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Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 29 APRIL 2003

Note by the Secretariat

1. The Committee on Trade and Environment (CTE Regular) met on 29 April 2003 under the Chairmanship of Ambassador Peter Brňo (Slovak Republic). Relevant documents were contained in the Annotated Draft Agenda (Job(03)/77, 24 April 2003).

I. ADOPTION OF THE AGENDA

2. The proposed agenda was adopted (WTO/AIR/2069, 14 April 2003).

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 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 Convention on Biological Diversity[1] (CBD).

II. PARAGRAPH 32(I)[2]

A. PARAGRAPH 32(i) (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.*

4. The Chairman recalled that this paragraph had two aspects: (i) the "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

5. There were no new papers, and no Member wished to take the floor.

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

(i) Fisheries

6. Before introducing his delegation's submission, the representative of Japan recalled previous papers prepared by his delegation. First, Japan had submitted to the meeting of the CTE Regular in February 2003, a paper on "Sustainable Development and the Trade of Forest and Fishery Products".[3] This paper covered a range of issues, including fisheries subsidies. While recognising that the negotiations on fisheries subsidies should be conducted in the Negotiating Group on Rules ("NGR"), Japan was of the view that the issue needed also to be discussed in the CTE Regular in terms of addressing illegal, unreported and unregulated fishing (IUU), and over-capacity. This had also been mentioned by Japan in its paper to the NGR at its meeting in February 2003.[4] The current submission provided some analyses on the relationship between fisheries subsidies and over-exploitation, taking into account work of relevant international organizations.[5] While the purpose of the paper was to deepen Members' understanding, it did not prejudice Japan's position in the WTO.

7. The relationship between fisheries subsidies and over-exploitation had been analyzed by several international bodies. Japan mentioned three examples. First, in a study prepared in 2000, the OECD concluded that possible negative effects of subsidies could be minimized if coherence was maintained between fishery management policies and subsidy policies. This meant, for instance, that when a subsidy for vessel construction was provided to fishing vessels engaged in a certain fishery, it was necessary to restrict the total fishing capacity of the fishery through regulations. Second, the OECD also concluded, in a study conducted in 2002, that the effects of subsidies on resources differed depending on the status of resources and management. Subsidies were least likely to affect

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[1] The CBD Secretariat held a lunch time side event, separate from the CTE Regular, for interested delegations on issues and developments in the CBD and the Cartagena Protocol on Biosafety.

[2] Paragraph numbers refer to those of the Doha Ministerial Declaration ("DMD") unless otherwise indicated.

[3] 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).

[4] TN/RL/W/52, 6 February 2003, NGR, "Japan's Contribution to Discussion on Fisheries Subsidies Issue".

[5] WT/CTE/W/226, 24 April 2003, "Analysis on the Relationship between Fisheries Subsidies and Over-Exploitation of Fisheries Resources".

resources adversely in a case of under-utilized resources with proper fishery management. Third, APEC had conducted a study on fisheries subsidies in 1999. According to this study, the impact of subsidies was closely related to fishery management regimes and, therefore, the impact of subsidies could not be discussed in isolation. Similar findings had also been made by the FAO. These analyses suggested that there was a common understanding that the effects of subsidies on resources varied, depending on the status of resources and fishery management.

8. The representative of Japan went on to note that one WTO Member had recently indicated that the expansion of prohibited subsidies was a possible means of strengthening disciplines on fisheries subsidies. A question was, however, whether there was any "red" subsidy from the standpoint of their resource impact in the fishery sector; in other words, was there any subsidy that should be automatically restricted because it created extremely adverse effects under any circumstances? Based on the common understanding mentioned above, the answer to the question could hardly be "Yes". The reason for this was that the effects of subsidies on resources varied, depending on the status of resources and fishery management. In Japan's view, the establishment of "red" fisheries subsidies in terms of their impact on resources was based on the premise that the stock status exploited by the fishery receiving the subsidies was bad, and that the fishery management was also inappropriate. However, the situation differed among various types of fisheries. Furthermore, over-capacity could exist even without subsidies when the fishery was not managed well.

9. In order to be concrete, Japan provided two cases. First, the case of skipjack tuna was provided as one example of how the effect of subsidies changed owing to the status of stocks or management. The production of skipjack tuna had been on the increase and had reached 1.89 million metric tons in 2000. It was reported that the stock status of skipjack tuna was fairly good, with a high reproduction potential and that the production could be further increased. However, production was suppressed by limited demand. Skipjack tuna could be regarded as a case in which fisheries subsidies were unlikely to cause over-exploitation, as referred to by the OECD and others. The second case was the purse seine fishery in the Eastern Pacific Ocean. This was an example of over-capacity even without subsidies when there was no good management. Concerns had been expressed about the over-capacity in the purse seine fishery since 1998, and it had been confirmed that the current fishing capacity, measured in the total fish hold capacity of purse seine fishing vessels, was 210 thousand cubic meters, well surpassing the recommended level of 158 thousand cubic meters.

10. In the view of Japan, these cases showed that the possible effects of subsidies on resources changed depending on resource status and fishery management regimes, and that the lack of effective fishery management created over-capacity even without subsidies. From the standpoint of responsible fishing, it would be unfair to ignore the varying situations and to automatically prohibit certain fisheries subsidies. Japan wished to know if there was any subsidy which caused damage to resources under any condition, regardless of resource status and fishery management. Members who demanded more disciplines on the fisheries subsidies needed to present cases of over-exploitation and investigate whether the main cause of the over-exploitation was subsidies. Finally, Japan considered it important for the CTE Regular to continue its discussion on the possible impact of fisheries subsidies on resources, taking into account the work of the FAO and the OECD.

11. The representative of Korea considered that, from an environmental or sustainable resource management point of view, the impact of subsidies on fish resources was not well established and could vary depending on the circumstances. Therefore, Korea was of the view that the studies on the effects of fisheries subsidies needed to be made bearing in mind the on-going work of the FAO, UNEP and OECD. Korea believed that case studies with respect to the impact of subsidies on fish resources could be quite useful for enhancing Members' understanding of the interaction between fisheries subsidies and fisheries management regimes and could guide future CTE work. In this regard Korea found that the case of skipjack tuna cited in the Japanese submission was highly important and a good example showing how the effects of subsidies varied according to the status of stocks or management. Korea believed that case studies should be further developed before

embarking on any discussion of the categorization of fishery subsidization, or improvement of fisheries subsidies disciplines.

12. The representative of the United States noted that Japan raised some issues related to IUU fishing and management issues. However, these issues seemed to be interwoven with an analysis of the question of subsidies; in fact, the recent Japanese intervention focussed on the question of a potential red light category for fisheries subsidies. At the last meeting of the CTE Regular, Japan had noted that there was an important role – or continuing role – for the CTE in this respect. The US view was that the Doha Ministerial Declaration ("DMD") had changed things significantly. There was now a problem with institutional confusion: Japan had raised a number of questions for delegations, but these questions generally appeared to be most relevant to the negotiations under paragraph 28 of the DMD which was being addressed in the NGR. The United States would prefer to consider these questions in that Group. However, there was a procedural dilemma because Japan had not yet tabled the newly introduced paper in NGR. Therefore, it might be difficult to respond to these questions in that context. Finally, on the issue of red light category and one Member having referred to that possibility in a submission to the NGR, the United States wished to provide an update. In fact, a new and very interesting paper had been submitted by another Member in the NGR, which also referred to the possibility of a red light category for fisheries subsidies.

13. The representative of Chile noted that Japan's paper alluded to concrete proposals presented by other Members in the NGR and recognized that the problem of fisheries needed clarification and improvement of current disciplines, as stated in paragraph 28. Chile reaffirmed that the particularity of fisheries subsidies was that they affected not only equitable access to common resources in the High Seas but also resources which existed in exclusive economic zones corresponding to highly migratory fish species. This was clearly a trade distortive measure. Therefore, this issue had to be looked at in the NGR, and not in CTE Regular. Japan mentioned fishing management regimes in its paper – these were outside of the WTO's mandate. In fact, it was up to other international bodies to look at this issue. Chile, therefore, rejected Japan's view that the CTE Regular should deal with problems of IUU and over-capacity.[6] Chile did not intend by this that there were no problems in this regard, however, in their view, the issue at the WTO was a trade one. Japan, in its paper, stated that theoretical analyses showed that there was a general understanding that subsidies varied depending on the status of resources and fisheries management. Chile wondered which theoretical sources Japan was referring to. Japan had also mentioned concrete cases showing how over capacity could exist without subsidies. Would Japan be prepared to prohibit the use of subsidies to fisheries when a resource was over exploited? The Doha mandate clearly indicated that the disciplines applied to fisheries subsidies were insufficient. The task ahead of Members was that of elaborating new disciplines or improving the current ones so as to deal with the particular characteristics of these subsidies. This task had to be dealt with in the NGR.

