
Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 14 FEBRUARY 2003

Note by the Secretariat

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1. The Committee on Trade and Environment (CTE Regular) met on 14 February 2003 under the Chairmanship of Ambassador Peter Brño (Slovak Republic). The documents submitted for discussion at the meeting were set out in the Annotated Draft Agenda (Job(03)/18, circulated on 5 February 2003).¹

I. ADOPTION OF THE AGENDA

2. With a minor change, the proposed agenda in WTO/AIR/2017/Rev.1 was adopted.²

3. The Chairman invited observer organizations to report on matters of interest arising from their work under the relevant items of the Committee's work programme. He welcomed the representatives from the European Free Trade Association (EFTA), the Food and Agriculture Organization (FAO), the International Organization for Standardization (ISO), the Organisation for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), and the United Nations Framework Convention on Climate Change (UNFCCC).

II. ELECTION OF CHAIRPERSON

4. The Chairman noted that at its meeting on 10 February 2003, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies, including the CTE Regular. On the basis of the understanding reached by the General Council, his name had been proposed for the CTE Regular. In light of this, the Committee agreed on the election of Ambassador Peter Brño (Slovak Republic) by acclamation.

5. On a personal note, the Chairman recognized the important work done by his predecessor, Ambassador Demiralp (Turkey), and, speaking for all Members, expressed his gratefulness for the smooth and eloquent way in which Ambassador Demiralp had guided the work of the CTE in 2002.

6. In thanking Members for the trust put in him, the Chairman considered the broad agenda ahead. The work of the CTE Regular covered the ten traditional items of the CTE work programme³, with the additional requirement, since November 2001, to give "particular attention" to three of them: (a) "market access", (b) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and (c) labelling for environmental purposes (paragraph 32).⁴ In addition, there were other key issues such as technical cooperation, capacity building (paragraph 33) and sustainable development (paragraph 51). Considering that many of these elements involved close cooperation with other bodies in the WTO, perhaps a key issue for the CTE would be to find ways of adding value to work done elsewhere.

7. Perhaps a special challenge for the CTE Regular in 2003, and a particular responsibility for the Chair, would be the preparation of the Committee's report to the Fifth Session of the Ministerial Conference in Cancún ("Cancún Report"). The CTE Regular had a specific reporting requirement to Cancún contained in paragraphs 32 and 33 of the Doha Ministerial Declaration. This would be a particular focus of the current meeting.

¹ An updated list of all documents circulated in the CTE Regular and CTE Special Session until 31 January 2003 is contained in WT/CTE/INF/5/Rev.1, dated 5 February 2003.

² Before adoption of the agenda, a minor change was made so as to enable the CTE to elect the new Chairman at the beginning of the meeting instead of at the end.

³ The original terms of reference and mandate for the CTE are contained in the 1994 Decision on Trade and Environment.

⁴ All paragraph numbers refer to the Doha Ministerial Declaration unless otherwise stated.

III. PARAGRAPH 32

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.

8. The Chairman recalled that this paragraph had two aspects: (i) "market access aspect", i.e. the effect of environmental measures on market access, and (ii) the "win-win-win" aspect which 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 ("sector analysis").

1. Market Access

9. The representative of the OECD recalled that the OECD Global Forum on Trade workshop on "Environmental Requirements and Market Access: Addressing Developing Country Concerns" had taken place in New Delhi, India on 27-28 November 2002.⁵ Hosted by the Indian Ministry of Commerce and Industry, and organised by the OECD and the Indian government supported Research and Information System for the Non-Aligned and Other Developing Countries (RIS), in cooperation with UNCTAD, the workshop had brought together close to 100 participants for the two-day event. These included more than 40 civil servants, researchers and non-governmental organizations (NGOs) from India, 16 developing country participants, 20 OECD Member country delegates, 5 Inter-governmental organisations and 5 NGOs.

10. The main purpose of the workshop had been to gain a better understanding of the issues, particularly with respect to some of the inadvertent problems created by environmental requirements – both those imposed by governments, and those created by private industry and NGOs. A number of case studies and experiences from several developing countries, including India, were discussed. One of the conclusions was the need to improve the information flow regarding changes in environmental regulations so as to make such notifications as early as possible to enable exporters to have time to understand the changes. Another point made was the need to find ways to involve developing countries in standard-setting processes, and to find better means of providing technical assistance and of improving the capacity of developing countries to respond to environmental requirements.

11. Following the workshop, the OECD Joint Working Party on Trade and Environment had agreed to follow-up on the case studies that had formed a major part of the background material for this workshop, with a particular focus on positive steps that OECD countries had taken in the above-mentioned areas.⁶

12. The representative of UNCTAD noted that the outcome of the "Expert Meeting on Environmental Requirements and International Trade" (Geneva, 2-4 October 2002)⁷ had been brought to the attention of the Seventh Session of the UNCTAD Commission on Trade in Goods and Services and Commodities (the "Commission"). The Commission addressed three substantive items:

- (a) Export diversification, market access and competitiveness, in particular in the context of the commodities crisis;

⁵ Document WT/CTE/GEN/3 contains OECD's presentation of this subject at the last meeting.

⁶ Relevant information regarding this meeting, including the rapporteur's summary of the various sessions of the workshop were made available as a room document.

⁷ More information at: www.unctad.org/trade_env/.

- (b) trade in services and development complications; and,
- (c) trade, environment and development.

13. Under the last item (trade, environment and development), the Commission discussed, among other things, the outcome of the Expert Meeting and agreed on a number of recommendations for the work of the UNCTAD Secretariat. In particular, the Commission recommended that the UNCTAD should continue its work on standard-setting and harmonization of environment and health regulations, taking into account the development dimension. In this regard, the UNCTAD was also asked to explore the possibility of creating a consultative task force on pre-standard harmonization on environmental requirements and international trade. This task force would closely coordinate and collaborate with relevant initiatives in other bodies and organizations; it would involve the private sector and would be conducted as a project-based activity. Another recommendation concerned harmonization and equivalence in organic agriculture (a joint activity of UNCTAD, the FAO and the International Federation of Organic Agricultural Movements – IFOAM). Yet another recommendation concerned the facilitation of access to scientific and technical advice on issues relating to environmental sanitary and phytosanitary measures, as well as the impact and application of new technologies, particularly in the context of the UNCTAD Science and Technology Diplomacy Initiative.⁸ The fourth recommendation was to strengthen work carried out by UNEP and UNCTAD within the framework of the Capacity Building Task Force (CBTF)⁹ and projects aimed at building capacity for negotiations on key trade and environment issues in the post-Doha context. Other recommendations concerned the bio-trade program, in particular in the follow-up of partnerships launched at the World Summit on Sustainable Development (WSSD). The Secretariat had also been asked to continue analysis of the trade and investment implications of multilateral environmental agreements (MEAs).

14. In conclusion, the UNCTAD noted that the Commission had decided to hold an extra meeting on definitions and dimensions of environmental goods and services in 2003, most probably in July. The UNCTAD was currently exploring possibilities with the WTO Secretariat to schedule this meeting back-to-back with one of the WTO meetings in 2003.

2. Sector analysis ("win-win-win")

- (a) Forestry and fish

15. In introducing a paper on "Sustainable Development and the Trade of Forest and Fishery Products"¹⁰, Japan recalled that the Doha Ministerial Declaration firmly reconfirmed Members' commitment to the objective of sustainable development. The WSSD Plan of Implementation¹¹ also required action to achieve sustainable forest management and sustainable fisheries. Hence the current round of negotiations needed to address how international trade could contribute to sustainable forest management and sustainable fisheries in all countries. Civil society was also concerned about the potential negative influence of the free trade regime on forest and fishery resources and it was indispensable for the WTO to promote trade liberalization while fully acknowledging such concerns.

⁸ <http://www.unctad.org/stdev/services/diplomacy.html>.

⁹ <http://www.unep-unctad.org/cbtf/>.

¹⁰ WT/CTE/W/222, 6 February 2003, "Sustainable Development and the Trade of Forest and Fishery Products", Submission by Japan. This document was previously submitted by Japan as a proposal in the Negotiating Group on Market Access (TN/MA/W/15/Add.1, dated 6 January 2003).

¹¹ It is noted here, for information, that the Secretariat has circulated the text of the Johannesburg Declaration on Sustainable Development and of the WSSD Plan of Implementation in WT/COMTD/W/106/Rev.1 and WT/CTE/W/220/Rev.1, dated 20 December 2002.

