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REPORT OF THE MEETING HELD ON 8 OCTOBER 2002

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1. The Committee on Trade and Environment (CTE) met on 8 October 2002 under the Chairmanship of Ambassador Oğuz Demiralp (Turkey). The documents submitted for discussion at the meeting were set out in the Annotated Agenda, circulated to Members on 30 September in Job(02)/134.¹

2. On observers, the Chairman noted that there had been a new request for observer status in the CTE from the Ozone Secretariat of the Montreal Protocol on Substances that Deplete the Ozone Layer.²

I. ADOPTION OF THE AGENDA

3. The agenda in WTO/AIR/1900 was adopted.

II. ADOPTION OF THE ANNUAL REPORT

4. The CTE adopted the Annual Report of the Committee for 2002 as contained in WT/CTE/7.

III. PARAGRAPH 32(III) (LABELLING)

Labelling requirements for environmental purposes.

5. The Chairman noted that paragraph 32(iii) of the Doha Ministerial Declaration on labelling was the "item of focus" for the current meeting. He recalled that at Doha, Ministers had instructed the CTE, in pursuing work on all items of the CTE work programme within its current terms of reference, to give particular attention, *inter alia*, to the issue of "labelling requirements for environmental purposes". At the last meeting, the European Communities (EC) had tabled a paper³ on this issue and there had been some preliminary discussion. For the current meeting, Switzerland had submitted a paper on "labelling for environmental purposes".⁴

6. In introducing the paper, the representative of Switzerland stressed that the CTE needed to intensify its work on environmental labelling in line with the mandate from Ministers in Doha. The objective was to come up with a report for the 5th Ministerial Conference, which would include recommendations on any future action. But the CTE needed to make progress on its work on environmental labelling because there was also an increasing trend to establish labelling requirements and schemes which focused on providing consumers with information about the environmental aspects of a product. Although labelling requirements in general tended to be less trade restrictive than other regulatory instruments, there were growing concerns that environmental labelling schemes could have an impact on international trade. This was particularly so when requirements varied from one country to another; compliance with divergent requirements could pose special difficulties for developing country Members. Yet, environmental labelling could be seen as a policy instrument towards "sustainable consumption". Hence, taking into account these aspects, Switzerland was of the view that the Committee, in order to submit a satisfactory report to the next Ministerial Conference, needed to structure its future discussions. In essence, Switzerland was suggesting that the CTE

¹ An updated list of all documents circulated in the CTE up to September 2002 is contained in WT/CTE/INF/5, 2 October 2002.

² The full text of this request is contained in document WT/CTE/COM/10, 4 September 2002. Also, a full list of the organizations that have requested observer status in the CTE is available in document WT/CTE/W/41/Rev.9.

³ G/TBT/W/175, WT/CTE/W/212, 12 June 2002, "Labelling", Submission by the European Communities.

⁴ At the time of the meeting, this paper was circulated as a non-paper, issued as Job(02)/140, 4 October 2002. It was subsequently circulated as WT/CTE/W/219, 14 October 2002, "Labelling for Environment Purposes", Submission by Switzerland.

concentrated on issues that specifically related to environmental labelling. It proposed a three-step approach:

- (a) Definition: The Committee needed to come to a common understanding on what was meant by the notion "environmental labelling" or "eco-labelling" respectively. It appeared as if these terms were being used for various types of labelling schemes, regardless of whether they were of a mandatory or voluntary nature. The Secretariat could be asked for an update of its 1998 paper⁵ on environmental labelling with a view to providing the Committee with the most recent international developments with respect to definitional issues.
- (b) Specific trade concerns: There was a need to identify specific trade concerns relevant to environmental labelling. To this end, Switzerland suggested that the Secretariat be asked to update its overview⁶ on the notifications filed within the TBT Committee with regard to environmental labelling. A revised and amended version of this document could also include a compilation of specific issues raised within the TBT Committee in this respect relevant to environmental aspects.⁷ Additionally, Members could be invited to contribute actively to discussions by providing the Committee with specific examples of trade-related experiences with regard to environmental labelling schemes.
- (c) Conclusions: Based on the conclusions of this process, which would include discussions on WTO rules that apply to environmental labelling, the Committee could make recommendations on any necessary action to be taken, as requested by the Doha mandate.

7. The representative of the Czech Republic indicated that his country considered eco-labelling to be a useful economic instrument for informing consumers about environmentally friendly products, especially when awareness of sustainability aspects was growing. The Czech Republic supported the notion of harmonization between various schemes of eco-labelling. In fact, it had already harmonized criteria for eco-labelling programmes with those of the European Union. The significant impact of labelling requirements on producers and exporters – developing countries in particular – was understood; there was a need to better involve developing country trading partners in setting environmental standards and regulations. He noted that the Czech National Eco-labelling Programme (initiated in 1993) aimed at identifying consumer products which did the least harm to the environment. The Programme respected the following principles: its application was voluntary for producers; eco-labelling served as positive information for consumers and users; credibility, transparency and public participation; environmental impact of the production, consumption and disposal of labelled products had to be significantly lower when compared with average products which served similar purposes and had equivalent uses; and, equal access for domestic as well as imported products. The conditions for awarding the eco-label were defined for individual product categories. Specific, clear, precise and objective environmental criteria were established for each category to achieve a high level of environmental protection. Life cycle assessment of the impact of production, utilisation and disposal was used whenever possible. In the Czech Republic, the Minister of Environment was the authority to grant the eco-labels and approve the criteria for individual

⁵ WT/CTE/W/79, 9 March 1998, "Market Access Impact of Eco-Labelling Requirements", Note by the Secretariat.

⁶ WT/CTE/W/150, 29 June 2000, "Information Relevant to the Consideration of the Market Access Effects of Eco-Labelling Schemes", Note by the Secretariat.

⁷ The representative referred, in this respect, to on going work in the TBT Committee. The relevant documents here are, *inter alia*, G/TBT/W/183, 8 October 2002, "Notifications Related to Labelling (1 January 1995 – 31 August 2002)", Note by the Secretariat and G/TBT/W/184 (and Corr.1), 4 October 2002, "Specific Trade Concerns Related to Labelling Brought to the Attention of the Committee Since 1995", Note by the Secretariat.

categories; anyone could submit proposals for product categories to the Board of the Czech National Programme. The Czech Republic also participated in the international organization Global Ecolabelling Network (GEN).

8. The representative of Brazil noted that her country disagreed with the assertion that the Doha Declaration "clearly assigns the task of progressing work on environmental labelling to the CTE" (paragraph 5 of the Swiss paper). It was Brazil's understanding that the CTE was assigned to continue its work on labelling, but not only on labelling. There were eleven issues to discuss, including the issues that were under negotiation. The three issues that were singled out in the Doha Mandate were to be prioritized, but that was not to say that the other issues should not be discussed. Hence the word "progress" did not reflect the mandate given by ministers. Nevertheless, on the substance, Brazil believed that some of the points raised by Switzerland were valid and needed to be discussed in the CTE. For instance in paragraph 8, Switzerland recognized that eco-labelling represented a sound alternative to other policy instruments such as the setting of mandatory product or production/processing requirements/standards. It was true, also, that there was a proliferation of many different eco-labelling schemes. However, for Brazil that was not a problem. Quite to the contrary – it was through diversity that consumers could actually make a qualitative choice; there was nothing against discussing the proliferation of eco-labelling schemes in this Committee. Members could benefit from understanding that some eco-labelling schemes could pose barriers to trade or were not an appropriate response to the needs of consumers, producers and exporters.

9. Brazil did not agree with the approach set out in paragraph 12. On the first suggestion, that of trying to define eco-labelling, it was Brazil's view that WTO rules applied and that this was something that had been regularly reiterated in the TBT Committee. In fact, the proper forum for discussing not only eco-labelling issues but also labelling in general was the TBT Committee. The CTE in regular session was not the appropriate forum for discussing the appropriateness of WTO rules vis-à-vis labelling. On the second proposal (to identify and analyse specific trade issues related to environmental labelling schemes), Brazil believed that the Secretariat was already overburdened with too many tasks. Moreover, the methodological implications were daunting. It was also important not to duplicate work in the TBT Committee. In particular the third point of paragraph 12 suggested work for the CTE that was way out of line with the mandate from Doha: the CTE was not supposed to draw conclusions; conclusions were to be drawn only at the very end of the process, and only if there was a need to do so on eco-labelling.

10. The representative of Canada noted that the term "eco-labelling" (normally discussed in the CTE), could be seen as a narrower subset of the expression "labelling requirements for environmental purposes" (contained in the Doha Mandate). Canada recalled that it had submitted a document⁸ relevant to the issue of labelling where the view was put forward that there was a need to pursue a better understanding regarding the use of – and possible abuse of – labelling measures informally in the TBT Committee. At the same time, Canada also saw the need for the CTE to better understand the WTO disciplines that had a bearing on labelling, for example those in the TBT Agreement. However, Canada did not see a need to negotiate new or additional disciplines such as those found in the TBT Agreement. In fact, most Members were aware that root of controversy and possible differences among Members was related to what was called non-product related process and production methods (NPR-PPMs). This debate became complex and sometimes even acrimonious when discussing mandatory NPR-PPM labelling schemes. There was no doubt that this issue would need to be discussed in the CTE.

11. Canada had noted in the past how voluntary eco-labelling, driven by the market, could provide valuable information to consumers. It had also noted how important it was that such

⁸ G/TBT/W/174/Rev.1, 31 May 2002, "Labelling and Requirements of the Agreement on Technical Barriers to Trade (TBT): Framework for Informal, Structured Discussions", Communication from Canada, Revision.

programmes be developed consistently with the requirements of the TBT Agreement, and specifically with Annex 3 of that Agreement (the "Code of Good Practice for the Preparation, Adoption and Application of Standards"). Furthermore, the TBT Committee's Decision on the "Principles for the Development of International Standards" provided useful guidance in this area.⁹ This decision contained many, if not all, the principles which needed to be followed in the development of standards for labelling, including eco-labelling standards. These included transparency; inclusiveness or openness (all stakeholders be involved in the development of the standard); impartiality and consensus; effectiveness and relevance; coherence; and, wherever possible, responsiveness to the needs and interests of developing countries. These were all well-known and understood principles in the standards development world. Canada believed strongly in consumer choice and in protecting the health and welfare of not only Canadian citizens but also of all consumers of Canadian-made products. There had to be rules to ensure consumers' protection and trustworthy, non-misleading statements on labels; beyond health and safety and direct environmental consequences of products such as toxicity, or energy consumption by various products, Canada believed that there was a need to discuss what additional consumer information should be provided in response to market and consumer demands.

12. Canada acknowledged the contribution of the European Communities to this discussion¹⁰ and believed that it contained proposals on moving forward the informal discussions in the TBT Committee, that most, if not all Members believed essential to a better understanding of labelling issues under the TBT Agreement. Moreover, the work under way by the TBT Secretariat¹¹ would throw further light on the natural extent of labelling problems to date, including those that would fall under the rubric of labelling requirements for environmental purposes. Canada recalled the conclusions summarized in the CTE Report to the Singapore Ministerial meeting in 1996. Since then, new issues had arisen which the CTE needed to examine. While Canada was pleased with work undertaken in the TBT Committee in respect of labelling, the CTE also had to continue to discuss labelling matters as they related to "requirements for environmental purposes" in order to fulfill its mandate to report on this issue to the 5th Ministerial Session. This was an issue that Canada would revert to at the next meeting.

13. Canada appreciated the Swiss intervention and paper and would revert to it in the future. It asked the Swiss delegation to elaborate a little more on the first sentence of paragraph 8: "As such, 'eco-labels' represent a sound alternative to other policy instruments (such as setting of mandatory product or production/processing requirements/standards)". Canada was interested in seeing some examples of how Switzerland saw this as an alternative to other policy approaches.