14. The representative of Australia noted that while the paper tried to purport a rationale for discussing the issue of fisheries in the CTE Regular, Australia remained unconvinced. Australia had repeatedly asserted that the more appropriate forum for this discussion was the NGR. This position was supported by the fact that the issues raised in Japan's paper were *already* being discussed in the NGR. For instance, Part III of Japan's paper specifically responded to a proposal made in the NGR on expanding the category of prohibited red light fisheries subsidies. The red light category in this proposal refered to Article 3 of the Agreement on Subsidies and Countervailing Measures. While useful from an information point of view for the CTE, since there was a negotiating group reporting to the TNC and which specifically focussed on these issues, Australia considered that the discussion needed to be pursued in the NGR.

15. The representative of the European Communities did not have a strong view on whether the issue should be discussed in the CTE Regular or not. In the CTE Regular it was not a negotiating

[6] Reference was made to paragraph 1 of WT/CTE/W/226, dated 24 April 2003.

item. However, it was an item on the agenda which had a long history in the CTE. Therefore, the European Communities was comfortable to also make some remarks in this context, although it was clear that the issue of subsidies in the fishery sector did belong to the NGR. The European Communities would present a paper on fisheries subsidies in the next meeting of that Group, so most of what would be said at the current meeting would also be mentioned in the NGR.

16. The European Communities considered that it was important to address the link between subsidies and over-capacity. Within the European Communities, measures had been taken acknowledging this link and actually striving to get rid of subsidies which enhanced capacity. The EC policy had significantly moved in that direction lately and the European Communities would certainly, within the context of the Rules negotiations, propose to end subsidies that resulted in a clear unbalance between fishing capacity and available fisheries resources. However, the European Communities considered, and this was relevant for the discussion in CTE Regular, that not all subsidies were *per se* bad and, therefore, needed to be banned. Subsidies which contributed to over-capacity, namely for vessel construction and those given for transfer of vessels to third countries, should be the main focus of Members in the CTE Regular.

17. Furthermore, as had been noted by Korea, it was clear that fisheries subsidies were not the only problem in the fishery sector. Adequate management of fishery resources was also one of the crucial factors needed to ensure that fish stocks were sustainably exploited. The European Communities referred to its internal policy and mentioned that it had recently taken steps to improve management and work on comprehensive plans aimed at fixing multi-annual catch targets for stock. This included a strong emphasis on enforcement and compliance mechanisms. Many of these issues were addressed in other international organizations such as the FAO, OECD, UNEP, and the Convention for the Protection of the Marine Environment of the North-East Atlantic ("OSPAR Convention"). The European Communities encouraged all delegations to look at the OECD study referred to in Japan's paper and said that there might be more nuance on the question of subsidies and the relationship to capacity than was reflected in Japan's paper.

18. The representative of Norway noted that Japan argued that the negative effect of fisheries subsidies varied depending on the status of resources and fisheries management, and seemed, on that basis, to draw the conclusion that there was no need for general and stricter disciplines on fisheries subsidies in the WTO. Norway agreed that the negative effect of fisheries subsidies might vary, depending on the status of resources and fishery management. Moreover, Norway also acknowledged that the issue of fisheries subsidies was only one of several important elements that had a negative impact on sustainable development in the fisheries sector. Nevertheless, Norway was of the opinion that the magnitude and scope of certain types of subsidies had a negative impact on the sustainability of fisheries as well as having harmful trade distortive effects. There was a clear case for increased disciplines in the WTO to deal with such subsidies.

19. The main focus of the negotiations taking place in the NGR needed to be on subsidies, such as direct payments and cost-reducing transfers that led to over capacity and over exploitation, and thereby to distortion of trade. In essence, this related to subsidies directed towards the fishing fleet. For Norway, the elimination of such subsidies would have several positive effects. First, it would provide for a more sustainable management system. Second, it would, on a global scale, accommodate a higher output from the global fisheries resources. Third, the elimination of these subsidies would have a positive economic effect on efficiency and economic performance of the sector as well as on trade in fish and fishery products.

20. Like Japan, Norway recognised that some form of governmental transfers might also contribute to ensuring sustainability of fisheries and the aquatic ecosystem. For Norway, it was obvious that governmental action with manifested beneficial effects, such as, *inter alia*, maintaining resource management, monitoring and enforcement, as well as biological stock assessment, fell outside the scope of this exercise. Therefore, Norway welcomed recent submissions in the NGR by,

inter alia, the United States and the European Communities, which would bring the negotiations forward on this important issue. As suggested by the European Communities, one possible way to move forward in these negotiations was to discuss ways of prohibiting capacity enhancing subsidies.

21. The representative of Brazil considered that Japan's paper raised some points that went beyond the competence of the CTE Regular. Therefore, Brazil hoped that Japan would also present and circulate its paper in the NGR where Brazil was in favour of discussing it.

22. The representative of New Zealand noted that in the NGR, Members had moved on to a different phase of discussing specific disciplines and he was of the view that the NGR was the *only* place to have that discussion. However, there were some more general points made in Japan's paper which New Zealand wished to address, particularly in terms of the implications of subsidies generally for trade, environment and development, which were part of the CTE Regular's work program. Japan emphasized in its paper language from an OECD report on the importance of management in minimizing damage from subsidies. Like the European Communities, New Zealand believed that Japan read more into the OECD language than what was really intended, given the content of the report as a whole. He noted that another part of the same OECD report read: "Some direct payments and cost reducing transfers … may have a negative impact on the governance of fisheries. Transfers can imbed expectations about capacity and activity levels that can be expensive and costly for governments to remove. Excess capacity … can lead to increase on fisheries management decisions that favour short-term requirements at the expense of long-term sustainability". In other fora, material from the World Bank, APEC and other sources were also referred to. There were many expert opinions on this point and they were solidly against Japan's position. New Zealand mentioned an expert seminar at the OECD in 2002 that looked at the broader question of environmentally damaging subsidies. It was clear from the debate that fisheries had become a special case for a number of reasons including data deficiencies, extreme levels of over-capacity and the urgent need for a solution. The conclusion of the Chair at that OECD seminar was that the reform of subsidies in fisheries was a necessary, if not a sufficient, condition for addressing the gross environmental difficulties faced today. In New Zealand's view, Japan was swimming against the tide.

23. New Zealand went on to note that Japan not only quoted organizations such as the OECD in support of its thesis but also offered some specific evidence from individual fisheries. Again, New Zealand believed that the evidence that Japan cited was against the weight of evidence that existed from other sources. New Zealand had referred in previous meetings of the CTE Regular (as well as in other bodies) to examples such as toothfish. Other delegations had shared their experience in South Atlantic fisheries which had also been extensively documented in fairly vivid terms by UNEP studies. Another example was a high value tuna species in which both New Zealand and Japan had a direct interest. This particular fishery was under a multinational management regime. Yet, despite this, the stock had collapsed from an annual yield of about 80,000 tons to a current level of around 15,000 tons. This was an example of an international management regime which was simply not successful. The key reason was the intense pressure on governments from industry suffering from over-capacity; there had been pressure to resist scientific and management advice which would reduce and limit reliable catch to sustainable levels. Japan was closely familiar with the same example. The point that needed to be drawn from all of this was that, in the real world, management theory did not provide simple answers of the sort that Japan's submission might imply. There were a limited number of well-managed fisheries. Subsidies simply exacerbated the pressure on inadequate management regimes. The representative of New Zealand expressed the hope that Japan might next time bring forward a submission on ways in which the elimination or reduction of trade distortions in the *agriculture* sector might benefit trade, environment and development. New Zealand would be pleased to engage in that discussion in the CTE Regular as well.