16. Japan stressed that forests were exhaustible natural resources which were renewable if managed appropriately. Forests provided various public benefits such as the mitigation of global warming and the conservation of biological diversity. Since the 1992 Rio Summit, promoting sustainable forest management had been one of the world's challenges. However, forests in the world were decreasing and degrading. Japan, while greatly contributing to the development of trade in forest products as a major wood-importing country, was concerned about the current situation and interested in the world-wide promotion of sustainable forest management.

17. Turning to the specific proposal on forest products and trade measures in the forestry sector, Japan noted that there existed cases where no export restrictions were imposed on processed wood products whereas unprocessed logs were subject to export restriction. The consistency of these measures with WTO rules needed to be scrutinized in light of which measures were appropriate to the conservation of natural resources. Concerning illegal logging, Japan felt that there was a need to deepen the discussion in the WTO with the aim of pursuing a possible contribution from a trade perspective.

18. Regarding fisheries, Japan stressed that fishery resources were exhaustible natural resources that could be depleted by over-exploitation, but were renewable with proper fisheries management. However, given the increasing demand for fishery products all over the world, world fishery resources were declining due to such factors as over-exploitation and illegal, unreported and unregulated fishing (IUU). While greatly contributing to the development of trade in fish products – as the largest fish-importing country – Japan was concerned about the current situation and interested in the conservation of world fishery resources. In its specific proposal, Japan first noted the roles and necessities of trade-related measures that could complement conservation and management measures for fishery resources that had to be duly taken into account. Second, in light of the WSSD, the WTO needed to examine how to address fisheries subsidies at the CTE Regular for the purpose of solving IUU fishing and over-capacity issues, taking into account the work in other organizations. Third, regarding labelling for environmental purposes in the fishery sector, the FAO needed to first try to establish scientific and objective guidelines. The WTO could then consider how to deal with this issue from a trade viewpoint, taking into account these established guidelines.

19. Japan stressed that in order to ensure the long-term development of trade in forest and fishery products, it was important to provide adequate technical and financial assistance. Japan had been supporting these two sectors on a bilateral, regional and multilateral basis, and would continue to do so. These efforts would contribute to the promotion of sustainable forest and fishery management in developing countries. Sustainable development of exhaustible natural resources such as forest and fishery products was essential to promote trade liberalization while ensuring their sustainable use.

20. The representative of Argentina noted that while his country shared the goal of sustainable development expressed by Japan, he had some concerns with the Japanese focus on fish and forestry. On forestry products, Japan's paper stated that it was crucial to ensure that each Member retained flexibility among products when determining the appropriate level of tariffs. This was to be done by taking into account such factors as the trends of domestic production and consumption, and the international supply and demand of each product, while giving due consideration to the conditions and the management of forests and the experiences of past trade negotiations.¹² In Argentina's view, and in conformity with the Doha mandate, the focus of the CTE Regular needed to be specifically on the impact of trade measures on market access. Argentina was not entirely sure that to reverse this approach by starting from tariff levels in order to move towards sustainable development was the pertinent one. Without doubt, the focus on tariff levels would have implications and opened up the possibility of discrimination with regard to the process and production methods (PPMs), a point which his delegation could not accept.

¹² Japan's submission (WT/CTE/W/222), paragraph 8(i).

21. On fishery products, the paper stated that it was crucial to ensure that each Member retained flexibility among products when determining the level of tariffs, taking into account the level of fishery resources and the status of fishery management.¹³ Once again Japan's approach focussed on the regulatory capacity in importing states of fixing tariffs for fishery products. In other words, under the pretext of conservation, the importing country would become a unilateral referee of fishery management thereby affecting the market access of the exporting state. This, Argentina believed, neither helped nor contributed to the objective contained in paragraph 32(i) of the Doha Declaration.

22. Argentina also pointed out that the document made an argument in relation to fisheries subsidies and the relevant negotiations in the Negotiating Group on Rules.¹⁴ It was suggested that as no concrete cases had been discussed in the Negotiating Group on Rules demonstrating trade distortions caused by fisheries subsidies, the matter needed to be dealt with by the CTE Regular so as to avoid illegal fishing and to combat over-exportation and over-capacity. Even though the issue had originally been raised in the CTE, the Doha Declaration crystalized the purpose of negotiations in paragraph 28: "to clarify and improve WTO disciplines on fisheries subsidies". Argentina supported the general objective of promoting sustainable fisheries as well as the preservation of fisheries resources. However, there was a need to bear in mind that the over-capacity, and, consequently, a large part of the over-exploitation of fisheries, was caused by subsidies. It was taking this into account, and the effects of subsidies on trade, that Ministers had mandated Members in paragraph 28 to improve and refine the disciplines. Hence, both dimensions of fisheries subsidies were covered by the Negotiating Group on Rules. Argentina considered that the CTE Regular should not duplicate the work which was being undertaken in that body.

23. The representative of Korea shared Japan's view that the objective of sustainable management of forest and fisheries was not in conflict with the trade liberalization envisaged in the Doha negotiations. In particular, sound forest and fishery resource management was essential to obtaining the objective of sustainable development. In this context, and as Japan had pointed out, Korea also believed that the issue of sustainable forestry and fishery resource management, including fisheries subsidies, needed to be further discussed in the CTE Regular, especially since there were some major issues regarding sustainable forest management.

24. The representative of the United States noted that in his view, Japan was somewhat misguided in suggesting that tariff elimination in these sectors would inevitably lead to an exhaustion of natural resources. In fact, maintaining trade barriers in the form of tariff and non-tariff measures was no substitute for effective resource management. Trade liberalization, in concert with sustainable resource management, could stimulate more efficient production with more long-term environmental benefits.

25. On fish, the United States believed that questions associated with tariff and non-tariff measures were appropriately being taken up in the Non-Agricultural Market Access Negotiating Group and, with respect to subsidies, in the Rules Negotiating Group. With respect to the Rules Negotiating Group, there had already been useful discussions on the need for improved and clarified WTO disciplines to diminish over-depletion of fisheries stocks world-wide. It was quite remarkable that Japan was suggesting that the clock be turned back to the time when delegations were simply talking about fisheries subsidies in the CTE. The United States had been under the impression that two recent events, one in Doha, Qatar and the other in Johannesburg, South Africa, had provided Members with clear direction on these issues. On forestry, the United States was of the view that increased trade liberalization could offer greater opportunities for forest-rich countries to increase the value-added of their production and reduce the incidence of over-harvesting. Ultimately this could

¹³ *Ibid.*, paragraph 13(i).

¹⁴ *Ibid.*, paragraph 16. The representative of Argentina also made a reference to "Japan's Basic Position on the Fisheries Subsidies Issue", contained in a submission by Japan to the Negotiating Group on Rules, TN/RL/W/11, 2 July 2002.

encourage sustainable resource management. Again, trade liberalization needed to go forward in concert with sustainable resource management.

26. On labelling, the United States noted that Japan had further argued in favour of labelling for environmental purposes in both sectors. While labelling could provide important information to consumers, such schemes needed not to be misleading and had to be verifiable. It was not clear how certification of Japan's proposed labels would work. In any event, the United States believed that the Agreement on Technical Barriers to Trade (TBT) provided sufficient disciplines to facilitate the development of labelling schemes. Regarding technical assistance and capacity building, the United States agreed on its importance for sustainable resource management programs, and the longer-term development of forests and fisheries. The United States would continue to work through organizations such as the FAO, the United Nations Forum on Forest (UNFF) and the International Tropical Timber Organization (ITTO) that had technical expertise in these areas.

27. The representative of Brazil noted that the issue of illegal harvesting of forest products could not be discussed in isolation. It had to be considered together with demand aspects of the issue, i.e., international trade, and, on the domestic side, the capacity of countries – especially developing ones – to monitor the implementation of their national forest legislation. In fact, this was the approach taken by the UNFF and which had been reiterated by Ministers and Presidents in Johannesburg. Brazil welcomed the recognition by Japan of the relevance of technical and financial assistance in trade liberalization in pursuit of sustainable forest management. As had been recognized by the UNFF, these were the very means of implementing sustainable forest management on a permanent basis in all countries.

28. The representative of Chile noted that his country shared Japan's interest in promoting sustainable development of fisheries and forestry resources. As had been stated by Chile and other Members, fisheries stocks were affected by the subsidies applied by certain countries. Furthermore, as Japan had stated, the issue of trade distortions was being looked at in the Rules Negotiating Group. Nevertheless, Chile called for some study from Japan on the impact of subsidies on fisheries resources and sustainability. Also, Chile requested from Japan, who was concerned about stock depletion and sustainability, information about the measures which they applied on high seas fishery. This was the only area, covering about 5 per cent of fisheries, which was not subject to national legislation or jurisdiction of conservation agreements and therefore was not subject to stock conservation regimes. Moreover, Chile could not understand the logic of using tariff levels¹⁵ for environmental purposes and shared Argentina's point of view in this regard (paragraph 21 above) and asked for some clarification on this point from Japan. Regarding what was referred to as the "zero-for-zero approach ... [which would] also add an extra pressure to the resources ..."¹⁶, the representative of Chile wondered why Japan thought that in the case of fisheries subsidies there was no additional pressure on resources. While thanking Japan for the paper, the representative of Chile asked for further information in the appropriate forum, which was the Group on Non-Agricultural Market Access.