14. The representative of Japan fully understood the importance that the European Communities and Switzerland attached to labelling requirements for environmental purposes. Japan shared the view that while it was important to make sure that such labelling requirements would not result in unnecessary obstacles to trade, Members needed to address the issue with a view to ensuring transparency, given the civil society's concerns for environmental protection. Referring to a previously tabled paper,¹² Japan encouraged (i) the acceptance of Code of Good Practice of Annex 3 of the TBT Agreement by the bodies developing labelling requirements; (ii) the promotion of international standardization on labelling through cooperation with the existing international standardization process; and (iii) the adoption of performance-based labelling requirements. Japan believed that these points should apply to eco-labelling as well. It was Japan's view that discussions on labelling in general should be first conducted under the TBT Agreement, which provided

⁹ G/TBT/9, 13 November 2000, "Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade", Annex 4.

¹⁰ G/TBT/W/175, WT/CTE/W/212, 12 June 2002, "Labelling", Submission by the European Communities.

¹¹ *Supra* note 7.

¹² G/TBT/W/176, 18 June 2002, "Labelling", Submission from Japan.

disciplines applicable to labelling, and within the TBT Committee, which had the relevant technical expertise. The CTE could then deepen its consideration of eco-labelling, taking into consideration the results of the discussions at the TBT Committee. Regarding fishery products, Japan referred to the discussions conducted at the FAO on sustainable use of fishery resources. Japan was of the view that objective and scientific guidelines should be developed at FAO, and that WTO should examine the issue from trade perspective taking into consideration the results of the FAO work.

15. The representative of Korea considered that there was general support for eco-labelling as an effective instrument of environmental policy, and that this had been confirmed by the 1996 Singapore Ministerial Report. Noting the demand from consumers for information about the environmental aspects of products, and the Mandate given by Ministers at Doha, Korea was in general open towards the direction of the CTE's future work on eco-labelling, as suggested by the Swiss delegation. Korea understood the Swiss paper as an expression of the need for the CTE to undertake discussions of its own while drawing on the ongoing work in the TBT area. The focus needed to be balanced on both the positive and negative aspects of the various eco-labelling schemes: while eco-labelling reflected the legitimate demand by consumers for information, the issue was how to address existing concerns expressed by many Members regarding potential implications on exports by developing countries. It was Korea's view that the main concern was about the reliance of eco-labelling schemes on life-cycle analysis. Moreover, with regard to eco-labelling, it appeared that if particular importance had to be paid to process and production criteria, this would eventually undermine what was perceived to be a comparative advantage of exporting countries. Korea welcomed the Swiss paper's suggestions on such instruments as harmonization, equivalence and mutual recognition as a way to address non-homogeneity in environmental concerns. It was notable that both the EC and Canadian papers also attached importance to these criteria as a way of reducing trade barriers resulting from labelling requirements.

16. The representative of Indonesia noted that the Swiss delegation had rightly pointed at the concerns held by many Members that environmental labelling and standards should not be misused for the protection of national markets. Various studies referred to the fact that environmental labelling regulations, which were strict and drafted without the participation of all concerned parties, tended to have effects on trade, particularly trade from developing countries. Requirements to fulfil standards that went beyond the capabilities and capacities of developing countries' industry to respond had deterred importers from placing orders. The need for transparency was of the outmost importance. Transparency had to be ensured at all stages of the process of creating environmental labelling schemes or programmes. Once a programme or scheme on environmental labelling had been decided upon, care had to be given to properly disseminate the information on the various rules and regulations related to the labelling scheme in order for foreign producers not to be at a disadvantage and not to suffer losses. A concrete example was the case of the "Green Dot" programme, whereby products were returned due to packaging "flaws". The take-back burden imposed on producers would have a more severe effect on foreign producers compared to domestic producers, due to the cost of shipping for returning the products.

17. Indonesia was of the view that environmental labelling schemes needed to be based on scientific considerations that were measurable and which took into account the need to balance the interests of consumers, producers and sustainability concerns. These concerns had also been reflected in the discussion at the Triennial Review meeting of the TBT Agreement. On the issue of the development of international standards related to environmental concerns, Indonesia stressed that developing countries were at a disadvantage due to limited participation as well as capacity. At present, it was more important to concentrate on assisting developing countries in designing schemes or programmes that supported environmental objectives within the national context. Different countries faced different environmental problems that had different characteristics and involved different specific concerns. Hence, at this stage of the development process, developing countries needed flexibility to adopt policies and programmes tailored to address their specific environmental concerns. For example, Indonesia had embarked on various programmes to ensure that environmental

concerns were addressed sufficiently. Various standards relating to environment had been adopted, such as those in the ISO 14000 series. Indonesia had opted for voluntary environmental labelling programmes and was in the process of developing voluntary environmental labelling criteria for specific products. It was Indonesia's experience that voluntary labelling provided incentives for effective compliance with environment policies and regulation. This showed that Indonesia was not opposed to the need to protect the environment; it was more concerned that this had to be done wisely. In concluding, Indonesia reiterated the view that the issue under discussion was closely related to the discussions in the TBT Committee, and hence there was a need to further discuss this in that particular Committee.

18. The representative of Norway stressed that eco-labelling could represent a potentially attractive way to inform producers about the environmental dimension of their purchasing, as well as way to provide producers market access for products to which there was a premium attached. This could be a viable alternative to mandatory government regulations, as the consumer was left with freedom of choice and the producer an incentive for "greening" his products. On the other hand, there was a danger that the proliferation of such labels could be confusing, or constitute unnecessary barriers to trade. Such schemes could turn into de facto requirements, leaving producers with little choice but to adapt. The developing country concerns were particularly relevant in this context. Although standardization, harmonization, equivalence and mutual recognition were instruments that could prove inclusive for developing country producers, in particular small and medium size enterprises (SMEs), authorities in these countries remained unformed. The proposals set forward in the EC paper, both as regards advance information on labelling, participation of developing countries in standardization activities and capacity building needed to be further examined in both the CTE and the TBT Committee. While many of the EC proposals were directed more at the TBT Committee, Norway believed that the CTE would benefit from a systematic analysis of the eco-labelling schemes' functioning and properties.

19. Norway was of the view that the CTE needed a common understanding with regard to the kinds of labelling schemes being discussed, and also with respect to the function and properties of the various schemes. On the basis of such a common understanding Members could then consider how to deal with the various labelling schemes under the TBT Agreement. Regarding the functioning of labelling schemes, these provided objective information to consumers and others about possible hazards, safety measures, properties of products or services, the origin of the products or services, and about the conditions under which the product or service had been produced. They also assured consumers and others that the product or service, or the information provided therein, had been subject to independent third-party quality assessment. As such, they offered a choice of products or services that were more environmentally sound than other products available in the same market. With respect to properties, Norway noted that some labelling schemes were mandatory, while others were voluntary. Some were set up by public authorities and others by independent third parties. Other schemes were set up by the companies themselves or their organizations. Some schemes were "static" while others were "dynamic" (i.e. subject to periodic review with a view to adjusting criteria). Some were national, in the sense that they dealt with local concerns, while others dealt with issues of international importance. Finally, some labels were directed towards ordinary consumers, while others were directed towards professional consumers (enterprises, wholesalers or retailers). These distinctions needed to be kept in mind in order to be able to identify the trade issues that the various kinds of labelling schemes raised. In the light of the above, Norway supported the Swiss proposal for an update of the relevant Secretariat papers.¹³ Norway also agreed that future work should involve, as appropriate, TBT experts as well as authorities responsible for health, safety and environment.

20. The representative of Australia remained convinced that existing WTO disciplines were more than adequate to deal with the issue of eco-labelling. Eco-labelling and consumer information tools needed to be voluntary and market driven, as opposed to imposed regulatory requirements.

¹³ Norway referred to: WT/CTE/W/150 and WT/CTE/W/79, *supra* notes 5 and 6.

Furthermore, the most appropriate body to take the lead in discussing labelling issues was the TBT Committee. It would be unwise for the CTE to preempt in any way the work taking place in the TBT Committee which was dealing with labelling more generally, and which was based on the understanding that discussions were on an informal basis without any prejudgement of outcomes. On the specifics, Australia believed the Swiss paper prejudged – or at least pushed – in a certain direction the outcome of the CTE mandate in paragraph 32(iii). This would be counterproductive to the discussions taking place in the TBT Committee. While Australia had no problem with giving some structure to the discussion, it was not appropriate to predetermine the outcome and to imply that some kind of "necessary action" would be needed. Australia noted that paragraph 7 stated that "It increasingly appears that consumers in most industrialized societies are willing to pay higher prices for products that are more environmentally friendly than others". Australia was interested in discussing this comment further. Also, Australia was concerned about the future activities and the way forward being suggested in the Swiss paper, considering that it was important not to duplicate what was going on in other bodies. It might be preferable to see the results of the work carried out in the TBT Committee before taking any decisions on what the CTE needed to do.

21. The representative of the European Communities recalled what his delegation had highlighted when the EC paper had been introduced at the last meeting.¹⁴ He referred in particular to the issues of international standards, developing country concerns, and equivalency and transparency. Like Switzerland, the European Communities believed that paragraph 32(iii) clearly mandated the CTE to give particular attention to environmental labelling and the European Communities was not in favor of making work in the CTE conditioned on progress in the TBT Committee. There was a need to pursue this work in parallel, as had been done before. Members did not have much to gain from a debate on what the mandate allowed for or did not allow for, in particular on the issue of conclusions. It was only fair to say that the Swiss paper in paragraph 20 left the issue quite open, because the word "whether" did appear, while it did not appear in the Doha Declaration. An in-depth discussion in the CTE was an important opportunity to address the issue in a way which allowed Members to demonstrate their intention to be adequately responsive to environmental considerations, and, as a result, send a reassuring message of mutual supportiveness between trade and environment policies, as had been done in the Singapore Report six years ago.

22. The European Communities drew the Committee's attention to the conclusions of the World Summit on Sustainable Development (WSSD) in Johannesburg and reiterated the importance of ISO work in this field. Both the WSSD and the ISO offered valuable input, and the CTE needed to take it into account. In particular, the ISO standards on voluntary eco-labelling based on life cycle provided internationally agreed principles for the use of such schemes. The WSSD Plan of Action recognized voluntary market-based instruments as a valuable tool to make progress towards more sustainable production and consumption patterns.

23. On the specifics of the Swiss paper, the representative of the European Communities did not see paragraph 12 as a prescription for the Secretariat's work. It was rather an idea of how to reach a common understanding of where the focus of the work needed to be. He was not sure whether he had misunderstood the Brazilian intervention in this regard. Concerning the definition of eco-labelling, the ISO standards had been mentioned, and figured in the contribution of the European Communities. The identification of specific trade issues related to environmental labelling schemes was already under way in the work done in the TBT Committee.¹⁵ The European Communities also considered the point made in paragraph 19 of the Swiss paper, where delegations were asked to provide examples of specific initiatives for trade facilitation and promotion with respect to environmentally friendly products – in particular if these addressed developing country concerns. Finally, the European Communities did not have a firm view on necessary action or conclusions; the mandate instructed the CTE to clarify whether or not further action was warranted, and recommendations had to be made to

¹⁴ *Supra* note 3.

¹⁵ The EC representative referred, in particular, to G/TBT/W/184, *supra* note 7.

the next Ministerial Session. The European Communities was not of the view that Members should be precluded from discussing, at some stage, possible outcomes, or possible conclusions.

24. The representative of the United States referred to the Canadian paper submitted to the TBT Committee.¹⁶ Its views were usefully reflected in paragraph 4 (referring to labelling issues as being largely horizontal and to the fact that concerns related to how trade disciplines function in the context of labelling for environmental purposes could be expected to arise also with respect to general product safety or performance, including food safety) and in paragraph 6 (referring to the fact that the TBT Agreement did apply, and that TBT provisions were balanced and adequate). The United States agreed with what Australia had said in this regard in terms of TBT and SPS disciplines being sufficient, and with the view that eco-labelling should be voluntary and market driven. Similarly, the United States had yet to hear any compelling argument articulated as to how existing WTO rules could be insufficient to address particular concerns related to labelling in general and eco-labelling more specifically. The TBT and SPS Agreements already applied to labelling programmes, whether mandatory or voluntary. Particularly with respect to mandatory programmes, the TBT and SPS Agreements had a wide range of obligations to ensure that such requirements were developed and applied through a transparent participatory process, that they were non-discriminatory and that their adverse trade effects were minimized. The United States had a number of voluntary, and a few mandatory, eco-labelling programmes whether developed by the government or private sector. The practice of the United States generally provided for transparency and participation to underpin the development and application of labelling schemes.