24. The representative of the Philippines joined other delegations in saying that the appropriate forum for the on-going discussion was the NGR. The Philippines encouraged Japan to submit a similar paper in that forum where the Philippines would discuss it in light of other submissions.

25. The representative of Cuba did not have any substantive comments, given that the document had been received only recently and that the CTE Regular was not the appropriate forum to debate it. Cuba encouraged Japan to present its document in the NGR.

26. The representative of Argentina reflected on the Japanese argument that there was no need for improved disciplines on subsidies and that the issue was rather one of efficient resource management, and that the WTO could contribute by combating illegal, undeclared and non-regulated fishing. Japan seemed to be of the view that there was not necessarily a need to discuss the negative environmental effects that *subsidies* could have. Japan also affirmed that the effect of subsidies on fishing resources varied depending on the state of conservation and management of these resources and emphasized the need for coherence between government management and transfers. Argentina had already stated on other occasions that this was a partial view of the situation of subsidies in fisheries because it left aside the distortions to trade caused by subsidies to fisheries. The supposed non-existence of the effects on trade, which, in Argentina's opinion, had not been demonstrated, had to be looked at very closely in light of the mandate in paragraph 28. It was a surprising notion that a *trade* measure such as a subsidy which generated over capacity had to be dealt with through management and not through the disciplining of the measure itself. Argentina considered, with regard to paragraph 11 of Japan's submission, that the CTE did have a role in discussing the possible impacts on resources. However, she agreed with others regarding the relevance of this issue to the ongoing negotiations in the NGR.

27. Like other delegations, the representative of Indonesia was of the view that the current issue needed to be discussed in the NGR – this was clear from the DMD. Moreover, the issues were not as simple as portrayed by Japan. For example, in paragraph 2, it was stated that if a new vessel was built with subsidies, another vessel whose fishing capacity was equivalent to that of the new one had to be scrapped. However, in the real world, it did not happen too often that the vessel was scrapped; it was merely transferred to a developing country.

28. The representative of Malaysia, like other Members, asked Japan to table its paper in the NGR in order to have a more thorough discussion on it. The issue went beyond the mandate of the CTE Regular.

29. Similarly, the representative of Djibouti was of the opinion that Japan's paper needed to be presented in the NGR so as to enable Members to discuss the issue in depth.

30. Responding to the comments, the representative of Japan said that one of the main reasons for submitting the paper in the CTE Regular had been to re-vitalise the discussion; at least that objective had been achieved. On the US comment with respect to the institutional dilemma between the NGR and the CTE, Japan indicated that it was in a similar dilemma. The reason for that was that paragraph 28 of DMD was quite clear: the NGR did not have a mandate on discussing fisheries subsidies in terms of impact on fisheries *resources*. This was the reason why Japan submitted the paper in the CTE Regular, where Members were supposed to discuss trade and environment issues. Japan was aware of the EC submission to the NGR and was looking forward to discussing that paper at the next meeting of the NGR. On the points made by Chile regarding the fact that there were cases in which subsidies caused negative impacts not only on shared stocks in the High Seas but also on other stocks within exclusive economic zones, Japan had repeatedly requested the Chilean delegation to submit case studies which would show such negative effects. Japan indicated that it was regrettable that not a single case had been provided to any committee or group within the WTO. Again Japan asked the Chilean delegation to provide case studies which would show the negative effects of fishery subsidies. Concerning the second point made by Chile on fishery management being outside the mandate of the WTO, Japan fully agreed. Japan was not trying to say that the WTO should deal with fishery management; Japan was emphasizing the link between fisheries management and the effects of fisheries subsidies, as pointed out by the European Communities.

31. Many delegations had stated that the paper should also have been submitted to the NGR. Again, Japan's view was that the NGR did not have the mandate to discuss fishery subsidies with respect to environment. Japan felt sorry that many Members did not see the importance of the role of the CTE Regular. If Members continued to say that the CTE Regular did not have a mandate or that it should not discuss this topic, Japan was afraid that the role of the CTE would deteriorate. On Chile's comments, Japan said that it did not know every single case of fishery stocks resources in the world and that was the reason why Japan had presented two cases. If Chile believed that the world was more complicated, Chile needed to provide counter-cases showing this. On the EC comment regarding the interpretation of the OECD paper, Japan certainly understood what part it was referring to, and said that there could be several interpretations of one paper. Japan hoped the European Communities would provide its own experience on how fishery management did not work against certain fisheries subsidies. In response to New Zealand's question regarding the cases of toothfish and tuna, Japan asked New Zealand to provide Members with these two cases, focussing on the relationship between fishery subsidies and over-exploitation of stocks. This would help Members understand exactly how the "real world" was more complicated.

32. The representative of Argentina had a question concerning Japan's comment that there should be coherence between government policies on management and transfers. The most subsidized fleets were the ones on the High Seas. How did Japan ensure coherence between subsidies for fisheries that took place outside of its waters? If coastal countries and international organizations were obliged to reinforce controls in order to manage these fisheries, all the fishing would focus in waters of free access.

33. The representative of Japan recalled that he had stated this point many times in the past: in the case of High Seas tuna fishery, for example, the FAO had already issued an international plan of action calling for reduction of fishing capacity for this international fishing. According to this international plan of action, Japan had already reduced 20 per cent of its fleet using fishery subsidies. This was one of the ways of maintaining coherence between fishery subsidies policy and fishery management policies.

B. PARAGRAPH 32(II) (TRIPS)

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

34. There were no new papers, and no Member wished to take the floor.

C. PARAGRAPH 32(iii) (LABELLING)

Labelling for Environmental Purposes

35. The representative of the European Communities introduced its paper on "Labelling For Environmental Purposes".[7] He began by drawing Members' attention to the well-known fact that the use of environmental schemes was increasing rapidly. The European Communities believed that this trend was not bad in itself – it responded to a consumer demand. This information was normally developed by the markets, which meant that it was usually the most trade-friendly in order to achieve the environmental information objective which was behind the label. For the European Communities, it was worth pointing out that products which did not carry a label had the same access to the market as those that did. In that respect, labelling was clearly a subset of the market access discussions under Paragraph 32(i). In other words, labelling was the typical environmental measure that had been discussed when addressing the issue of environmental measures and market access. The European Communities also pointed out that the use of market-based mechanisms that promoted sustainable

[7] WT/CTE/W/225, 6 March 2003, "Labelling for Environmental Purposes", Submission by the European Communities under Paragraph 32(iii).

development had been highlighted in the Plan of Implementation of the World Summit on Sustainable Development (WSSD).[8]

36. While labelling schemes were developed in the market place, the WTO had a role in overseeing and discussing these issues. Labelling schemes had positive and negative consequences, and the negative consequences had been raised a number of times in the CTE Regular in the last years, particularly by developing countries. The argument had been made that these instruments were non-tariff barriers; studies had been prepared and meetings organized by UNCTAD, UNEP and the OECD to discuss whether that was the case or not. Some Members had complained that they were not able to participate in the setting of standards governing the label; or that they were not well informed; that there was no pre-notification; or that it was costly or technically difficult to get the labels, especially for small companies in developing countries (SMEs). There were also positive consequences, however, and the European Communities believed that these schemes could bring about new trade opportunities for products which carried the label. In particular, the new EC eco-label favoured access to European niche markets for a number of non-EC companies. Some examples included products from China, Korea and South Africa. Members were increasingly aware that these labels could give access to trade which would otherwise not be available. Moreover, developing countries had started to design their own schemes: Korea, China, Brazil, Thailand, Indonesia and Malaysia had such schemes and Colombia and Sri Lanka were about to implement them. The European Communities also mentioned the existence of the Global Eco-labelling Network (GEN)[9] which had received a number of enquiries on how to set up an eco-label scheme from WTO Members such as Cuba, Malawi, Tunisia, Chile, and Jamaica. These schemes reflected consumers' choice and helped consumers to be informed, and, if properly implemented, could create opportunities, especially for developing countries. Nevertheless, these labelling schemes created some concerns to many Members regarding potential implications on market access.

37. In an effort to be pragmatic, the European Communities proposed to start discussion on one particular type of eco-label: voluntary labels based on the life-cycle approach. At the outset, there was a need to avert concerns by some Members that the European Communities intended to re-negotiate the TBT Agreement through the back door, or to extend the discussion on Process and Production Methods (PPMs). This was not the case. The European Communities wanted to avoid such a discussion which would only divide Members on an issue which had been discussed for years without any conclusion in the CTE. The European Communities stressed very strongly that its paper stated that the discussions on eco-labelling should take place *within* existing rules.