29. The representative of Malaysia noted that Japan's paper had highlighted the importance of sustainable forest and fishery resources management. According to Japan, these renewable natural resources, if well-managed, could provide a continuous source of food as well as prospects for increasing living standards in many developing countries. Malaysia recalled India's paper¹⁷ on market access which had stressed the need to grant developing and least-developed countries a longer time-frame to achieve standards of sustainable development. This paper had further stated that market access during this period of time should not be denied to products from developing countries since

¹⁵ *Ibid.*, paragraph 13(i) of Japan's submission (WT/CTE/W/222).

¹⁶ *Ibid.*, paragraph 13(ii).

¹⁷ Paragraph 5 of WT/CTE/W/207, dated 21 May 2002, on "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.

growth and employment in such countries was dependent to a great extent on the ease with which they could export. In this regard, Japan's paper also attempted to discuss the role of market access instruments, such as tariffs, to ensure the balance in the sustainable development of resources – that of ensuring both economic and environmental development at the same time. Given its position on the role of tariff, it was not clear why tariffs were much lower on unprocessed products, compared with processed products. But since the tariff negotiations were being undertaken in a specific negotiating body in the WTO, Malaysia would not debate the merits or the modalities of the tariff reductions. It sufficed to state, as had the United States, that tariff and non-tariff measures were no substitute for efficient resource management. Malaysia stressed that the promotion of market access in sectors of export interest to developing countries remained an important goal in the current negotiations and she associated herself, in this regard, with the comments of the United States, Chile and Argentina on the issue of fisheries subsidies.

30. Malaysia also wished to encourage the industrial development of further downstream activities related to these natural resources (forestry and fishery), including market access improvements through tariff reductions and elimination of tariff escalation on processed products. She noted that it was recognized that economic development went in tandem with higher levels of achievement in environmental protection. The representative of Malaysia drew the Committee's attention to a recent communication from the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹⁸ which was relevant to the issue of restrictions on the export of unprocessed logs in the forest sector. This was a means to protect forestry resources from over-exploitation while, at the same time, allowing domestic processing of wood products so as to encourage the development of a viable wood product and furniture industry capable of contributing to economic growth of the economy and uplifting standards of living. The CITES communication noted the advantages of designing and implementing economic incentives such as the assignment of well-defined property and use rights, tradable catch and export quotas, export taxes, access fees and user charges in achieving the objectives of the CITES Convention. It also encouraged the parties to consider the use of these incentives in national policies as part of the process of developing national and regional conservation strategies. These measures deserved further reflection if they could be used to ensure conservation without reducing countries ability to benefit economically from its natural resources.

31. Malaysia was of the view that much could be done to provide greater technical assistance in natural resource conservation and management through the various international environmental organizations in the forestry and fishery sectors. Transfer of technology could also be encouraged so that developing countries could avail themselves of the latest tools and techniques of forest and fishery conservation, best practices of silviculture and fisheries farming. In the CTE Regular, Members could consider how WTO rules were being implemented in a manner that could help achieve this objective of improving market access through the proper use of environmental measures.

32. The representative of Venezuela supported the comments made by Argentina, Chile and the United States on the Japanese paper and agreed with the point made by Brazil that the illegal exploitation of forests could not be examined in isolation. It was not possible to combat illegality from the planning standpoint; the problem of poverty had to be addressed. The Japanese document made no reference to poverty. Venezuela was well aware of the importance of planning, development, protection and sustainable development of forests. His country had extraordinary experiences from the commercial and industrial development of the forestry sector from projects recognized by the Inter-American Development Bank. These projects had given particular attention to the integration of local communities in the protection of forests. At the same time these communities were able to participate in small and medium scale industries. Also, Venezuela had successful experiences in the establishment of national forests. A lesson from this was that there was

¹⁸ WT/CTE/GEN/6, dated 20 November 2002, on "Economic Incentives and Trade Policy", Communication from the CITES Secretariat under Items 1 & 5.

no point to merely planning development unless the problem of poverty was tackled. In fact, in most developing countries, poverty was the main cause of illegal exploitation. Hence, Venezuela encouraged Japan to consider the issue of poverty and noted that this could also be addressed under paragraph 51 of the Doha Declaration.

33. The representative of the European Communities supported the concerns raised by Japan in paragraphs 4 to 7 of the paper: forest and fish were natural resources which were both in a very dangerous position. He noted that the discussion had already been started in another forum of the WTO and that in that debate the European Communities had made clear that in all aspects of these negotiations due account had to be taken of the objective of sustainable development, and of reducing resource depletion and pollution.¹⁹ The European Communities found some of the points made, especially the one on special and differential treatment and capacity building for developing countries in relation to forest and fishery, to be of utmost importance. The European Communities would be interested – in the context of the paragraph 33 mandate – to see what exactly had been done, and what more could be done, in order to encourage sustainable management of resources.

34. The representative of Peru noted that while her delegation shared the objective of sustainable development, she supported the concerns expressed by various delegations such as Argentina, the United States, Chile and others. While it was true that the regimes for the conservation of fishery resources were an important aspect for controlling over-capacity and over-fishing, it had also been proven in many studies that subsidies granted by certain developed countries had negative effects both on the international trade in fishing products and also on the environment. Peru hoped to continue this discussion in the Negotiation Group on Rules, which was the proper forum to deal with it.

35. The representative of New Zealand also shared the underlying concern for the objective of sustainable development and resource use expressed by Japan. However, New Zealand had, in light of its own experience, considerable doubts about the linkage Japan was seeking to draw between market access, especially tariffs, and effective resource management. New Zealand would be providing a more detailed response to Japan's paper at the upcoming meeting of the Negotiating Group on Market Access. New Zealand shared the concerns raised by the United States, Argentina, Chile, Brazil and a number of other delegations.

36. On the issue of sustainable fishery management, the representative of Indonesia was of the view that although there was a need to protect the resource, over-capacity and over-fishing tended to cause problems. Hence, the issue was the need to address the fisheries subsidies that had given benefits to major fishing fleets. As other delegation had said before, this was properly discussed within the Negotiating Group on Rules. Likewise, on the issue of sustainable forestry management, Indonesia supported Brazil's concerns that the issue of illegal logging be not dealt with in isolation; it had to be discussed in the context of illegal trade of forest products. Like Malaysia, Indonesia did not entirely understand Japan's focus on unprocessed logs as opposed to processed products. Why were tariffs higher on processed products compared to unprocessed products? Indonesia was of the view that sustainable forest management was closely related to the ability of developing countries to enhance their welfare by achieving gain from trade. Tariff escalation on processed products greatly hampered developing countries' efforts to achieve sustainable forest management. Following other delegations, Indonesia agreed on the need for technical assistance to support sustainable forest management and fisheries.

37. In response to comments, the representative of Japan stressed that with its paper it had wished to raise awareness on the issue covered. Regarding the question on tariffs, Japan clarified that its idea was that tariff reductions be negotiated in Non-Agricultural Market Access negotiations and that the CTE Regular would keep close watch on those negotiations from an environmental perspective.

¹⁹ The EC representative noted that this was a quote from an EC submission to the Negotiating Group on Market Access, on "Market Access for Non-Agricultural Products" (TN/MA/W/11, 31 October 2002).

Regarding the questions posed by Malaysia and Indonesia on export restrictions on unprocessed logs, while Japan had raised the issue in the Negotiating Group on Market Access, Japan wished to explore, in the CTE Regular, appropriate ways by which trade measures could be taken to address environmental concerns in the forestry sector. In this context, export restrictions imposed on unprocessed logs and not on processed forest products could be a measure to protect domestic industry in the name of environmental protection. Hence, Japan wanted to deepen the discussion, taking into account the development aspect as indicated by Malaysia and other Members. Some delegates, including Brazil, had questioned why Japan raised the issue of illegal logging in the WTO. Japan had, in cooperation with Indonesia, initiated an Asia Forest Partnership whose objective was to promote sustainable forest management in the Asian region. Under this partnership, partners were (i) to develop and enhance identification systems of legally harvested wood; (ii) to expand the information exchange on illegal logging and associated trade; and (iii) to promote effective measures in both importing and exporting countries in order to eliminate illegally harvested wood from trade. Although there had not been sufficient results flowing from this, Japan wished to inform the CTE of this action in the future so as to raise awareness of Members. Japan considered that the labelling of forest products was an effective tool in tackling the issue of illegal logging. In order to eliminate illegally harvested wood from international trade, it was indispensable to distinguish illegally from legally harvested wood throughout harvesting, distribution, processing and export. Here the necessity of labelling emerged. As Japan had been making efforts to develop verification systems, including labelling on legally harvested wood, Japan intended to introduce an example of this kind of labelling to the CTE Regular in the future, as well as other concrete actions against illegal logging.