25. On the Swiss paper, the United States expressed some preliminary views. While the United States supported a structured approach to discussions (paragraph 21), as stated by Brazil with respect to paragraph 12 and in particular sub-paragraph (c), which referred to conclusions and decisions on the necessary actions to be taken, it was not clear to the United States that action was necessary at this point. Nor was it clear, with respect to paragraph 22 (like Australia), what "value added" the Secretariat might provide at this early stage of the discussions. This was particularly the case with respect to the compilation that Switzerland proposed. The United States was not in a position to consider further work by the Secretariat in this respect until after the Secretariat had circulated the compilation undertaken in the TBT Committee, and there had been sufficient time to review this. During this discussion a number of delegations had referred to the TBT document that the Secretariat was about to issue.

26. The representative of the People's Republic of China, in offering some preliminary comments on eco-labelling, noted that his country believed that eco-labelling was an effective environmental policy instrument. However, the WTO principle of non-discrimination was stressed and all eco-labelling schemes had to be consistent with the TBT Agreement, especially the Code of Good Practice. Exporters and producers in China, and other developing countries, experienced significant difficulties due to the complexity and diversity of eco-labelling requirements in export markets, especially in developed countries. China believed that transparency needed to be improved in the establishment and application of such schemes, and efforts had to be made to reduce their negative impact on exports from developing countries. Furthermore, eco-labelling standards and their application in different countries varied, due to the difference stages of development. China believed that consultation and cooperation needed to be enhanced in international standards setting. All trading partners had to work together so as to mitigate the formation of trade barriers in the form of eco-labelling. The special needs of developing countries and least developed countries had to be accommodated in related technical assistance and capacity building activities. Finally, China, in establishing its own eco-labelling system, had taken international standards into consideration and was willing to participate actively in the establishment of international standards. China wished to strengthen its cooperation with international organizations and other Members in the area of mutual

¹⁶ *Supra* note 8.

recognition and was committed to improving the transparency of the eco-labelling system in China, and to providing information to interested importers and consumer's groups of other Members.

27. In a preliminary intervention, the representative of the Philippines noted that the intention of the Swiss paper was obviously to upgrade the work of the CTE on labelling and eco-labelling. It first demonstrated the fact that work in the CTE had not been approached in a systemic manner (paragraph 4), and then, in paragraph 21, suggested that systematic work on core issues related to environmental labelling be started without further delay. This would, however, accelerate the discussion in the CTE compared to the TBT and probably the SPS Committees, which were the bodies in the WTO tasked with addressing these issues. While the representative of the Philippines took note of the United States' statement regarding the adequacy of SPS and TBT rules, he was concerned that the European Communities implied that it would not agree to making work in the CTE conditional upon what was happening in the TBT Committee. This exceeded the mandate of Ministers which, as Brazil had explained, had instructed the CTE, in pursuing work on all items of its agenda, to give particular attention to three sub-issues among which the third was the labelling requirement for environmental purposes. Regarding whether further work on this issue needed to include the "identification of any need to clarify relevant WTO rules", the representative of the Philippines had yet to be convinced that there was a need to clarify relevant WTO rules since the SPS and TBT Agreements had created the appropriate balance of rights and obligations. If Members were to proceed in the manner suggested by Switzerland, an imbalance could be opened up, departing therefore from what had been agreed by Ministers.

28. The representative of Cuba recognized the close link between the debate on market access and labelling issues within the TBT Committee and the debate on labelling for environmental purposes in the CTE. While the CTE needed to focus on issues related to environmental labelling as a tool for environmental management, it had to be kept in mind that these could generate non-tariff barriers. In effect, the discussion in the CTE could be used as an input to the debate in the TBT Committee. The CTE could go into detail on the actual validity and cost-benefit related to new market opportunities which labelling could offer certain developing countries. Similarly, there was a need to look at the concerns of developing countries in implementing existing requirements and how these could give rise to new trade barriers, or be used for protectionist purposes, especially when one considered the PPM aspect, and the influence of PPMs on the final physical characteristics of the product. There was also a need to address the effects of voluntary eco-labelling schemes on developing countries, bearing in mind the applicability of the TBT Agreement.

29. Regarding the document of the European Communities¹⁷ and the need to clarify WTO rules through an understanding or interpretation, or some kind of guidelines, Cuba felt that there were no persuasive arguments for this. It was premature to discuss – or draw conclusions about – the need for clarifying WTO rules, especially with regard to eco-labelling, which required greater analysis from the standpoint of developing countries. Cuba supported the European Communities' proposal that the TBT Committee should hold an informal workshop on labelling. However, the CTE's participation in this workshop was essential. On the Swiss paper, which Cuba had not had time to consider, it supported the comments made by the delegation of Brazil, especially with respect to the issues dealt with in paragraphs 5 and 12.

30. The representative of Venezuela noted, concerning the definitions of eco-labelling (paragraph 12(a) of the Swiss paper), that this was an issue for the TBT Committee. On paragraph 12(b), while Venezuela felt that it would be fruitful to have an analysis of "specific trade issues", the CTE was not the place to identify these – this was better done in the TBT Committee. Nevertheless, it could be interesting to begin such an analysis with an example. In past cases certain countries had tried to impose eco-labelling for protectionist purposes; it was sufficient to recall the *United States–Tuna* dispute which was clearly, in his view, an issue related to both trade and

¹⁷ *Supra* note 3.

eco-labelling and was the type of issue that could be looked at in the CTE. On paragraph 12(c), Venezuela repeated that it was the TBT Committee that should be taking decisions and drawing relevant conclusions. The CTE could look at those decisions and conclusions taken in the TBT Committee on the two earlier points (paragraph 12 (a) and (b)).

31. The representative of New Zealand considered that both the EC and the Swiss papers were useful contributions to the ongoing debate (although New Zealand had a problem with some of the work proposed, particularly in the Swiss paper). As had been noted by Switzerland, New Zealand had also observed the trends on environmental labelling. Environmental labelling could be useful to move consumption and production onto a more sustainable footing; New Zealand believed that labelling schemes needed to be non-mandatory, participatory, transparent and above all, market driven. As had been noted by others, the TBT Committee had work under way to examine labelling issues, and while this work was more general than the environmental labelling mandate that Members faced in the CTE, it did cover a range of issues relevant to the CTE. New Zealand supported the systematic analytical approach being taken in the TBT Committee.

32. The representative of Argentina believed – and supported Switzerland in this respect – that it was important that the CTE debate be approached in a systematic and structured way. Nevertheless, Argentina did have some considerations, as did others, about the suggested structure and whether it would be prejudging the results of the work of the CTE. Like others, Argentina was of the view that the work being done by the TBT Committee, which was a more general exercise on labelling, should not be encroached upon by the CTE. Nor would it be advisable to condition the work of the TBT Committee so that it would consider solely the issue of labelling for environmental purposes. Instead, the CTE needed to give priority to certain effects, certain problems – such as the implications and trade effects for developing countries of labelling schemes. The CTE might need to analyse and clarify, for example, what criteria were being used, whether these schemes were voluntary, how effective they were, how relevant they were to achieve the goal of sustainable development in countries producing these goods, and also what difficulties exporting developing countries had in obtaining certification. On certification, a particularly important issue was the recognition of equivalency of certification systems established by developing countries, and which enabled these countries to eco-label their own products. All these issues needed to be integrated into a work programme for the CTE, so as to better structure the debate.

33. The representative of Malaysia hoped that the EC delegation would realise that many delegations in the room shared equally the concerns expressed by Brazil and Australia. Malaysia remained unconvinced of the need for any new disciplines in the WTO on labelling or eco-labelling. The TBT and the SPS Agreements contained adequate provisions; the TBT Agreement had a Code of Good Conduct, he noted. What remained to be done was to ensure that Members complied with and adhered to the provisions contained in these two Agreements, as well as ensure that the implementation of labelling schemes was done in a transparent and non-discriminatory manner. Also, as had been stressed by Australia and the United States, eco-labelling and consumer information needed to be market driven and voluntary. The best place for this discussion was the TBT Committee and even if the CTE were to discuss it, Malaysia could certainly not agree with the Swiss proposal that such a discussion would result or end up with a conclusion, or some decisions on necessary actions to be taken. Even with respect to the issue of definitions (paragraph 12(a)), Malaysia could not see a need to discuss this in the CTE Special Session. In fact, the Swiss proposal in paragraph 14 already identified some ISO definitions – these were voluntary. If this was to be discussed in the CTE Special Session, then it had to add value and to avoid duplication of work. Furthermore, Malaysia was not in a position to support any further work suggested by the Swiss delegation in paragraph 22.

34. The representative of Saudi Arabia believed that the interventions by Brazil, Australia, the United States, New Zealand and others had highlighted the emerging consensus that there was no need to establish any new rules and that eco-labelling needed to be on a voluntary basis; the CTE should concentrate on the implementation of the disciplines of the existing rules. Moreover,

Saudi Arabia totally shared the concern of many countries not to overburden the Secretariat with work on identification and analysis, particularly when considering the concern that the CTE should not duplicate work in the TBT area.

35. The representative of the European Communities felt that there was a need to correct a misunderstanding: the European Communities did not raise the issue of new disciplines and new rules in this context at this stage. There was no EC position that there was a need for new rules and disciplines on eco-labelling. What the European Communities was looking for was a debate on the state of play.

36. The representative of United States also wished to clarify the US point of view (in light of the EC clarification); the United States had not yet heard a compelling argument for a common understanding or guidance to be negotiated. Also, the United States noted that Malaysia had raised an important point on the issue of compliance with existing obligations.

37. The representative of Switzerland stressed that it was not the purpose of the Swiss paper to prejudice any outcome of the discussions under the Doha mandate within the CTE. Like the European Communities, Switzerland did not see any need for new rules, but wished to start a discussion on the open issues, that is, with respect to trade concerns related to eco-labelling. While the representative of Switzerland agreed that the technical expertise relating to the TBT Agreement, as well as the horizontal labelling issues, lay within the TBT Committee, she noted that the Doha mandate clearly instructed the CTE to give particular attention to labelling requirements for environmental purposes. Moreover, during the last discussions in the TBT Committee on labelling, several delegations had said that the Doha mandate did not apply to the TBT Committee and that therefore the TBT Committee did not need to progress or intensify its work because of the Doha mandate. It was the CTE that was instructed, in paragraph 32 of the Doha Declaration, to take further action. So the Swiss delegation would not support a motion to defer all the labelling questions to the TBT Committee. However, she agreed that the CTE should not duplicate work undertaken in the TBT Committee and was interested in the views of those who had said that the CTE could complement this work, specifically on environmental issues. Regarding definitions, as had been obvious during the discussion, and as New Zealand had pointed out, there were several terms being used. One of them was "environmental labelling", another was "labelling for environmental purposes" and yet another "eco-labelling". Switzerland was not certain that all delegations understood the same thing under these terms and felt that the issue needed to be addressed within the CTE. Referring to Malaysia's point, the representative of Switzerland assured the Malaysian delegation that her country did not intend to raise the issue of labelling within the Special Session of the CTE. The Doha mandate instructed the CTE, in regular session, to deal with this issue – which was the nature of the current meeting.

38. The representative of Brazil drew the Committee's attention to the work carried out by the Committee on Forests of the FAO which was specifically addressing the issue of forest certification. She recommended that, at the next meeting of the regular CTE, the FAO representative be invited to circulate some of the relevant papers on forest certification.