38. The European Communities believed that a focus on the voluntary eco-labelling schemes based on the life-cycle approach was the best alternative in terms of environment, trade and development to meet the concerns in the market access area. Mandatory labelling, for example, carried with it more consequences for market access, and implementation. Moreover, these labelling schemes were now based on international standards. In 1999, the ISO Standard 14024 had created international agreed criteria for such schemes. These pre-set criteria had been drawn up following intensive consultations with most Members present in the CTE, giving them a possibility to participate. These criteria needed to be the guiding principles and had to be the basis of the CTE discussions. Considerations, such as science, life-cycle – how to take into account from the manufacturing phase of the product to the re-cycling or the end-use of the product – remained relevant. It was also very clear from the discussions on how to design these schemes that developing countries who wanted to design such schemes would use, if possible, these standards. Hence, if there was a demand, it needed to be as harmonized as possible.

39. What the European Communities wanted to achieve in the CTE was to get a recognition for those who operated these schemes that voluntary eco-labelling schemes based on the life-cycle

[8] See WT/COMTD/W/106/Rev.1, WT/CTE/W/220/Rev.1, 20 December 2002, "Report of the World Summit on Sustainable Development", Note by the Secretariat, Revision.

[9] See http://www.gen.gr.jp/.

approach were the appropriate way to proceed and that this recognition extended to the fact that their use was legitimate and within the rights and obligations of the WTO Agreements. This sounded like a very simple statement, but the European Communities wanted to hear comments on whether Members could all agree on it, or whether some delegations had doubts.

40. The second main focus of the work of the CTE Regular needed to be on how to improve further voluntary eco-labelling schemes based on the life-cycle approach. This meant that those who used such schemes needed to be formally encouraged to reflect the principles of the TBT Code of Good Practice, and to keep the implementation and practice of these schemes under review. Moreover, Members needed to consider whether it was necessary to discuss the possibility of notification of existing and new schemes so as to ensure that developing countries had the fullest possible access not only to the definition but also to the operation of such schemes.

41. The third point was the importance of improving technical assistance. Very often, even the knowledge of these schemes did in itself allow for market access. Members in the CTE had already acknowledged the importance of trade-related technical assistance in order to participate in international standards. Other, more practical matters could be looked at. For example, one could consider whether eventual fees for acquisition of the labels needed to be the same for developing countries. Were there ways to fund smaller exporters and developing countries so as to facilitate their access to these schemes? Lastly, Members needed to give positive recognition and support to the work done by several international organizations such as the GEN for the preparation and application of the schemes of developing country Members. Reverting to the WSSD result, the European Communities believed that it was also a good idea to discuss and support private public partnerships like the Sustainable Trade and Innovation Centers which the European Communities supported. The European Communities continued to be active in this field by supporting meetings on specific issues, such as textiles and electronic eco-design. On the Cancún Report, the European Communities wanted to see a full reflection of the debate on this particular point; it would then consider possible recommendations on this issue.

42. The representative of Canada recalled, as he had done in the meeting of the CTE Regular in October 2002, the extensive section in the 1996 Singapore Report[10] devoted to the Committee's discussion of eco-labelling, and in particular voluntary eco-labelling. This was a reflection of the long time the CTE had been discussing the issue and that conclusions may be called for. Canada also noted that the WSSD Plan of Implementation included a number of activities that could contribute to sustainable development including, as noted by the European Communities, voluntary market-driven initiatives such as labelling for environmental purposes. Canada found the paper by the European Communities particularly useful in making a distinction between voluntary eco-labelling programs, whether government or non-government, and mandatory labelling programs. In that context, Canada was pleased to note that Annex I of the paper referenced the Government of Canada's eco-labelling scheme under the Environmental Choice Program. The scheme had been launched in 1988 and was the second oldest after the German scheme; it was a voluntary, market-based and life-cycle focused scheme. Since 1995, this programme had been administered under license by a private company called TerraChoice Environmental.[11] However, Canada pointed out that Environment Canada retained policy oversight; it owned the Environmental Choice Program and its distinctive trademark logo. There were now over 230 companies participating in selling over 3,000 products and services, and these included companies from the United States, India and China which sold products on the Canadian market. Finally, the annual sales of products and services bearing the eco-label from Canada were now valued at more than 3 billion Canadian dollars and contributed to a better environment.

[10] WT/CTE/1, 12 November 1996, "Report (1996) of The Committee on Trade and Environment".
[11] See http://www.terrachoice.ca/index2.html.

43. The representative of Canada went on to note that many of the trade concerns expressed by WTO Members during the past few years had related to proposed mandatory environmental labelling based on life-cycle approaches that incorporated non-product related PPMs. However, Canada considered that this was not what was really happening in the world today. These concerns did not necessarily apply to voluntary eco-labelling programs that were based on a life-cycle approach, particularly if a market continued to exist for products which had not been ordered in eco-label. In most instances, voluntary eco-labelling programs represented only a fraction of the total market in any given product. However, care needed to be taken to ensure that eligibility for eco-labelling programs was not restricted either directly or indirectly to domestic products. The voluntary nature of most eco-labelling programs should not diminish the need for transparency, openness, communication, and consultation with exporters of products from developing and developed countries. These aspects of eco-labelling had been raised during discussions in the CTE, in particular, by Japan.

44. The representative of Canada had already noted that voluntary eco-labelling programs driven by the market could provide valuable information to consumers. He had also stressed the importance of such programs being developed consistent with the requirements of the TBT Code of Good Practice. Also, the TBT Committee's decision on the "Principles for the Development of the International Standards"[12] provided useful guidance in this area. Canada drew the Committee's attention to Canada's communication on labelling to the TBT Committee circulated in May 2002.[13] Canada believed that there was also a need to draw a distinction between voluntary eco-labelling programs and programs for sector-specific certification of sustainable resource management that may or may not be accompanied by a label. This was the source of some confusion. While their objectives could be similar, sector-specific certifications often focused on other factors in addition to the environment and did not focus necessarily on the impact of a product on the environment but rather on *how* it was produced. In recent years, there had been growth in non-governmental certification programs set out to certify sustainable management in the forestry sector, and more recently the fishery sector. These certification programs had been controversial at times because of the attempt by some of the programs to monopolise the market. This was of concern to countries like Canada that were significant natural resource exporters.

45. On the EC submission, paragraphs 6 to 8, Canada's view was that the focus on voluntary eco-labelling programs in this Committee was most likely to result in practical benefits for Members, for the reasons outlined in paragraph 7 of the EC submission. Canada also agreed that discussions on voluntary programs should not prejudice whether and how the CTE addressed other types of eco-labelling programs. In this regard, Canada had already referred to the concerns of Members related to proposed mandatory programs based on life-cycle approaches incorporating non-product related PPMs. Canada would be interested in further details as to what progress the European Communities thought the CTE could make on these issues *before* the Cancún Ministerial Conference. On paragraph 28 (b) of the EC paper, Canada asked the European Communities to clarify how the WTO could facilitate the use of eco-labelling programs as these programs were often non-governmental. On paragraphs 28 (d) and (e), Canada would support transparency and consultations with all interested stakeholders in the development of labelling. However, Members needed to be cognisant that some eco-labelling programs were operated by rather small scale organizations with limited resources which might find it hard to comply with a notification requirement. On paragraph 29, Canada supported the idea of providing technical assistance to developing countries. However, there was a need to know if work in this area was being undertaken by other bodies such as ISO, UNEP or UNCTAD (particularly UNCTAD which had been working with developing countries in the past on labelling issues). Canada was concerned that some of the smaller operators might not have the resources; there was a need to consider reduced fees or funding

[12] Annex 4: Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement, G/TBT/9, 13 November 2000, "Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade".

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

of small exporters. However, Canada understood that the GEN was already doing work to support co-operation between different programs which included information exchange, fostering best practices, mutual recognition and the development of common local criteria. Canada would encourage Members to support these efforts.