38. On a general note, the representative of Japan noted that he was pleased to hear agreement from everybody regarding the importance of sustainable development in the fishery and forestry sectors. Perhaps a major reason for this was that fishery and forestry resources were exhaustible natural resources, which needed to be wisely managed for sustainable use. He noted that many delegates referred issues addressed by Japan to other fora: labelling to TBT, subsidies to the Negotiating Group on Rules, tariffs to the Negotiating Group on Market Access. While Japan basically agreed with this, it wondered for what purpose delegations were attending the CTE? The "CTE" was an abbreviation for Committee on Trade and Environment, it was supposed to be discussing the relationship between trade and environment and almost all the content of Japan's paper was related to trade and environment. That was the reason why it had been presented to the CTE for further discussion among those who were – as had been noted above – very much concerned about the environmental protection and sustainable development.

39. On the specifics, the representative from Japan noted that some Members had raised the question of a "reverse approach" referring to the Doha mandate, paragraph 32(i). Japan wished to stress that while it was fully committed to trade liberalization based on the Doha mandate, looking at the specific nature of fishery and forestry products, one could not be so naive to believe in the merits of trade liberalization from all aspects. Members needed to be cautious, considering the exhaustible nature of the resources being discussed. On tariffs, the representative of Japan agreed that tariffs were to be discussed at the upcoming meeting of the Negotiating Group on Market Access. He noted that some delegations had stated that there was no relationship between tariff levels and over-exploitation. However, various sources, including a recent study made by the OECD Fisheries Committee, showed that there was a linkage between tariff levels – or trade – and over-exploitation. So Japan did not necessarily agree with the remarks made by Members in this regard.

40. On subsidies, some Members had stated that the CTE Regular should not duplicate work of the Negotiating Group on Rules. The representative of Japan, who had attended CTE meetings over the last four years, noted that at almost all CTE meetings Members had been active on the subject of fisheries subsidies. Why then, suddenly, should the CTE stop discussing it? Japan wanted to discuss the issue of fisheries subsidies from the over-exploitation standpoint. Furthermore, some delegations had requested Japan to provide studies, or information, on the relationship between subsidies and fish stocks. Several members were arguing that fisheries subsidies were causing depletion of fish stocks

and thereby having an adverse effect on the trade and development of fisheries. In fact, whenever this affirmation had been made, Japan had repeatedly asked Members to provide case studies and evidence thereof. Unfortunately, Japan had not seen even one such case study, despite promises from some Members. So, Japan was again soliciting Members to provide actual case studies. In the absence of such information, Japan had difficulties in explaining, back home, why the WTO was discussing fisheries subsidies.

41. On labelling for environmental purposes, again, some Members had stated that this was better discussed within the TBT Committee, and, once again, Japan basically agreed. In the context of fish, Japan was concerned with the proliferation of the private eco-labelling schemes for fishery products, such as the Marine Stewardship Council, initiated by environmental NGOs. Also, if eco-labelling for fishery products was implemented in arbitrary manner, it could adversely impact trade, particularly from developing countries. The FAO was going to discuss the issue in two weeks²⁰ in Rome and Japan would perhaps raise this issue again and would push the FAO to resume its work on establishing guidelines for fisheries eco-labelling within the framework of the FAO. For the time being, Japan wished to consider how the FAO was dealing with this issue.

42. Lastly, some Members had noted the importance of fishery and forestry products for developing countries. Japan was certainly aware of this point and it was for this very reason that Japan was providing technical assistance and capacity building through its Official Development Assistance (ODA). Also, Japan announced that it had recently decided to eliminate tariffs on shrimp from LDCs; shrimp was the most important commodity for LDCs. This was indicative of Japan's commitment to the development of forestry and fishery industries in developing countries.

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).

43. The representative of the European Communities introduced a "Concept Paper" relevant to the review of Article 27.3(b) of the TRIPS Agreement.²¹ While he reminded delegates of the relevance of paragraph 19 of the Doha Ministerial Declaration, he stressed that his delegation, in tabling this paper also in the CTE Regular, did not wish to distract from other ongoing discussions; the European Communities was not looking for parallel debates. Nevertheless, the European Communities wished to encourage delegations to read again, or take note, of the points made in the paper – in particular because the TRIPS Council was busy with many other issues and the European Communities wished to bring this up in a forum (the CTE Regular) which was less occupied by one very single important issue as was the TRIPS Council.

44. The "Concept Paper" set out the preliminary EC views on a number of pertinent issues. On TRIPS Article 27.3 the main message was that the European Communities saw no reason to amend this provision as it believed that Article 27.2 (on the exclusion from patentability) and Article 27.1 (on the patentability criteria) already provided a sufficient flexibility to modulate patent protection. There was, however, a need to look at how the TRIPS Agreement, as a whole, functioned on these points, and to discuss the technical aspects. A second point addressed in the paper was the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD). Here, the European Communities did not either believe that there was a legal conflict - or legal incompatibility – between the two agreements. But the European Communities was of the view that

²⁰ 25th Session of FAO Committee of Fisheries, Rome, 28-24 February 2003.

²¹ The paper, submitted in the CTE Regular under paragraph 32(ii), has been previously circulated in the TRIPS Council as IP/C/W/383, dated 17 October 2002. It was a "Concept Paper" on the "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", circulated as WT/CTE/W/223, dated 14 February 2003.

the implementation of the two legal orders could raise questions, and could cause problems. There was considerable inter-action between both agreements and there was a need to interpret them in a mutual supportive way.

45. At the national level, the European Communities wanted to stress that sound regulation, either through legislation or administration, on the access and benefit sharing aspects of the CBD was essential to guarantee the legal security and to protect the rights of providers of genetic resources. At the international level, the European Communities believed that more work needed to be done on synergies by ensuring policy coherence in all forums which were relevant to the interface between TRIPS, CBD and the FAO International Treaty on Plant Genetic Resources for Food and Agriculture. Regarding the disclosure of origin, again the European Communities underlined that they were ready to examine and discuss the possible introduction of a system such as a "self-standing disclosure requirement" which would allow all WTO Members to keep track, at a global level, of all patent applications with regard to genetic resources for which they themselves had granted access.

46. On the protection of traditional knowledge, the European Communities believed that the TRIPS Council could consider preventive approaches to ensure that there was no misappropriation of traditional knowledge and also to stimulate the sharing of benefits which resulted from its use. Here approaches included methods of sharing of information, such as databases or registers. The European Communities was also of the view that when traditional knowledge was used as a basis for further innovations, it would be important to ensure that traditional knowledge holders shared in the benefits through disclosure of the original traditional knowledge from which the inventions were derived. The European Communities supported further work towards the development of an international *sui generis* model for legal protection of traditional knowledge and such work needed to take place in the World Intellectual Property Organization (WIPO), first and foremost. Whatever came out of those discussions would have to be fed into the WTO process.

47. On the effective *sui generis* protection of plant variety rights, the issue was the criteria that any system establishing rights over plant varieties needed to fulfil. The European Communities was open to discuss how such a system could be modulated. On farmers' rights and farmers' exemptions, the European Communities believed that such exemptions, for example exceptions to plant variety rights or patents allowing farmers to save, use, exchange or sell the seeds of protective varieties, could, under certain circumstances, be justified under Article 27.3(b) or under Article 30 of the TRIPS Agreement. There was a special situation of the least developed and developing countries which could be addressed by specific exceptions allowing subsistence farmers or small farmers to save, replant etc., these varieties. However, it was clear that farmers with more means and with significant commercial interests should not benefit from such exceptions.

48. The representative of India stressed that it would be important to disclose the source of the country of origin of the biological resource and the traditional knowledge used in the invention. India also shared, in general, several aspects of the paper presented by the European Communities. This was in line with the Indian submission in the TRIPS Council and also with India's statements in earlier meetings of the CTE. However, India did not share all the views, especially on the details contained in the EC submission. India would revert to such details in future meetings of the CTE.