39. The representative of the ISO gave a comprehensive and detailed statement on current developments in ISO relevant to environmental standards (ISO 14000), including a discussion on the current definitions on environmental labelling (Types I-III). The full text of this statement has been circulated separately as document WT/CTE/GEN/1.¹⁸

¹⁸ WT/CTE/GEN/1, 19 November 2002, "Progress in Environmental Management Systems (EMS) Standardization", Statement by the International Organization for Standardization (ISO) at the Regular Session of the Committee on Trade and Environment of 8 October 2002, paragraph 32(iii).

40. The Chairman thanked the Swiss delegation for its paper which had stimulated a useful discussion. He noted, however, that it was not possible to draw any conclusions from the discussion at this stage. He observed that almost all delegations that had taken the floor had underlined the importance of not duplicating the work of the TBT Committee. The discussion would continue at the next meeting.

IV. OTHER PARAGRAPH 32 ITEMS

A. PARAGRAPH 32(i) OF THE DOHA MINISTERIAL DECLARATION (MARKET ACCESS)

The effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development

41. The Chairman recalled that this sub-paragraph had two aspects. The first aspect was the "market access aspect", that is, the effect of environmental measures on market access. The second aspect, which was referred to as the "win-win-win" aspect and had to do with the situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development. According to past practice, this second aspect was reviewed sector by sector.

1. The Market Access Aspect of paragraph 32(i)

42. The Chairman recalled that at the last meeting, India had submitted a paper which had been extensively discussed.¹⁹

43. The representative of Canada noted the importance of bringing forward concrete examples regarding the effect of environmental measures on market access, as had been done in the Indian paper. He expressed support for UNCTAD's work in this respect, including the expert workshop which had been held the previous week, and the OECD workshop scheduled for November 2002. These provided opportunities to address specific case studies which could help Members better understand the issues. The issue of cost of compliance for SMEs was a concern for all countries, even if it posed greater challenges in developing countries. Members needed to seek to design regulatory measures that took into account the capabilities of developing countries while meeting legitimate health, safety and environmental objectives. Canada encouraged standard-setting bodies, particularly those working on international standards of interest to developing countries, to find ways to further involve developing countries in the early stages of the standard-setting process. At the same time, Canada noted that Members had the right to set their own appropriate level of environmental protection and measures were generally put in place to address legitimate environmental concerns. Canada agreed that sound science and transparency were important criteria in the development of environmental measures; the TBT and SPS disciplines negotiated by Members recognized this. They also imposed notification requirements on Members so as to enable consultations to take place. Greater efforts had to be made by all WTO Members to implement more rigorously their obligations with respect to notifications of proposed regulations so that affected Members were given an early opportunity to review them and raise concerns.

44. The representative of Japan noted that the Indian paper gave some interesting suggestions with regard to sustainable development and the mutual supportiveness of trade and environment policies. Sustainable development, in Japan's view, was global and cross-sectoral in nature. At the WSSD, the global commitment for sustainable development had been reaffirmed. The Indian paper

¹⁹ WT/CTE/W/207, 21 May 2002, "The Effects of Environmental Measures on Market Access, Especially in Relation to Developing Countries, in Particular the Least-Developed among them", Submission from India on Paragraph 32(i) of the Doha Ministerial Declaration.

pointed to the importance of sustainable development (in paragraph 6) and introduced some examples of India's commitment to sustainable development (in paragraphs 10 to 14). These examples included references to eco-packaging with jute, sustainable management of tropical timber, conservation and management of marine turtles, and organic food production. One point made in India's paper was of particular importance for Japan: the fact that packaging material made from wood taken from sustainably managed forests or plantations could be considered to be environmentally friendly.

45. On the relationship between environmental measures and market access, Japan understood the concern of developing countries that environmental measures might cause trade distortions if they were used in an inappropriate manner. At the same time, it had to be kept in mind that environmental measures were taken based on the need to attain environmental protection or sustainable development. What was important here was to make sure that these measures were applied in accordance with WTO rules, including the SPS and TBT Agreements, thus minimizing their trade-distorting effects. In this context it was important to pay special consideration to concerns from developing countries. In this regard, the Indian paper touched on some important points, including the need for special consideration for SMEs and the lack of infrastructure in the developing countries (paragraph 4), as well as the need for information dissemination about new environmental requirements (paragraph 7). In order to utilize the suggestions presented in the Indian paper, Japan considered it very important that each specific case be considered in light of its own situation and circumstances, and be dealt with in a flexible manner.

46. Japan wished to have some clarification from the Indian delegation. First, paragraph 9 stated that "there is a need to acknowledge that while certain environmental measure are prescribed to achieve the environmental objectives in the importing country, similar or greater environmental objectives could be achieved by some other measures in the exporting country". Japan asked if the Indian delegation could provide the CTE with some concrete examples which illustrated this statement. Second, paragraph 16 set out the responsibility of importing countries, when developing and applying environmental measures, to ensure actions listed in sub-paragraphs (a) to (g). Japan asked the Indian delegation for its view on how the accountability of the exporting countries could be considered.

47. The representative of the United States wished to highlight some of the points and suggestions made in the Indian paper, including (i) the importance of market access to products of export interest to developing countries, (ii) the suggestion that developing countries identify sector-specific examples of environmental requirements impacting export performance so that positive measures such as capacity building, technology transfer and technical assistance could be requested and directed at finding means for exporters in developing countries to meet requirements of other countries, and, (iii) the emphasis placed on assessing market impacts of regulatory measures.

48. The United States believed that for future discussions related to the Indian paper it would be useful to discuss how domestic procedures in importing countries incorporated market access considerations – domestic and foreign – into democratic and non-discriminatory regulatory processes at the national level while maintaining regulatory objectives and taking into account practical, informational, analytical and budgetary constraints. For example, the United States already had a public comment process available to all interested parties, foreign and domestic, to ensure meaningful participation in regulatory development. This kind of process had to be flexible and provide scope, in appropriate cases, for addressing particular concerns in the rule-making process. On India's points with regard to promoting environmentally friendly products from developing countries, the United States was prepared to engage in constructive discussion on how developing countries could be assisted in developing export markets for environmentally friendly products. Environmental regulation, like environmental market demand, could create new market opportunities. In fact, with respect to developing countries' concerns, the current agenda item (on market access) could be appropriate for some of the points raised in the Swiss and EC papers on labelling.

49. The United States was also of the view that it would be useful to consider the OECD series of case studies on developing country market access concerns with environmental measures. One such OECD study involved a specific example of the turtle excluder device which had been raised in India's paper (paragraphs 12 and 13). This OECD study reported on successful efforts between the United States and Costa Rica to address specific market access problems. In the US's view, there was sufficient scope in existing WTO Agreements to ensure that environmental measures did not unduly restrict developing country exports, particularly with respect to ensuring that there was an inclusive, participatory, regulatory process. The United States was open to reaffirming existing mechanisms, for example, to addressing some of the points raised in paragraph 16 of the Indian paper.

50. The representative of the European Communities wished, like other delegations, to encourage further work on this issue. He noted that on organic production and certification (paragraph 14 of the Indian paper) the WSSD did support the production and export of environmentally friendly products, and notably those originating from developing countries. Herein there was a concrete link in the WSSD declaration with the work of the CTE. Like others, the European Communities recalled the UNCTAD expert meeting as well as the upcoming OECD conference in New Delhi on the same topic. In the EC's view, it was worthwhile to consider specific examples and to identify regulatory developments and ways to target technical assistance and capacity building to overcome possible obstacles. Previously, reference had been made to "sustainable trade and innovation centers" which had been set up so far on a private basis to help developing country exporters overcome possible obstacles. But work was also being done elsewhere: by the ITC, the joint Capacity Building Task Force of UNEP and UNCTAD. New avenues needed to be explored; the issue of equivalency agreements in particular seemed to warrant further consideration. The EC representative drew the Committee's attention to a recent communication from the European Commission on trade and development which extensively addressed the current issue particularly in the field of SPS. How to deliver better technical assistance and help developing countries to meet EC legislation was one of the main themes therein. The European Communities believed that a bottom-up approach was necessary to help developing countries put into place the adequate legislative or regulatory capacity so as to enhance market access opportunities in EC markets.

51. The representative of Australia noted the link between market access and sustainable development as highlighted by India in paragraph 6 of its paper. This was not just an issue of environmental protection; there were benefits of trade for poverty alleviation and the derivation of export earnings for enhancing environmental protection. This had been clearly recognized as an outcome from the recent WSSD and had to be kept in mind in future work of the CTE and other areas of work of the WTO. The Indian paper also clearly highlighted the issue of equivalence, which formed the basis of recommendation (e) of the paper. This issue was not relevant only to environmental measures. The broader principle of equivalence was set out in Article 4 of the SPS Agreement which encapsulated animal, plant and human health and life. Externalizing an importing country's environmental objectives which had no relevance to the conditions of the exporting country, or impact in the importing country, was not consistent with this principle. For example, Australia's approach to the import and use of jute, from a range of countries, recognized equivalence, and was based on the potential prevalence of pests and diseases at the border, as opposed to determining how countries should protect their environment and how best to derive benefits from agricultural production. The approach on the import of jute as packing material was also based on sound science, transparency and equity, consistent with recommendation (b) of the Indian paper. It was also worth noting recommendation (g) in the Indian paper which called for additional market access to mitigate and eliminate the effects of environmental measures that caused the economic hardship for developing countries. The greatest benefit for all WTO Members in terms of increasing economic growth that could assist in delivering sustainable development on a national and global basis was to reduce barriers to trade and ensure that environmental measures were not implemented inconsistently with the principles and objectives of the multilateral trading system and as disguised barriers to trade in the guise of environmental protection.

52. The representative of Indonesia stressed the importance for the CTE of studying further the impact of environmental measures on market access, in line with the mandate set out in paragraph 32(i). This was particularly so with regard to exports from the South. There was a need to clarify the circumstances under which trade liberalization could have positive and negative environmental and developmental effects, especially for developing and least-developed countries. An early understanding on how "environmental measures" were defined in terms of market access would be useful. There was a wide spectrum of such measures – ranging from requirements relating to product standards and technical regulations to packaging, or charges and taxes for environmental purposes, environmental labelling, or even to process and use of raw materials. Indonesia agreed with India's view that SMEs from developing countries were those that had been most affected by the various environmental measures illustrated in the paper. This was due to various reasons, including cost of compliance, limited access to technology, insufficient facilities, limited technology choices and insufficient access to environmentally friendly raw materials and technology. In light of this, due consideration had to be given to providing longer time-frames and flexibility in complying and adapting to the various environmental measures for developing countries. It was Indonesia's experience that environmental standards that had not taken into account the specific characteristics and needs of developing countries caused compliance difficulties, and although much had been done to harmonize standards with international environmental standards, developing countries still faced difficulties. Participation of developing countries in the standard-setting organizations thus became all the more important. Indonesia also shared the view expressed in the Indian paper on the need to have a closer collaboration between developing countries and developed countries in the design of environmental requirements. In this respect, it had to be ensured that the measures were based on sound scientific criteria and were transparent in nature.

53. In Indonesia's view, the idea of having a collective initiative for cost-effective solutions to meet SME's cost of compliance needed further exploration. The issue of dissemination of information on various regulations related to environmental protection also needed to be appropriately addressed. Another idea that could be further explored was to provide incentives for environmentally friendly goods from developing countries. Acceptance in the form of greater market access of environmentally friendly products from developing countries would promote and ensure increasing production of such products. This would enable developing countries to better adapt to the changing environmental requirements in many countries. Finally, there was a need to ensure win-win-win solutions whereby the importance of environmental concerns was balanced so as not to hinder developing countries' efforts to expand their economy through enhanced exports. Developing countries, including Indonesia, were committed to meet global environment objectives; however, their needs and concerns also had to be taken into account.