46. With respect to paragraph 30 of the EC paper and the mandate for Ministers to report on the work of the CTE Regular, Canada's view was that the recommendation to Ministers could be that the Committee continue to discuss labelling for environmental purposes, with a view to ensuring mutual supportiveness between trade and environment. Members could start with a focus on voluntary eco-labelling programs while being particularly mindful about impacts on developing countries. Canada would also encourage a dialogue between the CTE and the TBT Committee on the broader discussion of labelling issues in the WTO.

47. While Canada appreciated the European Communities putting forward ideas for discussion, its proposal to launch a discussion around principles in paragraph 28 was, in Canada's view, premature. For Canada, the TBT rules applied to eco-labelling. Any *interpretation* on voluntary eco-labelling programmes should come from the TBT Committee. Finally, Canada noted that the European Communities had indicated, in paragraph 6, that this was its first contribution to the discussion and Canada was looking forward to future submissions.

48. The representative of Chile said the European Communities' contribution could help avoid surprises in Cancún. Chile was grateful to the European Communities for having concentrated the discussion under paragraph 32(iii) of the Doha Declaration on the voluntary nature of eco-labelling. He drew Members' attention to paragraph 6 of the EC paper which stated that such a discussion would not "prejudge following discussions on other types of eco-labelling schemes". Nevertheless, Chile had some concerns. First, Chile was concerned about the EC focus on the life-cycle approach. In fact, the document did not mention the life-cycle approach as one of the criteria for classifying schemes for environmental labelling (paragraph 18). Was the European Communities in this paragraph only focussing on life-cycle approach, or were there others? If so, which ones? Second, the European Communities stated that there were international standards already adopted by the ISO. With this in mind, what was the added value for the WTO if it were to deal with such schemes? Third, the European Communities had made references to different problems relating to the proliferation of different types of eco-labelling schemes. Chile shared these concerns because it could lead to confusion, but also because it could increase the cost of implementation and compliance for producers, especially in developing countries. Nevertheless, this was nothing new and history had shown that the market could adjust to multiple types of standards, the case between VHS and Beta in video recording was an example of this. Furthermore, there were bodies, such as the GEN, where participating countries could exchange information and experience on environmental labelling and could rely on necessary technical cooperation as well.

49. Finally, the proposal by the European Communities to establish a voluntary system of notification reminded Chile of a similar discussion which had taken place on geographical indications for wines and spirits. In that negotiation, the European Communities had proposed a multilateral compulsory register to which all WTO Members would participate and would have obligations, even if they did not produce wine and spirits themselves. Was this what the European Communities was aiming at? Would this mean that there would be a compulsory notification system even though the eco-labelling schemes were voluntary? Would it generate obligations for all Members despite the fact that they may or may not have voluntary schemes in force? Would this then lead to Panels and the Appellate Body getting interested? Chile noted that there would be two opportunities to discuss the issue: (i) the workshop on labelling for environmental purposes which was being organised by the TBT Committee; and (ii) the Triennial Review of the TBT Agreement. In Chile's view, Ministers in Cancún, on the basis of the report which the CTE Regular was going to issue, would have to take note of all discussions in the above-mentioned workshop and the Triennial Review so that Members clarified any concerns or apprehensions that they might have with regard to eco-labelling. In

particular, Ministers could reaffirm that the Code of Good Practices of the TBT Agreement was the appropriate basis for such labelling schemes.

50. The representative of Australia noted that in its paper, the European Communities mentioned that the issue was being discussed in a range of international fora, such as WSSD, ISO but also the TBT Committee, which had an important role to play in discussing labelling issues because there were a number of complex and technical issues involved. This was the very reason why Australia considered many of the issues raised in the EC paper as being more relevant to the TBT Committee. This was where the expertise on labelling, including labelling for environmental purposes, rested. In addition, the EC paper made the point that the discussion in the TBT Committee was ongoing and that a number of the events relevant to labelling were being planned in the TBT Committee, including the "Learning Event" that Australia was keen to see go ahead sometime after Cancún.

51. Like other delegations, the representative of Australia welcomed the focus on voluntary eco-labelling schemes which, in Australia's view, were most consistent with market-driven approaches. He was reassured by the EC statement to the effect that nothing in the paper was an attempt to introduce issues like PPMs, or perhaps even to reopen the TBT Agreement. Australia would have liked the European Communities to have clearly reflected this position in the paper itself. Technical assistance and capacity building were important, particularly given the complexity of life-cycle approaches and labelling issues. At a broader level, Australia noted that the paper seemed to be based on the assumption that comprehensive labelling schemes had a positive effect on achieving good environmental outcomes. If this was a correct depiction, Australia had some concerns as such an assumption did not necessarily accord with Australia's own analysis.

52. The representative of Japan believed that labelling requirements for environmental purposes could be quite useful in providing consumers with necessary information about the environmental aspects of products, and contributed to consumers' choice. Japan recognised the fact that the citizens of various countries had a growing interest in environmental issues and, in this respect, Japan agreed that voluntary eco-labelling could play an important role to achieve sustainable development while expanding international trade. Japan noted in particular that paragraphs 18 and 19 of the EC paper raised important aspects associated with eco-labelling, such as those related to non-governmental standard-setting bodies, and non-product related PPMs. Japan considered that those viewpoints were good suggestions for future discussions.

53. Japan noted that the EC paper also pointed out that the expansion of the market of environmental goods and services provided opportunities for developing countries; eco-labelling could facilitate market access to developed country markets for products of developing countries. To this end, it would also be beneficial for developing countries to examine the positive aspects of eco-labelling schemes and effective means for technical assistance. In its submission on "Labelling" to the TBT Committee in June 2002,[14] Japan had pointed out some matters that needed to be improved in the implementation of existing voluntary-based labelling schemes: (i) there was a need for improving transparency in the development of environmental labelling requirements; and (ii) international standardisation of labelling needed to be promoted in cooperation with existing international standardisation bodies. These issues applied to eco-labelling as well. In this respect, several delegations had already mentioned that the discussion in the TBT Committee also needed to be taken into account. Moreover, in the context of the TBT Triennial Review, a number of delegations attached high importance to issues relating to voluntary labelling schemes. Therefore, the CTE Regular needed to work closely with the TBT Committee so that any progress achieved in either forum could be considered in both Committees.

54. For the representative of Switzerland, the EC submission addressed some of the key issues that had emerged in past discussions. As such it was a valuable contribution to the discussion on

[14] G/TBT/W/176, 18 June 2002, TBT Committee, "Labelling", Submission from Japan

paragraph 32(iii) and would be useful in the preparation for Cancún. Switzerland reiterated the importance of the CTE discussion on eco-labelling as highlighted in Switzerland's own submission to the October meeting of the CTE Regular.[15] Consumers' interest in obtaining information on environmental aspects was increasing. The response of governments and private actors to this interest was the establishment of environmental labelling schemes. At the same time, exporting countries were increasingly concerned about market access or market share losses of their products. Bearing in mind this interface between international trade and environmental concerns, Switzerland believed that paragraph 9 of the EC submission went to the very heart of the overall CTE mandate and revealed the rationale of any possible discussion within the CTE Regular on labelling for environmental purposes. Although Switzerland had proposed to launch discussions on the definition of eco-labelling schemes with a view to achieving a better mutual understanding, Switzerland could agree with the EC proposal to focus, at this stage, on voluntary labelling schemes based on a life-cycle analysis since this category probably included the most prominent existing schemes.

55. Moreover, Switzerland agreed, in general, with the proposed principles on which the future debate on eco-labelling in the WTO could be based. Switzerland concurred with the assumption that voluntary eco-labelling schemes based on a life-cycle approach were in principle consistent with WTO rights and obligations (paragraph 28 (c)), provided that they were applied in a non-discriminatory manner and were appropriately based on international standards. Switzerland also expressed its consent with paragraph 28(b) which stated that the use of such schemes could and should provide an opportunity for developing countries to gain access to markets where environmental considerations were important. Access to information on existing eco-labelling schemes was indeed of significant importance for all those wishing to export an environmental friendly product to a market where a labelling scheme existed. Switzerland, therefore, supported the idea of developing means to enhance transparency. This could involve a notification procedure within the CTE, consultations, or an eco-labelling focused "stocktaking exercise" in the form of a questionnaire addressed to all WTO Members.