49. The representative of Peru noted that she had already discussed the issue in the TRIPS Council, which was where the real discussion was taking place. Like India, Peru also agreed with some aspects of the EC submission, but the details were not up to the expectations. Peru considered that the requirement to disclose information needed to be compulsory, not voluntary. There was also a need to move towards a multilateral system for the protection of traditional knowledge.

50. Peru wished to share with delegates the results of the Second Ministerial Meeting of Megadiverse Countries²², which met in Cusco, Peru, on 29 November 2002. The fifteen participating countries had as a common characteristic that they all had an enormous wealth of natural resources which represented 70 per cent of the biological diversity of the planet. The main goal of this Group was to coordinate and cooperate in respect of biodiversity conservation. At the end of the meeting, the Group adopted the Cusco Declaration on Access to Genetic Resources, Traditional Knowledge and Intellectual Property Rights of Like-minded Megadiverse Countries (the "Cusco Declaration").²³ It was agreed, among other things, that the mechanism of access to genetic resources and traditional knowledge should ensure the conservation and sustainable use of biological diversity to the countries of origin with all types of benefits, including monetary benefits, transfer of technology, development of value added products, and an improvement of economies in favour of peoples, particularly local and indigenous communities. It was also agreed to negotiate an international regime which would allow to safeguard and promote the fair and equitable sharing of benefits of the diversity and its component parts. These countries also underlined the importance of the relationship between cultural diversity and biological diversity, which was one of the most relevant aspects of the heritage of such countries. Finally, the megadiverse countries decided to establish an open *ad hoc* working group to prepare a proposal for the next meeting of the Group to be held in Kuala Lumpur, Malaysia, in 2003. The idea was to develop mechanisms to guarantee the fair and equitable sharing of benefits derived from the use of biodiversity and traditional knowledge. The working group would bear in mind, *inter alia*, the need to guarantee the full protection of the rights of indigenous peoples and local communities over their traditional knowledge so that their heritage was not accessed and used without their consent or without due benefit sharing arrangements.

51. The representative of Australia, being another megadiverse nation, also had significant interest in the matter and had set out its views in a submission to the TRIPS Council in October 2001.²⁴ As had been said before, Australia saw the TRIPS Council as the best place to be discussing the issue. Nevertheless, while the representative of Australia welcomed the submission of the European Communities for discussion in the CTE Regular, he was surprised by the EC comment implying that the TRIPS Council did not have time to discuss this issue. This was certainly not the view of Australia; there was plenty of time for discussion in the TRIPS Council, particularly as a number of issues on the TRIPS Council agenda were currently the subject of discussion elsewhere in the organization, and, in fact, the agenda of the upcoming meeting was looking rather thin.

52. The representative of Brazil was happy to hear that the European Communities was not looking for a parallel debate in the CTE Regular. It was Brazil's view that the TRIPS Council was the appropriate forum for the ongoing discussion. Brazil thanked the delegation of Peru, and associated herself with that delegation's comments on the recent meeting of the Group of Megadiverse countries. Brazil highlighted the importance for this group to find a mechanism to ensure the benefit sharing for all countries, especially for countries of origin, on the use of biodiversity and traditional knowledge.

53. The representative of Japan noted, in respect of plant variety systems, that in order to ensure a harmonized system for the protection of breeders' rights, expanding the already established UPOV²⁵ system would be the most effective way.

²² This group includes: Bolivia, Brazil, Colombia, Costa Rica, the People's Republic of China, Ecuador, Philippines, India, Indonesia, Kenya, Malaysia, Mexico, Peru, South Africa and Venezuela.

²³ For more information, see <http://www.comunidadandina.org/ingles/document/cusco29-11-02.htm>.

²⁴ IP/C/W/310, 2 October 2001.

²⁵ The International Union for the Protection of New Varieties of Plants (UPOV).

C. PARAGRAPH 32(iii) (LABELLING)

Labelling requirements for environmental purposes.

54. The representative of Japan recognized that labelling for environmental purposes was – and would become – a very important issue for international trade in the coming years. Labelling requirements, which themselves were not trade measures, could be quite efficient in providing necessary information to the consumer. However, Japan also recognized that they could become unnecessary obstacles to trade depending on their design and implementation. In its submission on "Labelling" to the TBT Committee²⁶, Japan had pointed at some matters that needed to be improved in the implementation of existing voluntary-based labelling systems: (i) there was a need for improving transparency in voluntary labelling schemes; (ii) there were insufficient international standards which could be used as a basis for labelling requirements; and (iii) there were still many specification-based standards instead of performance-based standards used as a basis for labelling requirements. The EC paper on labelling²⁷ suggested a non-exhaustive list of issues to be considered in relation to labelling, among which many issues coincided with those in the Japanese submission. These issues were, in principle, relating to labelling in general and most of them were relevant to the Code of Good Practice of the TBT Agreement. An informal TBT meeting had recently been convened and many delegations who attended the meeting attached high importance to issues relating to voluntary labelling schemes in the context of the TBT Triennial Review. Therefore, Japan believed that it was essential for the CTE Regular to take full account of the ongoing discussions on labelling taking place in the TBT Committee, and to keep close information exchange between the CTE and the TBT Committee. One way of doing this would be to maintain frequent communications between the Chairmen of the two bodies, and to have the CTE Regular briefed on the TBT discussions.

55. The representative of the United States noted that, at this point in the CTE Regular discussions under paragraph 32(iii), with the exception of the Swiss paper, all papers that had been submitted to the CTE since the Doha Ministerial had been re-submissions of papers submitted to the TBT Committee on generic labelling issues. Also, the United States would take under consideration Australia's proposal referred to in the informal discussions (paragraph 85 below) about a possible recommendation that environmental labelling issues were properly being taken up in terms of generic labelling in the TBT Committee.

56. The representative of the European Communities, referring to the US statement as well as to the one made informally by Australia, noted a slight "sloppiness in the language" with respect to paragraph 32. This paragraph referred to "labelling for environmental purposes". This was neither pertinent nor high on the SPS and TBT agenda as such. When the Ministers gave the CTE Regular the mandate at issue they must have seen a role for "environmental purposes" in the CTE. Hence, in light of this mandate, it was not appropriate to talk about sending issues back to other Committees. The European Communities would revert to the issue of how to deal with "environmental purposes".

IV. OTHER ITEMS ON THE CTE AGENDA

57. The Chairman noted that Members had now discussed those items of the work programme for which the Doha Mandate instructed the CTE Regular to give "particular attention". He recalled that CTE Members were instructed to pursue work on *all items* on the CTE work programme within its current terms of reference.²⁸

²⁶ G/TBT/W/176, 18 June 2002, "Labelling", submission from Japan.

²⁷ G/TBT/W/175 and WT/CTE/W/212, 12 June 2002, "Labelling", submission by the European Communities.

²⁸ Only those items actually addressed during the meeting follow.

B. ITEMS 1 AND 5

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

58. The Chairman informed the CTE that he had been asked by the representative of the CITES, who was not able to attend the meeting, to draw the Committee's attention to a paper submitted under this agenda item on "Economic Incentives and Trade Policy".²⁹ At the last Conference of the Parties (COP12) of the CITES, held in Santiago de Chile, November 2002, the meeting had concluded its deliberations with the adoption of a Decision in this respect. The Chairman drew the Committee's attention to the first paragraph of this Decision which directed the CITES Secretariat, in collaboration with the Parties that wished to participate, and several Intergovernmental organizations, including the WTO, to: "organize a technical workshop on wildlife trade policies and economic incentives applicable to the management of and trade in CITES-listed species".³⁰

C. ITEM 10

Relations with Intergovernmental and Non-governmental organizations.

59. The Chairman drew the Committee's attention to a reference made to the CTE in a document on "Outreach activities" circulated in the Committee on Trade and Development (CTD) in December 2002³¹. In a footnote it was stated that the Secretariat would consult with Members in both the CTE and the CTD on modalities, agenda and participation regarding the organization of a Symposium for NGOs on Trade and Environment. In light of this, the Chairman welcomed any input from Members on these points. He noted that the focal point in the WTO Secretariat for this event would be the External Relations Division (Mr. Hans-Peter Werner and Mr. Bernard Kuiten). The symposium, which was being financed by Norway, would be held on 16-17 June and an information note would be issued to Members in March.

V. 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.

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

A. TECHNICAL COOPERATION AND CAPACITY BUILDING

61. There were no comments from Members and Observers under this agenda item.

²⁹ Circulated as WT/CTE/GEN/6, 20 November 2002, "Economic Incentives and Trade Policy", Communication from the CITES Secretariat under Items 1 & 5.