54. The representative of Cuba reiterated her country's support for the preoccupations and concerns set out in India's paper regarding the vulnerability of developing countries to market access effects of environmental measures. Negative market access effects had to be reduced to a minimum for products of export interest to developing countries. In this sense, the CTE could look at the establishment of guidelines for the application of environmental requirements without affecting market access as a means of efficient and operational provision of special and differential treatment. Such guidelines could include ideas from India's paper (paragraph 16 (a)-(g)). The representative of Cuba recommended that Members read the documents pertaining to the UNCTAD Expert Meeting on environmental requirements. Cuba had, at that meeting, presented a paper on the economic impact of environmental regulations on market access for products from Cuba, namely lobster, honey and coffee.²⁰

55. The representative of India thanked delegations for their constructive engagement and noted that he would revert to the clarifications sought by Japan. Moreover, India was in the process of preparing specific papers on the textiles and other sectors which would be submitted in due course.

²⁰ The representative of Cuba noted that copies could be provided on request.

56. The representative of UNCTAD reported, in detail, on the Expert Meeting on Environmental Requirements and International Trade, held from 2-4 October 2002 in Geneva. Among the main concluding points was the need for: (i) raising awareness among producers, particularly SMEs of existing requirements; (ii) the particular difficulty SMEs faced in adjusting to standards; (iii) the need to reduce costs related to certification; and (iv) the need for developing "best practice" in setting up and implementing environmental regulations and standards. The full statement has been circulated separately as WT/CTE/GEN/2²¹ and the Chairman's summary of the meeting would be available on the UNCTAD web site.²²

57. The representative of Saudi Arabia wondered whether developing countries participated in the UNCTAD meeting. To his delegation, it seemed as if the problem of the impact of environmental measures on market access hinged on developing countries' inability to cope with the requirements and that once this problem was solved, there would be better access to the markets. This was not true. The main concern was how to minimize the impact of the environmental measures. This included looking at implementation issues that resulted in preventing market access. He wondered whether further studies could be undertaken by UNCTAD on distortions that could exist in the implementation of developed country measures.

58. The representative of UNCTAD confirmed that the meeting was dealing with developing country concerns and that the overwhelming majority of the participants, the experts, came from developing countries. He noted that delegations could look at the papers and presentations from the workshop which had been posted on the UNCTAD web pages. In fact, there were only a few contributions from developed countries. Regarding distortions, most of the discussion had focussed on proactive adjustment strategies in exporting countries. However, there were a number of papers dealing with particular concerns and with distortions, or alleged distortions, in developed countries. Some experts had highlighted the need for further analytical work on subsidies being provided to domestic producers in developed countries when it came to testing, for example, or infrastructure facilities in meeting particular environmental requirements.

59. The representative of the OECD provided the Committee with an update on a workshop entitled: OECD Global Forum on Trade – The Development Dimensions of Trade and Environment. It would take place in New Delhi on 27-28 November 2002. The workshop would draw, in particular, on approximately 20 case studies carried out in the Joint Working Party on Trade and Environment. The objective was to promote dialogue between developing country exporters, officials involved in the setting of environmental regulations and standards, various agencies involved in trade-related capacity building and experts from NGOs. The full statement of the OECD has been circulated separately as document WT/CTE/GEN/3.²³

60. The representative of Venezuela stated that he wished to participate in the seminar. It seemed that the programme was well balanced and Venezuela had positive experiences which needed to be presented in international fora.

²¹ WT/CTE/GEN/2, 20 November 2002, "Expert Meeting on Environmental Requirements and International Trade", Statement by UNCTAD at the Regular Session of the Committee on Trade and Environment of 8 October 2002, paragraph 32(i).

²² See www.unctad.org/trade_env/test1/meetings and document TD/B/COM.1/EM.19/L.1.

²³ WT/CTE/GEN/3, 20 November 2002, "Global Forum on Trade: The Development Dimensions of Trade and Environment (New Delhi, India, 27-28 November 2002)", Statement by the OECD at the Regular Session of the Committee on Trade and Environment of 8 October 2002, paragraph 32(i).

2. Sector analysis

(a) Energy

61. The representative of Egypt expressed his country's agreement with the conclusion contained in the paper from Saudi Arabia²⁴ to the effect that a reform of the taxation policy had to be undertaken by OECD countries so as to ensure that such taxation be based on carbon content. Egypt asked for a clarification regarding the logic of OECD policy in this respect, particularly in respect of EC policy which consisted of maintaining subsidies and applying the current system of taxation that, based on the data from Saudi Arabia, did not favour the reduction of greenhouse gasses, and this despite the European Communities apparent attachment to the goal of preserving the environment.

62. On specific aspects, the representative of Egypt wondered in what context the document from Saudi Arabia could be dealt with in the Special Session of the CTE. He also noted that there seemed to be a contradiction in paragraphs 13 and 15 with respect to the percentages. In the table on Fossil Fuel Consumption Taxes (page 5) it was stated that for the European Communities and the United States, there was 0 per cent of subventions for natural gas and 4.8 per cent for Japan. Yet under paragraph 13 (box) it was stated that "taxes on coal and gas products are negligible in comparison". Furthermore, Egypt wondered what annexes were referred to in paragraphs 18 and 19 and what Saudi Arabia meant in paragraph 57, second line, where it stated: "countries pursuing environmental objectives may contravene their WTO obligations". What WTO obligations could be contravened?

63. On the annexes, the representative of Saudi Arabia noted that paragraph 18 referred to Annex B under the Kyoto Protocol and the reference in paragraph 19 to Annex 1 was to the United Nations Framework Convention on Climate Change (UNFCCC). On reform policies and carbon content, the representative of Saudi Arabia reiterated his country's surprise to see that while oil products were heavily taxed, coal was being subsidized in some OECD countries, in particular the European Communities. It was shocking that EC Finance Ministers had agreed that Germany could continue subsidizing their coal industry until the year 2010 before any revision could be made. This clearly put energy exporters from developing countries at a disadvantage in respect of market access. Removing subsidies given to OECD producers of oil and gas would be beneficial not only for environment and development, but also for trade ("win-win-win"). On the issue of the Special Session, the paper had been tabled under paragraph 31(i).

64. The representative of Switzerland stressed that the discussion on the impact of measures taken to mitigate climate change, implemented by industrialized countries on oil-exporting developing countries, was dealt with under the UNFCCC, Article 4:8 and under the Kyoto Protocol under Article 2:3 and 3:14. Therefore, it was the Swiss delegation's view that rather than entering into a detailed discussion in the CTE, it was more convenient, for the sake of avoiding duplication, to refer to the ongoing process under the UNFCCC. This approach also found support in the recent WSSD plan of implementation that recognized that the WTO and Multilateral Environmental Agreements (MEAs) were mutually supportive. UNFCCC decisions requested parties to the UNFCCC and the Kyoto Protocol to provide information on how countries implemented measures to reduce greenhouse gas emissions and recommended countries that were in a position to do so, and, as appropriate, to address market imperfections in all greenhouse gas emitting sectors. Regarding market access impact, no relevant data could be specified and there was currently no methodology to assess the impact on oil-exporting developing countries.

²⁴ WT/CTE/W/215, TN/TE/W/9, 23 September 2002, "Energy Taxation, Subsidies and Incentives in OECD Countries and their Economic and Trade Implications on Developing Countries, in Particular Developing Oil Producing and Exporting Countries", Submission by Saudi Arabia.

65. The representative of the European Communities, referring to Egypt's statement, noted that he would be shocked if other delegations questioned EC's reduction targets under another convention, which was not at stake in the WTO, but where nevertheless there was some implication that EC domestic tax policies could be in contradiction thereof. The CTE was not the place to discuss this, and nobody was to go away from the CTE meeting with the impression that the European Communities did not keep its reduction targets; how the European Communities would do this was the EC's own decision. On subsidies, it was clear that there was a subsidy debate going on where subsidy issues could be raised in respect of their trade-distorting aspect. The European Communities was interested in this discussion, but also wished to look at other subsidies which might be "shocking" from their perspective, such as the practice of dual pricing for domestic producers and others – but that was also a debate that needed to be left to other bodies.

66. The representative of Venezuela, hearing the EC and Swiss positions, agreed with them to the effect that relevant discussions were being held in other fora. However, discussions were held there from an environment point of view. Here, in the WTO, the perspective was one of market access. The issue in the CTE was not the impact of CO₂ on the atmosphere but certainly the CTE was a valid forum in which to bring up the issue of market access. Hence, Venezuela supported the document for discussion put on the table by Saudi Arabia.

67. The representative of Saudi Arabia noted that both the EC and Swiss delegates could benefit from a careful reading of paragraph 32(i) which dealt with the elimination or reduction of trade restrictions and distortions that would benefit trade, environment and development. The issue was one of market access for developing countries.

68. The representative Egypt noted that, with respect to his first intervention, he had been confused with regard to the numbers and contradictions. The contradiction, in effect, was between paragraph 15, where Saudi Arabia talked about taxation, where it was stipulated that the EC's taxes for natural gas were 0 per cent while in the box under paragraph 13 (on the left) it was stipulated that for the United Kingdom, it was 4.8 per cent and for Finland 29 per cent.

(b) Forestry

69. The Chairman recalled Japan's paper on forestry which had been discussed at the last meeting.²⁵ As this paper had been circulated just prior to the meeting, several delegations had indicated their intention to revert to it.

70. The representative of Switzerland agreed with Japan that sustainable forest management was one of the world's major challenges. At the WSSD, the international community had underlined that sustainable forest management was essential to achieving sustainable development. Moreover, the WSSD had affirmed the international commitment to sustainable forest management; to combat illegal logging and illegal international trade in forest products, as well as the adoption of effective measures at the national and international level to realize these goals. Switzerland shared the view that forests could not be looked at in isolation. On the contrary, the multiple benefits provided by the forests (including: biodiversity habitat, provision of cheap energy, raw material for numerous products, food provision, mitigation of global warming effects, prevention of soil erosion, crucial function for the balance of water ecosystems and watershed protection, recreation, etc.,) and their interdependence with other sectors required a cross-sectoral approach which had also been confirmed at the WSSD. Hence, it was necessary to find ways of making a positive contribution to the goal of sustainable forest management. Because of its interlinkages and the necessity of a cross-sectoral approach, this had to include a discussion of trade-relevant elements. It was crucial that trade-relevant policies did respect the WTO principle that no measure be adopted which constituted a means of

²⁵ WT/CTE/W/211, 11 June 2002, "Issues on Forestry Products Trade and Environment", Submission by Japan.

arbitrary or unjustifiably discrimination or a disguised restriction on international trade. While measures necessary for the protection of the forests and the promotion of sustainable forest management had to be implemented, such measures also had to be non-protectionist. Therefore, limiting export restrictions to unprocessed logs, while not limiting the export of processed lumber products, seemed to be doubtful. On the other hand, effective tools for combatting illegal logging and illegal trade in forest products, including labelling based on transparent and non-discriminatory processes and principles, could be desirable policy measures. Switzerland fully supported the main conclusions of Japan's submission and was interested in deepening this discussion.

71. The representative of the United States noted his country's concern about illegal logging practices and referred to an initiative launched at the WSSD on forestry management practices. This was a private-public partnership relating to the Congo Basin of forest resources involving six Central African countries (Cameroon, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gabon and Congo). The United States representative asked the Japanese delegation to what extent Japan found that its paper was relevant to market access considerations being addressed under the current agenda item; in particular, was the paper related to the market access effects of trade liberalization or to the maintenance of tariffs and non-tariff barriers for purposes of forestry management?

72. The representative of Japan recalled that, at the last meeting, while many Members shared Japan's concerns over forestry issues, some Members had asked for clarification on the intention behind the submission. Japan had not presented the paper with the objective of giving specific solutions, or to predetermine the course of future discussions. Rather, the intention had been to have a CTE discussion aimed at exploring possible ways for the WTO to make a positive contribution to the forestry issue. Regarding the point of view that forestry issues were more appropriately dealt with in other international organizations, such as the United Nations Forum on Forests (UNFF), Japan considered that while the UNFF was a major organization with expertise in forestry, and forestry issues needed to be discussed in those organizations as well, this did not necessarily exclude the WTO's contribution to the field of forestry. Japan was going to prepare further contributions with a view to deepening the CTE discussions in this respect, while reflecting comments and inputs from Members.