56. On paragraph 29(a), Switzerland agreed that efforts needed to be undertaken in order to identify the specific needs of developing countries with regard to technical assistance. But before doing so, Switzerland reiterated the point made by Canada that it would be useful for WTO Members to be informed about relevant work done elsewhere. Based on this information, the CTE could then identify areas in which technical assistance was still needed and focus discussions on how the required technical assistance could be best provided. Switzerland also supported the facilitation of dialogue on voluntary codes between developing and developed countries and agreed that means of cooperation between different schemes should be explored. In this context, Switzerland could envisage an assessment, in close cooperation with TBT experts, of questions of conformity assessment, mutual recognition, and equivalence of environmental labelling schemes. Finally, with regard to possible future actions by the CTE, Switzerland did not share the view expressed by some Members at the last meeting that no further work should be undertaken by the CTE Regular since the TBT Committee was already discussing this issue. As a matter of fact, the TBT Committee addressed the issue of labelling in a horizontal manner and did not examine specific questions related to trade and environment, or to environmental labelling. In this sense, the TBT Committee's ongoing work was complimentary to the work in the CTE Regular and did not replace it. For Switzerland, Members needed to continue their discussions as mandated by the Ministers in Doha.

57. The representative of Indonesia found the EC paper interesting in that it recognised that, for developing countries, the issue of participation and commercially benefiting from labelling schemes was a challenge. The mandate given to the CTE by Ministers in Doha was clear in that Members, in pursuing their work, had to give *particular attention* to labelling requirements for environmental purposes, and to report to the 5th Ministerial Conference and make recommendations, *where appropriate*, with respect to future action. In carrying out this mandate, the CTE Regular had

[15] WT/CTE/W/219, 14 October 2002, "Labelling for Environment Purposes", Submission by Switzerland.

discussed the issue of labelling at all its meetings since Doha and had also focused on the issue of labelling at its October 2002 meeting.[16] In Indonesia's opinion, the CTE Regular had conducted the mandate as required by the Doha Declaration. In this connection, Indonesia shared the view of most Members that the TBT Committee was better suited for the task of deliberating WTO rules vis-à-vis labelling since it was already discussing labelling in general, including environmental labelling. Thus, whilst Indonesia appreciated the EC contribution on environmental labelling, it felt that it was more appropriately discussed in the TBT Committee.

58. He went on to note that the EC paper stated that in recent years there had been a considerable increase in the development of various types of environmental labelling schemes, and in the use of such schemes to promote environmental objectives. The paper also stated that the use of such schemes was no longer confined to developed countries, but was also relevant to developing countries. The European Communities had named a number of developing countries that had developed voluntary eco-labelling schemes based on a life-cycle approach which were members of GEN, including Indonesia. Indonesia understood that GEN was an association of third party environmental performance label organisations to improve, promote and develop the eco-labelling of products and processes. As far as the representative of Indonesia knew, Indonesia was not a member of GEN – at least this was not evident from the website. Nevertheless, and regardless whether developing countries were members or not, in Indonesia's view, the important point was that involvement of any labelling organisation in GEN was simply for the purposes of an exchange of information and experiences, and to foster cooperation. It needed to be underlined that this was *voluntary* in nature, and therefore, in Indonesia's view, involvement did not necessarily mean that eco-labelling schemes should be developed into more mandatory schemes.

59. On the issue of the recent increase in the development of various types of eco-labelling, Indonesia believed that this was a positive rather than a negative development. Nevertheless, taking into account the limited capacities in developing countries, and their limited participation in the development of the schemes, requirements to fulfil such labelling standards in the importing market had tended to deter importers from placing orders from developing countries' industries. Indonesia stressed that, at present, it was more important to focus on assisting developing countries design schemes or programs that supported environmental objectives, including those stipulated in the WSSD, within the *national* context rather than to focus efforts on regulating international labelling schemes.

60. With regard to the need to ensure that eco-labelling schemes were prepared, adopted and applied in a transparent way that promoted the mutual supportiveness of trade, environment and development objectives, Indonesia shared the EC view. Indonesia had always held the view that environmental labelling schemes should be based on scientific considerations that were measurable and took into account the need to balance the interests of consumers, producers and sustainable concerns. Indonesia had also stressed the importance of refraining from using environmental labelling as a means for disguised protectionism. These concerns had been reflected by a number of delegations including in the discussion at the Triennial Review meeting of the TBT Committee. Indonesia would appreciate further clarification with respect to the concept of the life-cycle approach so as to show that it *differed* from the PPM approach. The representative of Indonesia was not allergic to discuss eco-labelling or the protection of the environment. In fact, his country had embarked on various programs to ensure that environmental concerns were addressed sufficiently, including with respect to the adoption of a voluntary environmental labelling scheme. Whilst Indonesia's voluntary labelling was not as complex as the life-cycle approach, it did adopt some of the basic principles of the life-cycle approach. Indonesia underlined that for developing countries it was important to have a certain level of comfort before moving on any kind of discussion on eco-labelling. In closing, Indonesia stressed the view that the issue of environmental labelling was closely related to

[16] See WT/CTE/M/31, 2 December 2002, "Report of the Meeting held on 8 October 2002", Note by the Secretariat.

the discussion in the TBT Committee and should be discussed further in that particular Committee which had the expertise to elaborate further.

61. The representative of Thailand shared the view of Indonesia and Chile that the environmental labelling issue was more appropriately discussed in the TBT Committee where the relevant issues were already being discussed at a general level. Also, Thailand wondered what the WTO could do to add value to the debate considering the work being done by other international organisations in this area, such as ISO. Nevertheless, Thailand was willing to discuss the issue of technical assistance to developing countries and, in this respect, asked for clarification on the function and objective of the "Sustainable Trade and Innovation Centres" mentioned by the European Communities in its paper. Thailand also welcomed the statement of the European Communities that it did not want to reopen the TBT Agreement, and did not intend to stretch the concept of PPMs.

62. The representative of Malaysia did not agree with the EC suggestion that the CTE debate should focus on the principles for the use of voluntary eco-labelling based on the life-cycle approach. There were several reasons for this. Voluntary eco-labelling schemes based on life-cycle approach was a concept not well understood and its practice was not universally accepted. These schemes had not been determined to be the most effective or least costly labelling schemes. System boundaries were not always clear, processes were often ill-defined – especially when they generated more than one product – and full information on the choice of technology available and data on environmental processes was also often incomplete or inaccurate and could, therefore, lead to distortion of such an assessment. Life-cycle analysis was still fraught with subjectivity and many unknowns, and if widely applied could provide avenues for misuse. The use of labelling schemes based on life-cycle analysis could not be considered as legitimate under the WTO Agreements as it was based on non-product related PPMs, which were not applicable under the TBT Agreement. The EC paper also made a number of assertions which were not entirely correct. On the one hand, the European Communities correctly noted that the WSSD Plan of Implementation mentioned the need to develop and adopt effective, transparent, verifiable and non-discriminatory information consumer tools. However, it was not stated that voluntary eco-labelling schemes based on life-cycle analysis were advocated by the WSSD. Second, while voluntary market-based labelling schemes could provide consumer information, it had not been proven as an opportunity to enter markets where environmental considerations were important, as the cost and difficulties of implementing the scheme often forced these countries out of the market. Hence, Malaysia did not see any utility in further discussing this subject. Moreover, labelling was already being discussed in the TBT Committee, including with respect to technical assistance aspects.

63. The representative of Cuba agreed with the European Communities on the importance of transparency in the application of environmental labels as a means of achieving mutual support of trade, development and environmental objectives. Cuba considered that environmental labels, although they were a tool for environmental management, could lead to non-tariff barriers to trade and, therefore, were more appropriately debated in the TBT Committee. Cuba agreed on the importance of the assistance aspect. However, Cuba was concerned with the mention, in paragraph 28, of the life-cycle approach. For Cuba, this was dangerously linked to the PPM issue, which should not be taken up in any fora within the WTO at the current time. Cuba also noted that the European Communities had spoken of progress in this field. Cuba understood that a lot of work still had to be carried out – in particular with respect to studying the impact on developing countries of labelling and eco-labelling. This analysis needed to be done in the TBT Committee – that would be "progress".