³⁰ This Decision has been circulated as WT/CTE/GEN/7, 11 February 2003, "Decision on Economic Incentives and Trade Policy", Communication from the CITES Secretariat under Items 1 & 5.

³¹ WT/COMTD/W/104/Add.2, 10 December 2002, "2003 Outreach Activities", Note by the Secretariat.

B. ENVIRONMENTAL REVIEWS AT THE NATIONAL LEVEL

62. The representative of Canada noted that his country had submitted their Initial Environmental Assessment (IEA) of the WTO Trade Negotiations.³² He recalled that in past meetings of the CTE, Canada had provided information on the development and implementation of its "Framework for Conducting Environmental Assessments of Trade Negotiations", released in February 2001. This new Framework outlined Canada's approach to undertaking national environmental assessments of multilateral, regional and bilateral trade liberalizing negotiations. Assessments were intended to help negotiators better integrate environmental considerations into the negotiating process and address public concerns by documenting how environmental factors were being considered in the course of trade negotiations. The IEA was the first of three reports that would be prepared for the environmental assessment of the current WTO negotiations according to the aforementioned Framework. The principal aim of the IEA was to scope out the main environmental issues that might arise in Canada as a result of the negotiations. The issues identified would be given more rigorous analysis, as appropriate, at the next stage of the process and reported in a draft environmental assessment. To the greatest extent possible, further work would draw on existing sources of information. The analysis performed for the IEA suggested that in the aggregate, any effect the new WTO negotiations may have on Canadian environment was likely to be minimal on account of one or a combination of three reasons:

- (a) Further trade liberalization was likely to affect only a small proportion of Canada's trade as the bulk of it was already subject to the North American Free Trade Agreement (NAFTA) and other Free Trade Agreements, which had liberalized much of Canada's trade;
- (b) federal and provincial environmental legislation, policies and measures that could mitigate negative effects were already, or would soon be in place; and
- (c) some negotiations that sought clarification in procedures or established a system of notification and registration would not directly translate into increased production or trade, and therefore, were unlikely to lead to any environmental negative effects.

63. The representative of Canada went on to note that the current analysis covered the seven areas of negotiation that were launched in Doha: agriculture, non-agricultural market access, services, rules, trade and environment, wines and spirits registry, and dispute settlement. Only when an agreement to negotiate an issue was obtained would the issue be included in the environmental assessment process. The Government of Canada had sought input from Canadians on this initial environmental assessment, and would continue to seek their input throughout the subsequent stages of the assessment process. The next stage of the environmental assessment process was the Draft Environment Assessment, which would focus on the environmental issues raised in the IEA that required further analysis. The completion date of the Draft Assessment would depend on developments in the negotiations. Canada would be pleased to continue to make reports on their environment assessment efforts at subsequent stages.

64. The representative of the European Communities welcomed the submission by Canada and noted that it was important that Members understood what these assessments were about, and how these could be used as a tool to help trade negotiators be better informed about impacts on the objective of sustainable development. The European Communities shared some of the conclusions and concerns of the Canadian submission. For example, it had also found it extremely difficult to take into account the impact of services liberalization – a field which was about more than just aggregating tariffs and trying, econometrically, to examine their impact. The representative of the European Communities wished to find out more about the impact of the negotiations on trading partners,

³² WT/CTE/W/221, 24 January 2003, Initial Environmental Assessment: Trade Negotiations in the World Trade Organization, Submission by Canada.

particularly developing countries and inquired about the social dimension of sustainable development, and how far this had been part of the methodological approach. He wondered whether the potential effects of trade liberalization looked at had fully taken into account the rules dimension (including future rule-making in areas like the Singapore issues). Also, the European Communities was keen to see more analysis on the impact of liberalization on Canadian agriculture. Lastly, the European Communities drew the Committee's attention to its own submission and wished to exchange further information.³³

65. The representative of Japan noted that although the Canadian proposal was still being analysed in detail, Japan appreciated Canada's endeavour. The importance of environmental reviews in WTO trade negotiations had been confirmed in the Doha Ministerial Declaration and the WSSD Implementation Plan. Canada's submission on environmental assessment was timely and provided useful information on how to conduct an environmental assessment of trade negotiations. Japan considered that an exchange of information on the development of methods of environmental reviews and on implementation and results of environmental reviews was highly useful. He informed the Committee that the Japanese Ministry of the Environment had been conducting a study on procedures and methods of environmental assessment and had made the report public at the end of 2002.³⁴

66. The representative of the European Communities reported on a DG Trade Seminar on "Sustainability Impact Assessment of Trade Agreements: Making Trade Sustainable?", held in Brussels on 6-7 February 2003.³⁵ He noted that the conclusions addressed some of the concerns and questions which often surfaced in respect of Sustainability Impact Assessments (SIAs). For example, it was sometimes felt that SIAs were just another way to justify protectionist measures under the guise of social or environmental impacts. He noted that in all EC regional initiatives, be it with MERCOSUR, Chile, the Mediterranean countries, the Gulf Corporation Council or the Cotonou agreements which the European Communities would now negotiate, it had a commitment to do *ex ante* SIAs.

67. The seminar posed some concrete questions, for example: how could SIAs be made operational so as not to be a purely academic exercise; how to make them feed into the actual negotiating process in a manner which informed the negotiators on the impact of their actions? The seminar also examined closely how to involve in SIAs not only institutional players but also the private sector in the European Communities and in the countries with which it negotiated, and in particular groups such as farmers, NGOs, environmentalists and social trade unions. Another issue was how to ensure that the results would actually be disseminated and maximized in their effects. The last issue was how to ensure that when there was a need to formulate policies which would complement trading efforts to mitigate the effects of trade liberalization, measures would actually be taken. The representative of the European Communities emphasized that the current approach was still a rather modest one and several methodology questions remained. He noted, moreover, the considerable burden for developing countries and NGOs in developing countries to participate in the process.

³³ WT/CTE/W/208 (also WT/COMTD/W/99 and TN/TE/W/3), 3 June 2002, "Sustainability Impact Assessment", Communication from the European Communities.

³⁴ An English version of this report, which summarized the ideas concerning the procedure of the environmental review, can be obtained at www.env.go.jp.

³⁵ Documentation pertaining to the Seminar was distributed as a room document and subsequently circulated as WT/CTE/W/224, 21 February 2003.

VI. 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.

68. The Chairman noted that mandate implied that the CTE needed to find a way to identify and debate the environmental aspects of the negotiations. At the last meeting, some progress had been made, at least of a procedural nature. It had then been decided that it would be useful for the CTE Regular to take a sectoral approach and ask Secretariat staff to be invited to brief the CTE on what was going on in other negotiating committees or groups. On the basis of such factual briefings, a more substantive discussion could be launched on paragraph 51. It was agreed that a good starting-point would be the negotiations on **agriculture** and on **market access**, including, and perhaps in particular, environmental goods.

69. The CTE Regular then heard two oral presentations, one by Mr. Frank Wolter, Director of the Agriculture and Commodities Division and one by Mrs. Carmen Luz Guarda, Director of the Market Access Division. The representatives of Japan, South Africa, the United States, and Venezuela thanked the Secretariat for the presentations. Upon request, the full statements have been circulated separately.³⁶

70. The representative of the European Communities recalled suggestions made at previous meetings by his delegation under paragraph 51. While thanking the Secretariat for its useful presentations on the state-of-play, he called for a broader debate. There was a need to look at "sustainable outcomes" from the debate under paragraph 51. Delegations had not even mentioned the outcomes of the WSSD, for example, which had had references to the process under paragraph 51. The European Communities would revert to this "broader perspective" at another occasion.

71. The representative of the United States noted that he had been anticipating a bit of a broader discussion as well on both agriculture and non-agricultural market access. In fact, at the last meeting, his delegation had made rather detailed comments across all areas of negotiations regarding the US assessment of potential environmental implications. On agriculture, the United States stated that distortions in production policy created a heavy cost for the environment and that trade reform had the potential to help remedy this problem. A more market oriented agricultural system would lead farmers to make more accurate cost and benefit calculations and this would extend both to tariff reductions and to the reduction of export subsidies and distorting domestic support. On non-agricultural market access, the United States had noted that environmental goods were an obvious environmental positive in terms of prospects for liberalization, but had noted that it was too early to assess whether there could be other environmental implications, positive or negative, in the non-agricultural market access negotiations. Concerning the US environmental review, the United States was not very far along in the assessment of these negotiations. The United States had briefly reviewed Canada's initial environmental assessment which had preliminarily concluded that tariff liberalization would have a minimal environmental impact.