B. PARAGRAPH 32(ii) OF THE DOHA MINISTERIAL DECLARATION (TRIPS)

The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

73. The representative of India recalled some of the developments of the TRIPS Council of relevance to this agenda item. He welcomed the very useful contribution by the European Communities²⁶ in that forum and hoped that some variant of the paper would be tailored for the mandate of the CTE and circulated in the CTE. He noted, though, that although the paper went in the right direction, it did not meet all India's concerns.

74. The representative of the European Communities noted that the paper India had referred to was a communication which dealt with the review of TRIPS Article 27.3(b), the relationship between the TRIPS Agreement and the CBD (including the disclosure of origin), the protection of traditional knowledge, the protection of plant varieties, and, finally farmers' rights and exemptions. The EC's positions therein included: readiness to engage in discussions on disclosure of origin, while clearly setting limits for the terms under which any such requirements could be acceptable; the recognition

²⁶ IP/C/W/383 (TRIPS Council), 17 October 2002, Review of Article 27.3(b) of the TRIPS Agreement, and the Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the Protection of Traditional Knowledge and Folklore, Communication from the European Communities, "A Concept Paper".

that the UPOV convention was not the only valid *sui generis* system for plant variety protection; and a recognition of the rights of small farmers in developing countries to save, exchange and sell protected seeds under certain conditions. The European Communities would reflect on the request to circulate the document in the CTE.

75. The representative of Brazil welcomed, like India, the contribution from the European Communities which was useful and constructive. Brazil understood the EC's position that both instruments were complementary and not conflicting and took note of the fact that the European Communities agreed that it would be important to disclose the source of the country of origin of the biological resource and of traditional knowledge used in an invention. This was one of the elements of Brazil's own proposal. Although Brazil did not see "eye to eye" with the European Communities on every aspect, on at least one aspect there was agreement.

76. The Chairman noted that this concluded the discussion on those paragraph 32 items of the CTE work programme to which the Doha Mandate instructed the CTE to give particular attention. However, he reminded delegations that the Doha Mandate also instructed the CTE to pursue work on all other items on the CTE work programme, within its current terms of reference. Hence, the next Agenda Points would raise the remaining items of the CTE work programme.

V. OTHER ITEMS OF THE CTE WORK PROGRAMME

A. ITEMS 1 AND 5

"The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements (MEAs)" and "The relationship between dispute settlement mechanisms in the multilateral trading system and those found in MEAs".

77. The representative of UNEP stressed the importance his organization attached to the granting of observer status for MEAs and UNEP itself in the ongoing negotiations under the CTESS. He also commented on current cooperation between the WTO, UNEP and MEAs in the context of paragraph 33 (technical assistance) of the Doha mandate and emphasized the relevance of UNEP work to paragraph 32 on environmental labelling, TRIPS and market access. The full text of the statement has been circulated separately as WT/CTE/GEN/4.²⁷

78. The representative of CITES commented on a paper on "Economic Incentives and Trade Policy" which addressed some of the central issues involved in the relationship between the multilateral trading system and WTO rules.²⁸ The CITES delegate also reported on the upcoming 12th Conference of the Parties (COP12) which would be considering several proposals to amend the list of species subject to trade controls. Like UNEP, he expressed serious concern with respect to observer status of MEAs in the CTESS. The full text of the statement has been circulated separately as WT/CTE/GEN/5.²⁹

79. The observer of Saudi Arabia noted that with regard to observership of intergovernmental organizations (IGOs), there was a need for a balance between developed and developing country organizations who were granted observer status. The CTE had, for example, the OECD, but they could not identify any developing country organizations. At least two such organizations had applied for, but had not been granted, observer status. Secondly, while Saudi Arabia appreciated the

²⁷ WT/CTE/GEN/4, 20 November 2002, "UNEP Statement", Statement by the UNEP at the Regular Session of the Committee on Trade and Environment of 8 October 2002, items 1 & 5.

²⁸ The paper has been circulated separately as WT/CTE/GEN/6, 20 November 2002, "Economic Incentives and Trade Policy", Communication from the CITES Secretariat, items 1 & 5.

²⁹ WT/CTE/GEN/5, 20 November 2002, "CITES Statement", Statement by the CITES at the Regular Session of the Committee on Trade and Environment of 8 October 2002, items 1 & 5.

contribution from IGOs, there was a need for them not to preempt the CTE – instead they needed to be responsive to the work that was being done in the WTO. They should not have their own interpretation of the Doha Declaration.

80. The Chairman recalled, with regard to observer status, that there were ongoing consultations at the level of the General Council. As long as those consultations did not produce any results, there would be no movement.

B. 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."

81. The representative of the OECD noted that the purpose of the OECD intervention was to inform the CTE about a report entitled "Uncertainty and Precaution: Implications for Trade and Environment", which had been prepared in response to a mandate from the OECD Joint Working Party on Trade and Environment at its meeting in May 2000. The paper had been issued under the responsibility of the Secretary-General in September 2002. She noted that contrary to what had been indicated on the Annotated Agenda, and referring to the above-mentioned title, the OECD was not reporting on a paper about the "Precautionary Principle". While this was perhaps a nuance, it was important to some countries.

82. The first chapter of the paper examined how the concept of precaution fitted into the framework of environmental protection and provided brief overviews of how it was reflected in national laws and international environmental instruments. It also cited selected provisions of WTO agreements and WTO jurisprudence that could be relevant to measures taken to protect the environment in the context of scientific uncertainty. Three Annexes complement these overviews. The second chapter described a number of measures, steps and tools that could be used to identify and evaluate risks and to manage such risks in situations of insufficient scientific certainty about potential environmental damages. The third chapter raised several issues for discussion emerging from the previous chapters. The paper provided views of different analysts and stakeholders (governments, business, NGOs, etc.); it did not attempt to reach any conclusions but, rather, provided an overview of different arguments and opinions expressed.³⁰

83. The representative of Argentina stressed that very special care had to be taken with the term "Precautionary Principle". While the issue had been sufficiently clarified by the OECD representative, he wished the certainly unintentional error in the Annotated Agenda, which did not prejudice the position of any Member of the WTO, to be noted in the report of the meeting.

84. The Chairman confirmed that there had been a factual mistake in the Annotated Agenda.

85. The representative of Brazil asked why the OECD had taken the initiative to advertise this specific paper while not mentioning other papers that the OECD had produced in the past month and which were of greater interest to developing countries. She recalled, for example, papers on topics such as environmental requirements, the impact of agricultural subsidies on the environment, the impact of standards related to organic food, etc.

86. The representative of the OECD noted that there had been no particular motivation on their part in respect of introducing the current paper. It was one more paper that was mentioned in the same way as other work had been mentioned in previous meetings. This particular paper had been in

³⁰ The paper is available in English and French at the OECD Trade and Environment web page [http://www.oelis.oecd.org/olis/2000doc.nsf/LinkTo/com-env-td\(2000\)114-final](http://www.oelis.oecd.org/olis/2000doc.nsf/LinkTo/com-env-td(2000)114-final).

preparation for two years and it had been mentioned several times by delegates. Hence, the OECD had considered it appropriate to mention that it was now available to a broader public.

87. The representative of Saudi Arabia hoped that the OECD would present a paper on agricultural and energy subsidies in the OECD. On precaution, the representative of Saudi Arabia was aware of at least one convention where the precautionary principle had been stated in a very conditional manner to the effect that despite scientific uncertainties action could be taken, but this action had to be cost-effective and at a global level.

88. The representative of the European Communities believed that the paper could help to assuage some of the concerns and fears which had been aired when the CTE had last discussed the issue of precaution, a year ago. Since the paper neither drew any conclusions, nor made any recommendations – it was simply a factual overview of where precaution existed and how it was being implemented – it was not controversial; even those who were "allergic" to the issue of precaution could find some enlightenment therein.

89. The representative of Australia noted that, as an OECD Member, Australia had been involved in developing the paper. However, Australia was conscious of the fact that this represented the outcome of an OECD sub-committee that comprised a small group of WTO Members. Precaution, which was an important issue, was raised and discussed in many fora with different insights depending on the countries and individuals involved – it was not surprising that many individuals were starting to suffer "precaution fatigue". Hence, Australia was encouraged by the outcome of the WSSD which clearly recognized the need to improve and promote science-based decision-making, and science-based risk assessment. The WSSD outcome also reaffirmed Rio Principle 15 in the context of environmental protection.

C. ITEM 9

The Decision on Trade and Services and the Environment.

90. The Chairman recalled that the Committee had asked the Secretariat to prepare a background note and asked the Secretariat to introduce it.

91. In introducing the document³¹, the Secretariat noted that the paper was relevant to item 9 (of the CTE work programme) to the extent that it looked at the relationship between trade in services and the environment in the context of sustainable development, but was also relevant to item 6 as it considered the environmental benefits of removing trade restrictions. It was noted that while there existed a significant number of studies on the environmental effects of trade liberalization as well as studies on various effects of trade liberalization under GATS, fewer linked the two (the potential effects on the environment of services trade liberalization). On substance, the paper focused on three sectors: tourism, transport and environmental services, as a way of illustrating some of the links between liberalization of trade in services and the environment. The Secretariat stressed that the paper was aimed at promoting discussions and adding value from the CTE side.

92. The representative of Saudi Arabia noted that the Secretariat, in the paper, had referred to Agenda 21 and transportation under Chapter 9 (Protection of the atmosphere). This was somehow misleading because Agenda 21 contained more than 33 sectors and some of these issues were equally important. Giving an indication that transport was the most important was somehow misleading. This was a very sensitive issue, so there was no reason to give transportation special importance, even as an example.

³¹ WT/CTE/W/218, 3 October 2002, "Discussion Paper on the Environmental Effects of Services Trade Liberalization", items 6 and 9, Note by the Secretariat.

93. The representative of the European Communities noted that it was too early for a substantive discussion of the paper, as it had only been circulated recently. Nevertheless, the European Communities appreciated the paper and found the focus on sustainability impact assessment at the end of the paper to be vital.

94. The representative of Switzerland noted that the intention behind the original request made by Switzerland for the paper had been to help Members of the GATS Council to take into account the environmental impact of negotiations and services liberalization. Switzerland believed that the paper would serve as a useful tool for such an exercise. Furthermore, Switzerland supported the concluding remark in paragraph 45 that the methodology, which helped focus policy on the most significant environmental effects, was of key importance.

95. The representative of Venezuela believed that the CTE would need to address the issue of subsidies in the area of environmental services.

96. The Chairman confirmed that the paper would be on the agenda of the next meeting for a substantive discussion.

D. CANCUN

97. Before concluding the discussion on paragraph 32, the Chairman drew the attention of Members to one pending issue that had not yet been discussed: the preparation of the CTE Report to the 5th Ministerial Session, in Cancun, 10-14 September 2003. There was a need for Members of the CTE to start thinking about the form and content of this report. Hence the Chairman asked Members to prepare themselves for a discussion of this at its next meeting. That would give Members sufficient time to prepare the report.

VI. PARAGRAPH 33

We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

98. With respect to this issue, the Chairman noted that the Committee normally considered two aspects of paragraph 33 separately: (i) technical assistance and capacity building and (ii) national environmental reviews.

A. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

99. The Chairman noted that the Secretariat had circulated a note which provided Members with an overview of technical assistance activities during 2002.³² This note was subsequently introduced by the Secretariat.

100. The representative of Canada found the list of events organized by the WTO Secretariat in 2002 impressive, and was pleased to see that many of the activities were being held with the participation of the UNEP and MEA Secretariats. It was noted that Canada had provided support to both the WTO and UNEP for the first event held in 2002 (Caribbean countries, in St Lucia). Canada would be making an additional contribution to UNEP of approximately 100,000 Canadian Dollars for MEA-WTO related capacity building activities.

³² WT/CTE/W/216, 30 September 2002, "Technical Assistance and Capacity Building Activities in 2002", paragraph 33, Note by the Secretariat.