64. Like others, the representative of Brazil welcomed the indication by the EC representative that the European Communities was not willing to reopen the TBT Agreement. Also, the representative of Brazil welcomed the focus on voluntary schemes as it favoured labelling schemes that were voluntary, non-discriminatory and transparent. Her country joined Chile, Indonesia and others regarding their concerns with the life-cycle approach; it was unclear whether this concept differed from non-product related PPMs. Also, Brazil could not understand the purpose of the

proposed system of notification of voluntary eco-labelling and supported the Malaysian remark about the Plan of Implementation of the WSSD to the effect that the WSSD had not specifically endorsed any kind of eco-labelling based on life-cycle approach. On paragraph 7(a), Brazil did not think that the development of voluntary labelling schemes based on life-cycle approach was the most trade friendly means to achieve environmental objectives. Finally, Brazil did not support the recommendations proposed by the European Communities to be included in the report to Cancún. The issue of labelling was to be discussed in the TBT Committee. Moreover, the Learning Event to be held later in the year was a good opportunity for the European Communities and all Members to share views and concerns in this regard – the TBT Triennial Review similarly so.

65. The representative of the United States stated that the EC paper raised a number of issues that had contributed to enriching the current CTE discussion. He noted that the paper would have been even more welcome had it been tabled several meetings ago, as initially promised. As other delegations had noted, the paper provided a number of useful perspectives, particularly the focus on voluntary schemes as market based ones, and potentially less trade restrictive than mandatory ones. The paper also usefully highlighted the particular challenges for developing countries and the importance of ensuring that their needs were being taken into account in the development and the application of voluntary labelling schemes. In fact, and as recognized by the representative from the European Communities, some elements raised in the paper had already been discussed under paragraph 32(i) of the DMD regarding market access issues for developing countries.

66. The representative of the United States pointed out that while the EC paper identified several interesting criteria for distinguishing labelling schemes in paragraph 18, these did not seem to be unique to environmental schemes. All of these criteria appeared to be potentially relevant to labelling programs that addressed objectives *other* than environmental ones. It was also interesting to note that the paper, in paragraph 25, held up the EC programs as models for facilitating market access. The experience of the United States had too frequently been the contrary, particularly with respect to US stakeholders participating in, or commenting on, the development of EC schemes. Chile had also raised an interesting point about the EC focus, not only on voluntary schemes, but also on schemes that included the life-cycle approach. The United States would be curious to know more about this focus on the life-cycle approach. Obviously, voluntary environmental labelling schemes were not limited to this particular consideration in terms of their objectives.

67. For the United States, the EC paper provoked some concerns in its last section on a proposed approach. First, this approach had been proposed very late in the work of the CTE Regular since Doha. In fact, there was only one meeting remaining before Cancún. Second, the paper appeared to acknowledge that it had been submitted at a very late stage by suggesting that the approach should be taken up in the context of recommendations to the 5th Ministerial Conference. The United States had been very clear throughout the discussions that it could not support a reopening of the Doha negotiating mandate on trade and environment. The United States hoped that that was not what the European Communities was proposing. The United States remained of the view that no compelling case had been made that the existing TBT disciplines were wanting in some respect. Finally, as had already been pointed out by Canada, the reference to working on principles in paragraph 28 could be troubling without further explanation from the European Communities. Of particular concern for the United States was paragraph 28(c) in respect of life-cycle approaches being *legitimate* within the rights and obligations of WTO Agreements. It was not entirely clear to the United States what this was intended to mean. In fact, the representative from the European Communities sought clarification from delegations at this meeting on whether Members could all agree to that principle. Moreover, the United States had questions regarding this idea of a "principle". Presumably, the European Communities did not mean to suggest that these schemes were automatically legitimate without further consideration of whether they were consistent with the obligations of the TBT Agreement.

68. On future work, the United States referred to Switzerland, which had noted, at the last meeting, that it did not support those delegations who considered the TBT Committee to be the

appropriate forum, particularly since TBT work was horizontal and not specific to environmental labelling. For the United States, the relevant question was whether there were any particular characteristics, any particular potential trade restrictiveness of environmental schemes that were not present in other types of labelling programs and that raised particular concerns that were not going to be adequately addressed in the context of Members' work in the TBT Committee. A number of delegations had already referred to the conduct of the TBT Triennial Review. If that was not the case, the United States questioned the need to add to Members' future work on these issues. The United States was not saying no to future discussion since there was a long history of discussion on these issues in the CTE. But the United States did remain concerned about a discussion that was duplicative or redundant - or potentially even worse: leading to the consideration that these schemes were somehow unique when in fact they were not.

69. The representative of India said that the EC submission highlighted a number of important issues. Members had been discussing in the CTE Regular, under paragraph 32(i), the effect on market access of environmental measures. This was about the implications on market access of eco-labelling schemes; possible positive or adverse implications including those relating to the design of such schemes or certification systems; the constraints of small producers in developing countries in getting these certifications; and, the positive implications they could have for certain producers who could get these certifications for a certain type of product. It was reassuring that the European Communities was not touching upon any rules related parts in the submission, or in these discussions. However, in paragraph 28, the European Communities was proposing, as the United States had pointed out, that the use of voluntary eco-labelling schemes based on life-cycle approach as being *legitimate* within the rights and obligations of the WTO Agreement. This was unclear. The European Communities was also touching upon the Code of Good Practice, as well as notifications. With regard to the latter, it was not clear to India how this would work as the schemes at issue were voluntary.

70. India welcomed the emphasis on the need for further positive support to enable developing countries to benefit from these schemes, and also to participate in relevant international work. The EC submission underlined the need for identification of technical assistance related needs in relation to compliance with eco-labelling schemes. This issue needed to be deliberated in the context of labelling schemes and the related technical assistance requirements of exporters in supplying developing countries. Such specific work would highlight real requirements rather than theoretical ones. Organisations like UNCTAD could help in undertaking such an exercise which could form the basis of actual assistance to developing countries. The issue of participation in relevant international work, particularly ISO work, was also very important for developing countries. This issue had been deliberated in the context of the resolution of outstanding implementation issues in the TBT Committee. India would request the TBT Committee and ISO to inform Members on the deliberations on this issue and how to enable better participation from developing countries to these activities.

71. The representative of Mexico shared some of the concerns stated by Chile, Brazil and other delegations, especially concerning paragraphs 6 and 18. Mexico asked for clarification with regard to the focus on the life-cycle approach and PPMs and joined others in what had been said about the TBT Triennial Review, the Learning Event and the relevance of the work of the TBT Committee.

72. The representative of New Zealand noted that the EC submission addressed issues where many Members identified large commercial risks, as well as opportunities – which the conclusions of the Johannesburg text indicated. New Zealand shared the views of others to the effect that TBT Committee should provide the primary forum for debating labelling issues, including eco-labelling. It seemed that the requirement for technical expertise and the need for a horizontal approach, especially on the question of the relationship to WTO rules, would ultimately outweigh questions over environmental competence – which was where the CTE tended to come in. In the end, a horizontal approach in the TBT Committee would need to be the definitive one. New Zealand also noted that there was going to be a continuing and important role for other intergovernmental organisations. In

particular, Members needed to be kept informed of the useful technical work being done in the OECD Committee.

73. The representative of New Zealand focussed his comments on paragraph 28, i.e. on the principles. He asked the European Communities to give additional detail on the problem which each of these principles was designed to address, and detail specific issues which it saw as flowing from each of them and the relevance of further debate in the CTE Regular in this regard. What were the issues generated? For example, on paragraph 28 (b): "The use of such schemes should provide an opportunity for developing countries to enter markets where environmental considerations are important and the WTO should take steps to facilitate this, in line with the outcome of the WSSD." New Zealand wished to know whether the European Communities, in putting this forward, saw any implications in terms of preferential access for developing country users of such voluntary eco-labelling schemes. On paragraph 28 (c), i.e. the principle that such schemes were legitimate within the rights and obligations of WTO Agreements – was the European Communities seeking some sort of a statement or agreement to this effect?

74. The representative of Argentina welcomed the clarification provided by the European Communities that it was not trying to open up the TBT Agreement. Alongside other delegations, Argentina felt that this issue involved horizontal and technical issues which had to be dealt with in the TBT Committee.