72. The representative of the OECD informed the CTE that the OECD Joint Working Party on Trade and Environment had made a comparison of the three lists that had been circulated so far: (i) the APEC³⁷ list, (ii) the OECD list, and (iii) the Japanese list. It turned out that the overlap, at the

³⁶ Agriculture: WT/CTE/GEN/8, dated 18 February 2003, "Environmental Issues Raised in the Agriculture Negotiations", Statement by Mr. Frank Wolter at the Regular Session of the Committee on Trade and Environment of 14 February 2003 under paragraph 51; and, Market Access: WT/CTE/GEN/9 (and TN/MA/7), dated 21 February 2003, "Environmental Aspects of the Negotiations on Market Access", Statement by Mrs. Carmen Luz Guarda at the Regular Session of the Committee on Trade and Environment of 14 February 2003 under paragraph 51.

³⁷ Asia-Pacific Economic Cooperation.

six-digit level, between the APEC list and the OECD list was about 27 per cent. He noted that the Japanese list had more in common with the OECD list, with, in addition, quite a few new products, many of them in the resource or energy efficient technologies. This comparative work was still in draft form but would, if de-classified, be shared with CTE Members. The OECD was also looking at issues related to the classification of different products and how this related to the Harmonized System – but without prejudging what might emerge from the negotiations. Discussions and questions in other fora had made the OECD believe that there might be some misunderstanding about the OECD list. As distinct from the APEC list, the OECD list was not a result of a negotiation of offers or counter offers – it was simply an illustrative list prepared as much for undertaking statistical analysis of trade as anything else. The representative of the OECD hoped that countries were not regarding it as a list proposed by the OECD countries collectively; it was produced for analysis. The working definition (paraphrased) of environmental goods used was: goods to:

- (a) measure, prevent limit or correct environmental damage to water, air and soil as well as problems related to waste, noise and ecosystems; and,
- (b) clean technology, processes and products which reduce environmental risk and minimize pollution and material use.

73. The Chairman suggested that if Members found the sector-by-sector approach useful, the Committee could chose new areas for the next meeting.

74. The representative of South Africa pointed out that the approach would be even more useful if the presentations were available beforehand. South Africa would be interested in hearing a brief report on the environmental aspects of the ongoing negotiations in services and rules.

75. It was agreed that the CTE Regular would hear presentations in the areas of services and rules at its next meeting, subject to Secretariat staff availability.

76. The representative of Venezuela wished to know if there was a plan, in the future, to continue this exercise jointly with the CTD.

77. The Secretariat understood Venezuela's question as how the CTE Regular would work together with the CTD on paragraph 51. In this regard, it was noted that there had been a proposal from the European Communities before regarding a joint CTE-CTD event. However, it was up to the Membership to decide if they wished to hold such an event and, to date, there had been no such agreement. Venezuela was nevertheless welcome to put such a proposal to Members.

VII. "CANCÚN REPORT"³⁸

A. CHAIRMAN'S INTRODUCTION

78. The Chairman reminded delegates that at the last meeting of the CTE Regular, Ambassador Demiralp had drawn Members attention to the preparation of the CTE Report to the 5th Ministerial Session, in Cancún, 10-14 September 2003.³⁹ At that point, Ambassador Demiralp had noted that there was a need for the CTE Regular to start thinking about the form and content of this report and had requested Members to be prepared for a discussion at the current meeting.

79. The Chairman began by recalling the text of the mandate in paragraphs 32 and 33 (for easy reference the entire text of both paragraphs is reproduced below, with those sentences directly referring to the "report" emphasized):

³⁸ While the discussion under this agenda item was held in informal mode, it was agreed that the statements of all Members would be reflected in the report of the formal meeting.

³⁹ "Report of the Meeting Held on 8 October 2002", WT/CTE/M/31, 2 December 2002, paragraph 97.

"32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) 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;
- (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- (iii) labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.

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." [emphasis added]

80. In the view of the Chairman, paragraph 32 instructed the CTE to do two things: (1) to report and (2) to make recommendations, *where appropriate*. Paragraph 32 had a *factual* element (i.e. to prepare a report) and a more *substantive* one (i.e. to make recommendations, where appropriate). Paragraph 33 was factual in its entirety: the CTE needed to report on "activities". In respect of the factual elements of both paragraphs, the mandate was rather straight forward and, hopefully, the CTE Regular could reach agreement before the summer.

81. On the substantive element of paragraph 32 (to make recommendations, where appropriate, with respect to future action, including the desirability of negotiations), it was the Chairman's view that the words "future action" were key. He noted that proposals for future action could only come from Members, and that to date, there had been none.

82. The Chairman noted that he had a responsibility to ensure that Members in the CTE Regular, accomplished this work in a timely and appropriate fashion. While the exercise needed neither to be complicated nor time-consuming, trade and environment was never a completely friction-less subject. Hence, an early start was desirable. He asked Members for their views on how to proceed.

B. DISCUSSION

83. The representative of Australia noted that the Cancún Report would be an important part of the CTE Regular work in 2003. His preliminary comments focused on paragraph 32 because, as had been identified by the Chairman, paragraph 33 could be a more straight forward exercise.

84. In Australia's view, the CTE Regular had been able to begin a useful and informative discussion of paragraph 32 since Doha – a discussion that had been helpful and complementary to the discussion in other Committees, such as the TBT Committee, the TRIPS Council and the relevant market access negotiating groups, as well as other areas of the Doha work programme. In considering the CTE Regular's approach to the Cancún Report, Australia felt it was important to treat the various issues that needed to be addressed on their own merits, and on a case-by-case basis. Issues related to market access, TRIPS and labelling were all very different and they were already being handled in different ways under the Doha work programme. Some, like market access, were already part of the negotiations and others, like labelling, were definitely not. Considering this, Australia had a number of questions on what kind of report the CTE would be able to prepare when the issues involved were the responsibility of *other* committees in the WTO. Labelling, for instance, was clearly an issue for the TBT Committee and Australia therefore wondered how far the CTE Regular could go in providing a report, particularly in terms of making any recommendations. The same could equally be said for issues that were rightly addressed in the TRIPS Council or in agriculture, services and non-agricultural market access negotiations. Australia had always seen the CTE as playing a constructive role to the work going on in other bodies, to ensure that environmental and sustainable development issues were considered in a horizontal, cross-cutting manner supportive of the work in the respective lead bodies. In this regard, there was a need to make sure that the CTE did not move in front of the work going on in other bodies. This was a point that the CTE Regular needed to be particularly mindful when preparing its Report for Ministers in Cancún.

85. Regarding the language in paragraph 32, there were a few key areas where Australia wished to draw Members' attention. First, the CTE Regular was not mandated to make recommendations for future action; it was only asked to do this, if appropriate. Importantly, Members were also asked to make sure that whatever was done was "compatible with the open and non-discriminatory nature of the multilateral trading system" and did "not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures" (SPS) (see text of paragraph 32, above). In respect of the SPS Agreement, Australia emphasized that existing SPS and TBT disciplines were more than adequate to deal with the issue of labelling for environmental purposes. Hence, if there were to be any recommendation in the Report, this was what Australia would state, as well as making clear that discussion of this issue was more appropriately carried out in the TBT Committee. However, the CTE needed to continue to play a supportive role to ensure that there was a cross-cutting appreciation of how environmental issues were being discussed in other bodies. But the CTE Regular needed to be careful in not overstepping the mark in terms of what the Cancún Report could realistically aim to deliver. Australia looked forward to further discussion at future meetings.

86. In respect of the reporting requirement in paragraphs 32 and 33, the representative of Canada believed that the ministerial mandate was clear. As the time-line was short, the CTE Regular needed agree on the organization of this work at the current meeting. He recalled the preparation of the last major report to Ministers at Singapore as a lengthy task and a "bad memory" that Members needed to avoid repeating.⁴⁰

87. On paragraph 32, Canada noted that one possible first step would be for the Chairman, with the assistance of the Secretariat, to prepare for the next meeting, a summary report of the discussion in the CTE since 1995 under each agenda item. Canada considered that 1995 was the appropriate date as it was the last time the CTE had made a substantial report. If the CTE only went back a short period, the Report would not give a sense of how views had evolved and whether or not some conclusions had been reached on some of the items. The summary needed to be a synthesis of the discussions highlighting the main views of delegations. It also needed to note the number of submissions by Members as well as the last year in which substantive discussions had taken place.

⁴⁰ "Report (1996) of the Committee on Trade and Environment", also referred to as the "Singapore Report", WT/CTE/1, 12 November 1996.

This draft report could then be discussed by Members at the next CTE meeting. Furthermore, Members could submit input on recommendations, as indicated in paragraph 32.