101. The representative of the Czech Republic informed the Committee that his government had taken part in one of the Regional Seminars for Central Eastern European and Central Asian countries in Riga, Latvia in September. In comparison with previous WTO regional seminars, his delegation considered that this last activity had benefitted from the active participation of representatives of UNCTAD, UNEP and UNFCCC; it had been a successful and informative event with lively discussion. The Czech Republic considered this form of capacity building and information dissemination efficient.

102. The representative of Switzerland informed the CTE that UNEP and Switzerland had agreed on a new specific project on trade, environment and development which corresponded to the Doha Declaration, paragraph 33. One of the aims of this programme was to help developing countries engage effectively in the negotiations. A second was the strengthening of UNEP's contribution to the CTE's Regular session, especially regarding the effect of environmental measures on market access. Specific activities would be undertaken: workshops would be organized back-to-back in Geneva with the CTE Regular and Special Sessions and UNEP would organize briefings for the Geneva-based missions so as to inform them of its activities and of the progress achieved.

103. The representative of the European Communities backed the comments made by Canada on the participation of UNEP and of MEAs, as well as UNCTAD, in the seminars organized by the Secretariat, and expressed the hope that this would continue in 2003. Without wishing to make an exhaustive presentation of EC technical assistance activities, the EC representative underlined two points: (i) the significant participation of the EC Commission and member States in the Doha Global Trust Fund and (ii) the participation of the EC Commission in the Capacity Building Task Force³³ set up by UNEP and UNCTAD for trade and development. The European Communities commended UNCTAD for the expert meeting it had organized as it had allowed for the identification of concrete cases which could be worked on further. He also called for input from developing countries on technical assistance and reminded them of the EC's offer to exchange information on methodologies for sustainable impact assessments.³⁴

104. The representative of the United States thanked the Secretariat and looked forward to reviewing the plan for next year, as adopted by the Committee on Trade and Development (CTD). It was noted that the United States expected to provide information on relevant US initiatives by the next meeting of the CTE in early 2003.

105. The representative of the People's Republic of China noted that his country had participated in a regional seminar on trade and environment in May 2002, and had found it very helpful. The Doha Ministerial Declaration recognized the importance of technical assistance and capacity building in the field of trade and environment for developing countries, in particular the LDCs. Regional seminars could help improve Members' understanding of what was a truly complicated issue, as well as promote effective participation of developing countries and LDCs in both negotiations and deliberations as mandated by the Doha Declaration. It was noted that a national seminar would be held in Beijing in November 2002 and China appreciated the close cooperation with the WTO Secretariat in preparing for this workshop. The representative of China also took the opportunity to thank other intergovernmental organizations such as UNCTAD and UNEP, and donor countries. He stood ready to discuss the need for assistance which was more targeted to specific needs.

³³ <http://www.unep-unctad.org/cbtf/index.htm>.

³⁴ WT/CTE/W/208, WT/COMTD/W/99, TN/TE/W/3, 3 June 2002, "Sustainability Impact Assessment", Communication from the European Communities.

B. ENVIRONMENTAL REVIEWS

106. The Chairman recalled that at the last meeting, the European Communities submitted a paper on Sustainability Impact Assessment³⁵, circulated in the CTE, the CTE Special Sessions and the CTD.

107. The representative of Canada recalled that the basis for Canada's work on Environmental Assessments (EA) of trade negotiations was a framework which had been released in February 2001, and which had been presented to the CTE in March 2001.³⁶ It essentially underlined a four-stage process for undertaking an EA. The first stage was a notice of intent. The second stage was an "Initial EA", which was essentially a scoping exercise between economic activity and various environmental mediums such as air and water quality. The third stage entailed a "Draft EA" which was an elaboration of the initial EA in the light of ongoing negotiations. The final stage was the "Final EA" which was an ex post assessment. Canada was undertaking EAs of a number of negotiations aside from the WTO: the Free Trade of the Americas Area, the Canada-Singapore and the Canada Central American Four ("CA4").³⁷ Hence, this was being done in a global (WTO), regional and a bilateral context. Specifically on the WTO EA, the notice of intent had taken place in June 2002, followed by a public comment period which had lasted for approximately 60 days. The Initial WTO EA was just being finalized and would shortly be issued for public comment. It would be brought to the attention of the CTE when it met in 2003. The representative of Canada wished to highlight that after each phase in the EA process, public and stakeholder views were sought and integrated into the next phase; in this sense the EA was a series of elaborations.

108. The representative of the United States reiterated his country's long-standing commitment to a policy of conducting written environmental reviews of major trade agreements. It was a policy which dated back to 1991 and the initial review that had been undertaken of the NAFTA. The policy, which was set forth in a 1999 Executive Order (EO), had recently been made a statutory requirement in trade promotion authority legislation. The Trade Act of 2002 required environmental reviews of future trade agreements consistent with the EO and Guidelines pursuant to that EO. Moreover, it required that a report be made to Congress on the results of these reviews. As had been noted at the last CTE meeting (June 2002), the United States had initiated the review of the WTO negotiations. The deadline for initial public comments had passed and the Office of the United States Trade Representative (USTR) had received a number of comments in response which it was in the process of carefully considering. As could be expected at an early stage of the negotiations, the comments were relatively general although they did address many areas of the negotiations. The United States would volunteer more specific information regarding its review in the context of the next agenda item, under paragraph 51 of the Doha Declaration.

VII. PARAGRAPH 51

The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

109. The Chairman recalled that at the last meeting, in June 2002, it had been decided to hold "an overview event". This meant that delegations were free to raise, or to identify, any environmental aspects they wished regarding the ongoing negotiations.

³⁵ *Supra* note 34.

³⁶ WT/CTE/W/183, 15 March 2001, "Framework for Conducting Environmental Assessments of Trade Negotiations", Communication from Canada.

³⁷ Honduras, Nicaragua, Guatemala and El Salvador.

110. In the context of paragraph 51, the representative of New Zealand raised the issue of environmental goods and how these were handled in the negotiations. He noted the complexity of the issue as it came up under paragraphs 31 and 32 of the Doha Declaration and potentially involved the CTE meeting in Regular Session and Special Session, as well as the Negotiating Group on Market Access. There were major issues of scope and definition. It seemed, to New Zealand, appropriate to address the issue under the paragraph 51 heading.

111. To begin with, the representative of New Zealand was struck by the complexity of even a limited definition of environmental goods, one focusing on end use. There were issues regarding multiple-use products, customs and trade classification. Going beyond that, it might be a sensitive issue to attempt to expand the scope to a classification on the basis of process and production methods (PPMs), which would be the case if one were to go ahead with the sort of definition put on the table at an earlier occasion in the Special Session by one delegation. The heart of the matter was that there would be scope for discrimination against like products purely on the grounds of PPMs, rather than product characteristics. Whether Members chose to debate this point (on PPMs) in the CTE Special Session or in the Negotiating Group on Market Access, New Zealand felt that environmental goods defined by PPM criteria would remain a no-go area for many delegations. Yet Members had an interest, whether commercial or environmental, in promoting trade in environmentally friendly goods. New Zealand was selling plantation pine and sustainably harvested fish and was happy to take the premium that was available. Others would have similar interests. New Zealand's experience was that there were ways of doing this without discrimination, for example through voluntary labelling schemes, which were part of the CTE agenda. Therefore, New Zealand was particularly interested in the outcome of the discussions on environmental goods at the WSSD in Johannesburg. The WSSD Plan of Implementation, which was included in the document set³⁸, referred to "voluntary WTO compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods ...". Discussion along these lines in the CTE could actually be useful to the work that had been identified in the Johannesburg text, and be a potentially useful element in the CTE Report to the 5th Ministerial Conference. It could also go some way to accommodating the needs of those delegation that were seeking a discussion on environmentally friendly goods without getting into a sterile debate on PPMs.

112. The representative of the European Communities agreed that the WSSD outcome was a clear signal that the CTE Regular Session needed to be more proactive in fulfilling the paragraph 51 mandate. The European Communities still believed that their proposals made in March 2002 were pertinent in a general sense: a joint meeting of the CTE and the CTD, a form of outreach event to speak to the public, and a checklist or some sort of documentation which allowed for further progress. While the Secretariat (in the Annotated Agenda) had referred to the minutes from various negotiating groups, this did not allow the CTE to progress much further; it left resource-constrained delegations to go through hundreds of pages in order to find out what had happened at these meetings. The European Communities had proposed a more ambitious background exercise for the Secretariat by asking them to actually draw out relevant paragraphs from the minutes from the negotiating reports and thus identifying relevant issues for discussion. In fact, New Zealand had just mentioned one such relevant issue: environmental goods. The minutes from the Market Access Negotiating Group on this particular item gave food for thought. Hence, the European Communities reiterated their wish to see the Secretariat produce something with more substance on which a discussion could be started. He hoped delegations would show some flexibility on engaging the Secretariat more in preparing the debate. Referring to New Zealand's quotation from the WSSD, the EC delegate noted that the text also referred to services (not only goods), as well as organic products, which other delegations had mentioned when making the link to better market access for such products. The European Communities would be a "taker" for such a debate under paragraph 51 as suggested by New Zealand but with one proviso: such work could not precondition the market access discussions.

³⁸ WT/CTE/W/220, WT/COMTD/W/106, 7 October 2002, "World Summit on Sustainable Development", Note by the Secretariat (New Zealand referred to paragraph 93(b) of this document).

It was necessary to continue with the market access and goods negotiations even if there was not a common vision of what an environmental good was.

113. The representative of the United States, referring to the EC's statement, thought that the CTE had put procedural issues aside at the last meeting. In fact, the United States had welcomed the decision made at the last meeting to commence a discussion of the substance. The United States viewed paragraph 51 as an important part of the Doha Agenda and wished to start by highlighting some areas of priority with clear environmental implications.

114. Starting with agriculture, the United States stressed that distortions in agricultural production policy created a heavy cost for the environment. When farmers made planting decisions based on the provisions of government programmes rather than the carrying capacity of their land, environmental quality was under threat. Trade reform had the potential to help remedy this problem; a more market-oriented agricultural system would lead farmers and ranchers to make more accurate cost and benefit calculations. The objectives for agriculture in the Doha mandate called for the substantial reduction of tariffs, reductions with a view to phasing out all forms of export subsidies, and substantial reductions in trade-distorting domestic supports. Tariff reductions would create opportunities for farmers to grow crops best suited to their environment, and the reduction of export subsidies and distorting domestic support would decrease incentives for overproduction, cultivation of marginal land and application of chemicals. In addition, economic growth associated with the gains from trade would increase the ability of people everywhere to pay for environmental amenities. In the view of the United States, it was a false choice to say "it is either more production and environmental degradation or less production and more starvation". A more market-oriented agricultural system could foster innovation and efficiency that would allow the world to meet the growing demand for food and fibre in a manner that was environmentally sustainable. The US proposal for agricultural reform in the WTO would significantly eliminate market distortions that lead to unsustainable resource use and overproduction.

115. Regarding the Rules negotiations, the United States wished to highlight the negotiations on fisheries subsidies. The United States took quite literally its role as a "Friend of Fish". This area of the Rules negotiations was one of the best examples of how the WTO could achieve true "win-win-wins" as part of the Doha Development Agenda. There was already a large cache of information - authoritative research by a variety of organizations - on the environmental effects of subsidies that generated overcapacity in the fisheries sector and contributed to too many boats chasing too few fish. The United States expected to draw from some of this research in a paper that would be submitted to the Rules Negotiating Group shortly. The United States believed that new disciplines in the WTO could have a measurable positive impact on conservation efforts worldwide, and could be an excellent example of how the WTO and international environmental agreements, specifically those addressing management issues, could be mutually supportive.