88. On paragraph 33, a first step would be to have the Secretariat update previous work on technical assistance and capacity building on trade and environment.⁴¹ This information could then form part of the report to Ministers. The report would also need to highlight bilateral activities being supported by Members between Doha and Cancún. To ensure that the size of the document was manageable, Canada suggested that no more than one or two pages be devoted to the efforts of each country. It would be useful if there were some consistent elements of country reporting, these elements could include: (i) total expenditure, (ii) identification of recipient countries and regions, and (iii) the scope and primary objective of the initiatives. A third component of the report could be a section prioritising categories of capacity building and technical assistance needs; Members could identify in which areas they would like to receive technical assistance in the future. Finally, in addition to the elements on technical assistance, Canada suggested that the Report also include a section on Members' experiences on environmental reviews at the national level.

89. The representative of the European Communities noted that while he found it timely to start thinking about "what to do", his delegation would not go as far as to jump to conclusions – as Australia had done – by giving a clear indication of what sort of recommendation Members could see coming out of the process. It was too early for the CTE Regular to start a discussion on this; what would be "appropriate" recommendations needed to be the subject of further discussions, and the European Communities would not want to prejudge anything in this respect. However, it was timely to start thinking about the factual part of the Report, and he agreed with the Chairman's separation of the two elements of the Report. In this respect, the European Communities needed to reflect on how far in time the report would need to go back; but the European Communities was flexible in this regard. What was needed was a good tableau which outlined the pertinent issues under paragraph 32 and which would also include the normal work programme.

90. On paragraph 33, the European Communities found the Canadian statement very useful. This part of the Report needed not only to give a snap-shot of what was going on, but also to be a tool to identify best practices and to see what needed to be done in the future. In fact, any report on technical assistance needed to lend itself to actually drawing conclusion – maybe not in the report itself, but for Ministers or individual delegations running technical assistance programmes. On how exactly this could be done, the European Communities did not have a clear view. The European Communities agreed with Canada that it would be useful to identify needs, and likewise, concerning environmental reviews, which was part of paragraph 33, delegations needed to take this part of the mandate seriously, and contribute to it.

91. The representative of the United States expressed appreciation for the Chairman's assessment of how the CTE Regular might approach the reporting requirement in paragraphs 32 and 33. He understood this assessment as suggesting that the report under paragraph 32 would include a factual summary and that it may include recommendations, where appropriate. However, the possibility of a recommendation section would require that proposals first be made. If recommendations were to be offered, they certainly could include the recommendation that focussed work had been completed, or, perhaps, that another forum was the appropriate one for certain issues.

92. Reacting on the discussion thus far, in general, the United States expected that its views would be along the lines of those offered by Australia. In particular, the United States would be likely to take under serious consideration the suggestion that labelling discussions were most appropriately held in the TBT and SPS Committees. In any event, the United States would prefer that proposals for recommendations be made sooner rather than later. On the suggestion by one delegate that it was too

⁴¹ The representative of Canada referred to "Technical Assistance and Capacity Building Activities in 2002", WT/CTE/W/216, 30 September 2002, Note by the Secretariat under paragraph 33.

early to consider this question, the United States emphasized that it would not appreciate proposals for recommendations made late in the process. Commenting on Canada's statement, the United States noted that it had read paragraphs 32 and 33 as suggesting that the Report would cover the period since the Doha Ministerial Conference. Given that there was no further guidance in the Declaration to go back before the Doha Ministerial, the United States would like to have the Report covering only the period since the Doha Ministerial Conference.

93. The representative of Switzerland, in offering preliminary comments on paragraph 32, agreed with the Chairman's outline on the form of the report. With respect to the recommendations, there was a need for time and Switzerland did not want, at this stage, to discuss any conclusions for such recommendations. On the factual part, Switzerland agreed with Canada's proposal to have, from the Secretariat, a draft text for discussion at the next meeting.

94. The representative of Argentina believed that the Chairman had correctly outlined the two aspects of the mandate contained in paragraph 32: a first aspect which was factual, and a second aspect which was potential and which, as had been signalled by Australia, was contingent on any eventual recommendations being made. Furthermore, Argentina noted that the possibility to make such recommendations would flow naturally from the factual part of the report. On the factual report, Argentina, like the United States, saw no merit in extending it back to 1995; the point of departure was the Doha Ministerial Conference. Regarding the substantive element, Argentina associated itself with the views expressed by Australia: there were many issues, such as labelling, as well as negotiating issues, which were more appropriately dealt with in other bodies. On paragraph 33, Argentina agreed that the task was simpler because it was only a factual report.

95. The representative of Brazil thanked the Chairman for identifying of the two parts of the report (factual and substantive) and expressed support for Australia's view that issues had to be considered on a case-by-case basis. Likewise, Brazil supported the idea that work already conducted by other committees be taken into account. Brazil felt that the issue of labelling, for example, was more appropriately conducted in the TBT and SPS Committees. On paragraph 33, Brazil also believed that the discussion would be easier, given its more factual nature.

96. The representative of the Philippines believed that the Chairman was in the right track in stating that the Cancún Report be mostly factual in nature. The substantive part would need to be prepared carefully. He reacted to the use of the word "value-added"; this was also a criteria that had been encountered in the CTE Special Session, and it was unclear whether the connotation was the same. The Philippines agreed with the United States that if the CTE Regular was to work on specific recommendations, this work had to be prepared well in advance – and any such recommendations needed to be accepted by consensus. Moreover, the representative of the Philippines echoed the point that labelling was something that was more appropriately discussed in the TBT and SPS Committees.

97. The representative of Chile agreed with the reading of the mandate by Argentina that there was an obligation to inform, in a factual manner, on the three areas identified by Ministers. As such, the recommendations needed to flow from the factual report on the three areas. Chile did not see that there was a need to report on other areas of the Committee's work, and certainly not on the work undertaken since 1995. As stated by the United States, it would be sufficient to go back to the Doha Ministerial Conference. Chile also agreed with the United States that the recommendations should emanate from proposals of Members and the sooner these were received the more time there would be to discuss them. Chile did not either want to see any last minute recommendations in August. On paragraph 33, Chile fully supported Canada's suggestions.

C. CONCLUSION

98. The Chairman noted that even though it was still early days, he felt that the discussion had been a good start to the thinking process regarding the form and the content of this report. Summarising the discussion, he noted that, in general, there was agreement that the Cancún Report would have two aspects. The first part was factual in nature and would reflect the reporting requirement with respect to work under both paragraphs 32 and 33. The second part, which was only relevant to paragraph 32, was more substantive. Here the mandate was to make recommendations, *where appropriate*, with respect to future action, including the desirability of negotiations.

99. The Chairman proposed that the Secretariat prepare a first draft of the factual element of this report (the first part). He stressed that this exercise would be factual in nature and only relevant to the work undertaken by the CTE under paragraphs 32 and 33 since the Doha Ministerial Conference, in November 2001. The draft would be made available to Members in advance of the next meeting of the CTE Regular. Regarding the substantive aspect of the report (recommendations), he noted that no formal proposals of such recommendations had been submitted to date. As recommendations could only come from Members, he strongly encouraged Members to make any such proposals as soon as possible. Late arrival would make it difficult for the CTE Regular to give them due consideration.

100. The representative of Australia agreed that it would be sensible to move forward with the factual aspects of the report. On the "two parts" of the report, he noted that if the Committee decided that there was no need for recommendations, a second part might not be needed. Hence, he did not want any draft put forward to prejudge that question. He strongly supported what the Chairman had said on the need to come forward with any such proposals as quickly as possible and noted how few new proposals were actually on the table. Australia would seriously consider to have something to put forward for the next meeting.

101. The Chairman noted Australia's point and the CTE Regular agreed on the approach suggested.

VIII. SCHEDULING OF MEETINGS FOR 2003

102. The Chairman proposed that the CTE Regular agree to meet on the following dates back to back with the Special Session of the CTE (CTE Special Session in parenthesis):

- (a) **29-30 April** (1-2 May)
- (b) **7 July** (8 July)
- (c) **28-29 October** (30-31 October)

103. The representative of the European Communities recalled the issue of the Symposium for NGOs on Trade and Environment that his delegation had argued should take place back-to-back with the meetings of the CTE and the CTD. The European Communities trusted that the dates which had now been fixed would allow Members to precede in that way.

104. The representative of Canada wondered whether two-day meetings were necessary and whether the Committee could not meet in one day.

105. The Chairman noted that the CTE Regular would only meet on the second day as necessary.

106. The proposed dates were agreed.

107. The CTE Regular will meet again on **29-30 April 2003**.