116. On services, the United States pointed at the mandate with respect to environmental services. It was clear that Members could accomplish a win-win, or even a win-win-win, with respect to these negotiations. The United States wished to highlight the potential environmental effects of certain proposals in the ongoing negotiations under GATS Article VI:4. It was stressed that the right to regulate was a fundamental notion in the GATS, one that was highlighted in paragraph 7 of the Doha Declaration. The United States was pursuing the ongoing negotiations under Article VI:4 with this idea as a central tenet. It should not be a question of what was proper for governments to regulate - for example, to address national priorities with respect to environmental protection - but rather how they should do it. In particular, the United States viewed the negotiations to enhance transparency in domestic regulation as an opportunity to ensure that the development and implementation of regulatory measures was a participatory one. It was important that all voices could be heard as part of the regulatory process, including those that identified important environmental considerations. The United States was somewhat concerned, however, about suggestions that an across-the-board, one-size-fits-all necessity test was a priority in the GATS. This type of new requirement could be very

difficult to implement and could hamstring regulatory efforts in the environmental sphere, among other areas of regulation. It would create new unpredictability and confusion, and it would be bad for services trade liberalization and bad for governments seeking to achieve important public objectives, such as environmental protection through regulation. As an alternative, increased transparency could address many of the concerns that Members had with regulation being unnecessarily trade restrictive, while also offering greater opportunities for environmental considerations to be part of a balanced assessment of proposed regulations.

117. Referring to the ongoing negotiations on environmental goods in the context of the non-agricultural Market Access negotiations, the United States felt that this clearly had the potential for positive environmental effects. With respect to other areas of negotiation, the United States thought it was too early to assess the environmental implications, positive or negative. On the procedural issue regarding keeping abreast with what was going on in all areas of negotiations, the United States did not think that the Secretariat could easily compile information from the minutes of the negotiations. To do so would require the Secretariat to make some kind of judgement as to what aspects of these negotiations might be relevant in terms of their environmental implications. It was clear to the United States that the process of identifying environmental effects was a Member-driven one; it was the responsibility of individual Members to raise these under the CTE's paragraph 51 review.

118. The representative of Brazil supported New Zealand's suggestion to try to target primarily environmental goods under paragraph 51. However, Brazil was concerned with a lack of structure in the debate: if one tried to tackle all areas of the negotiations that had environmental implications one would end up talking about too many different issues at every meeting. It would facilitate preparation if one or two areas were targeted. While Brazil agreed with the United States that it was up to Members to select specific elements for discussion, it would nevertheless be useful if the Secretariat could select relevant documents, or identify certain parts of the documents in order to facilitate the task of reviewing them. Regarding the EC's statement, Members had already reacted to their past proposals: Brazil was not against the possibility of holding a joint CTE-CTD session, but what would be the content of the session? What was the benefit? It was Brazil's view that at present it would not be very useful. Furthermore, Brazil did not feel that "outreach activities" pertained to the mandate under paragraph 51.

119. The Chairman noted that, regarding a possible joint meeting with the CTD, he had been in contact with the Chairman of the CTD on the issue. While the option was still there, apparently the conditions were not yet ripe for holding such a meeting.

120. The representative of Japan, referring to New Zealand's statement, noted that it was his delegation's understanding that the non-agricultural Market Access Negotiating Group and the Special Session of the CTE were in close collaboration on this issue, which was one of the three negotiating items falling under the Special Session of the CTE. At present, Japan was not convinced about the need to enlarge the forum for this discussion.

121. The representative of Australia emphasized the importance his delegation attached to paragraph 51. He recalled that Australia viewed discussion under paragraph 51 as a Member-driven process, not a process-driven process. Members themselves had to decide on the issues that needed to be discussed; Australia was concerned about asking an already over-burdened Secretariat to mind-read what countries were proposing on this issue. Referring to the statements from New Zealand and the European Communities, he noted that it would be more useful if those Members were to come forward with some specific proposals in writing. He noted the useful contribution from the United States in respect of the environmental benefits of agriculture reform.

122. The representative of Korea recalled that at the last meeting his delegation had stressed the need for a structured debate; otherwise the CTE risked losing its sense of direction. There was a need

for some form of "mental benchmark" so as to avoid possible situations where the scope of the mandate under paragraph 51 was tailored to convenience. This was particularly important considering the ambiguity among Members when discussing paragraph 51. Korea believed that discussions under paragraph 51 were relevant to the situation in other negotiating groups. For example, the agriculture negotiations were now at the critical stage of preparing an overview paper to help reach modalities on negotiations by March 2003. In view of this, it was perhaps better for the CTE to refrain from attempting to provide input for the time being.

123. The representative of Venezuela noted that the Chairman had just mentioned that the possibility of having a joint meeting with the CTE and CTD was still open. However, if this joint session took place there was a need to address the issue of poverty in the context of development and environmental degradation. Venezuela was worried that it was still unclear how the issue of poverty was being addressed in the negotiations on environment. It had been recognized, in the best international fora, that one of the main causes of environmental degradation was poverty. A positive way to achieve results would be to have an interchange of opinions with the CTD on the effects of poverty on the degradation of the environment.

124. The Chairman noted that such a meeting could only take place following the decision of Members, and the agenda would be determined by the Members themselves.

125. The representative of Brazil recalled that the US's proposal reflected the Report of the last meeting³⁹ on the possibility of bringing in Secretariat staff to brief the CTE on certain aspects of the negotiations. Brazil considered that it would be a good idea for the Chairman take up this suggestion. It could be useful to start with someone from the Market Access Division to give the CTE, under paragraph 51, an overview on the state of play with respect to the discussions on environmental goods within the Negotiating Group on Market Access for non-agricultural products.

126. The representative of the United States was somewhat frustrated by the lack of substance in the discussion under paragraph 51. His delegation had been under the impression that process-related issues had been put aside, and that there was going to be a readiness to engage in some kind of substantive discussion at the current meeting. He urged delegations, for the purposes of future discussions, to be prepared to discuss the substance and to see whether there were environmental effects or implications with respect to the areas of negotiation covered in the Doha Agenda. On the question of process, Brazil had highlighted the US's idea that relevant Secretariat staff could provide updates for all areas of negotiation, and that this would be a better alternative to asking the Secretariat to search minutes for issues that they might find to be environmentally relevant.

127. The representative of the European Communities noted that his delegation had reverted to some of their earlier proposals simply in the spirit of helping delegations to prepare in an adequate manner for a debate. Certainly, the European Communities was prepared to speak about agriculture; in fact, there was much the EC delegation could say on non-trade concerns, and the role of the environment in agriculture. However, the European Communities emphasized the need for preparation, so the ideas from Brazil and the United States were welcome as long as other ways could not be agreed upon. The idea of bringing in Secretariat staff so as to brief the CTE was not in contradiction to the EC proposal.

128. The Chairman noted, in conclusion, that while the purpose of the current meeting had been to have a substantive horizontal discussion ("overview"), only a few delegations had actually approached the issue in that manner; the majority of the delegations had chosen to address procedural issues. In other words, there appeared to be uneasiness in the Committee on how to address paragraph 51. Looking back, prior to the idea of having a substantive horizontal discussion, there had been the idea

³⁹ See paragraph 134 in WT/CTE/M/30, 11 September 2002, "Report of the Meeting Held on 13-14 June 2002", Note by the Secretariat.

of a sectoral approach which, at that time, had been refused, but apparently the overview approach did not work either. So now there was a new suggestion, or, rather, a reiterated suggestion, that staff from the Secretariat be invited to brief the CTE on what was going on in the other negotiating committees or groups. This could be useful, particularly in the light of the fact that other approaches were not working. On the basis of such factual briefings, the CTE could then try to launch some meaningful discussion so as to be in a position to fulfill the mandate under paragraph 51. Since Members had raised the issue of agriculture and environmental goods, this could perhaps be a starting-point. He suggested, therefore, that at the next meeting relevant Secretariat staff would brief the CTE about the negotiations on agriculture and environmental goods so as to enable the Committee to contemplate the relevance of these issues under paragraph 51, and revitalize the debate. It was so decided.

129. The representative of the European Communities suggested that it would perhaps be useful to refer to the first issue as "market access", and not just simply "environmental goods". His view was that the discussion needed to encapsulate the whole debate in that negotiating group. This would not change the substance, as it could be expected that the debate would be on environmental goods, but this approach would also allow Members to raise other issues, and the Secretariat to prepare some other aspects.

130. The Chairman noted that if the other Members agreed to the EC's suggestion, the next meeting of the CTE would look at agriculture and market access, including environmental goods. It was so agreed.

VIII. OTHER BUSINESS: 2003 MEETINGS

131. The representative of the European Communities suggested that in structuring the work of the Committee in 2003, the Committee needed to concentrate its work on the Report for the Cancun Ministerial Conference. In order to ensure that there was enough time, the European Communities proposed that the CTE schedule three meetings before the Ministerial Conference; the third one being dedicated to the discussion of the Report. This would entail a slight deviation from current praxis to have the first meeting in March, the second in June and the third in October, but it was likely that there would, in any case, be a need for informal meetings, and it was perhaps better to reserve the time at this early stage. The only open question was whether there was a need for a fourth meeting after the Ministerial Conference. This issue could, however, be left open.

132. The representative of India was not sure whether a decision could be taken about the number of meetings in 2003. This was a horizontal issue and it would be necessary to look into the number of meetings in other areas. Hence, India reserved its comments as far as the number of meetings to be held on the environment in 2003.

133. The Chairman stressed that between Committees there was a strong competition for reservation of rooms in 2003.

134. The representative of the United States supported the EC's proposal, which he felt to be rather modest. He pointed out that the Secretariat needed to reserve rooms well in advance – and the United States was expecting a very robust discussion under Paragraph 51 at future meetings as well.

135. The representative of Canada stressed that his delegation was also concerned about having enough time for to complete the report for the Cancun Ministerial Conference. Canada was also of the view that the CTE should consider having three meetings before the 5th Ministerial.

136. The representative of Japan echoed the views of many of the previous speakers with regard to the number of meetings for next year and believed three meetings before the Cancun Ministerial were necessary. Also, given that the current meeting was the last substantive meeting of 2002 and the need

to prepare for the Report for the Cancun Ministerial Conference, Japan believed it was appropriate to have the first meeting of next year either in late January or early February 2003.

137. The representative of the European Communities, referring to India, noted that the European Communities had not asked for more meetings than the Committee would normally have. At issue was the timing: to have three meetings before Cancun, leaving open the question of whether a fourth meeting would be necessary afterwards or not. Also, he recalled that all Members, including the European Communities, had shown enormous flexibility in accommodating some concerns on the number of meetings in other fora, the most pertinent example being discussions on Special and Differential Treatment (where there would be four meetings by the end of the year because of another very important deadline). Finally, the European Communities supported the Japanese request to have an early first meeting.

138. The representative of Brazil noted that her delegation would be flexible regarding the number of meetings. She pointed out, however, that smaller delegations faced severe constraints in terms of human resources and there was hence a need to consult with them. In terms of timing, with regard to a meeting in late January 2003, there was a need to avoid a clash with dates of other meetings and also to ensure that all delegations would be back in Geneva. She wondered whether the European Communities was planning to have back-to-back meetings with the CTESS, in other words three meetings of the CTESS in the first trimester of next year.

139. The representative of India reiterated that whether the full quota of the meetings of any Committee would be held before the Ministerial was a horizontal decision which needed to be taken. India was not in a position to say that the full quota of the 2003 CTE meetings would be held before the Ministerial while the matter was not clear in other Committees.

140. The Chairman noted that there seemed to be no objection to advancing the date of the next meeting. He emphasized that there was a lot of work to be done before Cancun. There was a need to have at least one substantive discussion of Paragraph 51 as well as to revisit the items of focus which had been discussed in 2002 with a view of reaching some conclusions. Hence, the first point of agreement was to advance the dates of the first meetings, and leave open the option of holding all three meetings before the Cancun Ministerial. The Secretariat would look into possible dates. Depending on work achieved at the next meeting, the CTE could further consider the matter. The possibility of holding informals had to be kept in mind, also based on progress achieved. Hence, the chairman proposed that the CTE decide to advance the dates of the first meetings in 2003 while keeping an open mind on the number of meetings that would be held before Cancun. It was so agreed.

141. The meeting was concluded.