75. Similarly, the representative of Philippines took comfort in the opening statement by the representative of the European Communities where he had assured Members that there was no intention on the side of the European Communities to reopen the TBT Agreement, and that its desire was to confine discussions within the existing rules. However, the Philippines had, as did other delegations, doubts as to the possible added value of the EC proposal. The Philippines believed that any such added value would be outweighed by other concerns. Nevertheless, the Philippines appreciated the attempt of the European Communities to consider positively the case of developing countries and how they could possibly benefit from eco-labelling practice. However, the Philippines also shared the concerns of developing countries, in particular Malaysia, Brazil and Chile, with respect to the issue of life-cycle analysis. The Philippines remained unconvinced that this issue was *not* related to the issue of PPMs. As the European Communities had observed, there was already a momentum in many developing countries with respect to eco-labelling and the Philippines felt that other initiatives that would change the voluntary nature of eco-labelling, or that would result in additional obligations would only frustrate developing countries' efforts in this regard. The Philippines therefore felt that there was no need at the current time to put a recommendation to the 5th Ministerial Conference on the issue of eco-labelling.

76. The representative of Venezuela stressed that he would have preferred the presentation by the European Communities to have taken place in the TBT Committee, which was where the issue belonged; this was also the case with respect to technical assistance. Despite the importance the European Communities gave to the issue of transparency, Venezuela recalled that eco-labelling systems which were inappropriate could function as obstacles to trade for developing countries and that this had happened in the past (he mentioned the *US – Tuna* case as a negative example). In addition, Venezuela found paragraph 28(c) to be incomprehensible in both English and Spanish. Venezuela did not understand the use of the term "legitimate" with regard to voluntary eco-labelling schemes based on life-cycle approaches. The framework of rights and obligations in the WTO agreements was not about legitimacy but about legality. Why, therefore, was there a play of words in respect of legitimate rights and obligations? Did "legitimate" mean mandatory or voluntary?

77. The representative of the European Communities noted on a first, general point that there seemed to be quite some interest but also misunderstanding on the objectives and role of the CTE Regular, as well as on definitions etc. All Members seemed to agree that this was a market access issue. Some Members, like Chile, wondered whether the market would make sure that everything

was fine or whether further steps, which had been taken in ISO and by others, should be consolidated maybe by more clarity within the WTO. This was one of the basic questions which came out of the debate.

78. On the procedural point – which in the end was a substantive point – of whether the TBT Committee was the one and only place, or even the best place, to discuss these issues, the European Communities did not want to be formalistic. Ministers in Doha had said, in paragraph 32, that the CTE Regular should look at eco-labelling and intensify its work. Certainly, all Members wished to do justice to Ministers. The European Communities thought that the TBT Committee was very important and recalled that it had submitted a paper on labelling in a more general sense to that Committee in June 2002, which covered a number of issues that Members did not want to cover in the CTE Regular.[17] The life-cycle approach was inherently an environmental measure where the CTE Regular, hopefully, had the necessary expertise – and not the TBT Committee. Few delegations, if any, had questioned whether these schemes were the least market access restrictive ways to go ahead or not. This was an issue where delegations in the CTE Regular had the expertise to make a statement to the effect that this was the best way to achieve the environmental objectives – or contradict it if need be.

79. Voluntary labelling schemes based on the life-cycle approach were, according to ISO, based on the evaluation of products' environmental effects through its life-cycle. So it was about life-cycle and left it open to what that was. However, for those who looked at existing schemes it was clear that they looked at the whole manufacturing process, at the recycling efforts in the end, the whole way through which the product was created, moved around, and disposed of. This was clearly an environmental concept and not a trade concept. What the European Communities wanted to achieve was to focus the debate in the CTE Regular on the environmental part of the labelling debate; this was the reason why the European Communities believed that Ministers in Doha were right to validate, and to actually ask for further and better discussions on this particular item in the CTE. This did not keep the TBT Committee out of the debate, especially when addressing issues such as technical assistance, Triennial Review, etc. It was a good thing that the particular issue was being discussed in the CTE Regular because, otherwise, the European Communities would go to the TBT Committee which would then say that it did not have a clue what an environmental measure actually was. Moreover, again, this was a market access issue which Members were *also* specifically mandated to discuss in the CTE Regular under paragraph 32(i). In fact, it was a subset of the market access issue and the European Communities hoped that this was a convincing argument for those who were still not convinced that delegations should go on discussing this in the CTE Regular. The European Communities noted that the ambition that Switzerland might have had, had not been achieved. However, the European Communities were trying to cover the middle ground to see what was feasible in the short term before Cancún.

80. The European Communities were struck by the point made by Malaysia saying that life-cycle schemes were full of subjectivity and could, if widely applied, be open to abuse and distortion and had not been proven to help market access. The European Communities thought that the subjectivity had gone out of the debate for, in fact, the criteria and the definitions were in 14024 series of ISO.[18] Here there was a clear definition of the criteria and what a voluntary labelling scheme based on the life-cycle approach actually was. These schemes were widely applied and if they were applied incorrectly or in a non transparent manner, they would, and did, distort trade in ways which no Member could accept.

81. On the question of notification from Brazil, the European Communities said that notification was basically one of the best developed tools to achieve transparency. The European Communities was not saying that this was something where there would necessarily be a problem if there was no

[17] G/TBT/W/175, WT/CTE/W/212, 12 June 2002, "Labelling", Submission by the European Communities.
[18] See WT/CTE/W/114, 31 May 1999, "Internationally Agreed Definitions of Environmental Labeling within the International Organization for Standardization (ISO) and Related Work", Communication from the ISO.

result on this point, because certainly most developed countries had much better access to information and tools in order to understand what was out there. This was only about increasing transparency and other international organisations could have a role. On the legal issue, some delegations had asked whether it was possible to notify a voluntary scheme. The answer was clearly "Yes", and it was even possible to make this mandatory if it was to be considered the best way to make progress.

82. The representative of the European Communities noted that there had been quite some discussion on paragraph 28, and New Zealand had even asked the European Communities to go through the principles one by one. The European Communities believed that they were all valid principles that could be further discussed. On paragraph 28(b), for example, the first thing the European Communities was thinking about was the sort of workshop activity which was already taking place, i.e., working together, maybe even closer with ISO and GEN to give presentations in these committees.

83. Paragraph 28(c) was the point where delegations had most questions, particularly in respect of the meaning of "legitimate". The answer was clearly contained in paragraph 9: the European Communities would like a statement or some sort of recognition in the WTO. However, it was premature to make a pronouncement on what meaning this would take. To answer the question by the United States, Members could agree as a political statement – or as a statement from the CTE – that these schemes were, if applied in line with the usual criteria in the ISO and TBT Agreement, legitimate and fell within the standard definition and the way the TBT and WTO Agreements operated. That they were "legitimate" did not mean they were legal in each and every case because Committees did not pronounce themselves on that sort of thing. However, it would give a clear indication that all WTO Members had thought about this issue and had said that this was the way to go if Members wanted to achieve certain environmental objectives. The second sentence of paragraph 28(c) was also important because that pointed a little bit to the way that the European Communities was thinking.

84. The market access concerns in respect of paragraph 28(d) of the EC paper had come out very clearly in the discussion. One delegation had even said that EC labels were not as clear and access-providing as they needed to be. The European Communities was open to discuss this and any other scheme. The whole point was that Members had to look at the issue, to analyse and see what could be done for WTO Members to participate without undue burden. This was a "positive measure" approach. It was not just about attending the current meeting or letting – as some delegations had said – the market "do its work". The WTO had been requested to do numerous things on technical assistance after the Doha Ministerial Conference. Some focus in this respect would be a good part of that work programme for the CTE. This answered to some extent the question of what the added value of this Committee could be.

85. On Indonesia's question on how it had been included in the GEN list, the answer was that this was the list the European Communities had obtained from GEN – and maybe the website was wrong, or maybe the list GEN provided had been wrong. Finally, there was a point from India that Members should actually look at individual schemes, bring in UNCTAD, etc. The European Communities could not agree more on this point and believed in a concerted effort. The European Communities was aware of technical assistance by GEN, but was not fully in the picture of whether the other international organisations were very active specifically on this issue. Certainly in bilateral programs the European Communities addressed the issue of labelling. As a last point on what could be done under paragraph 28(b), the European Communities, for example, had reduced fees for developing countries for the eco-labels in Europe. This sort of discussion – a systematic debate in the WTO on what was being done to enhance access to labels, could be part of WTO work in the CTE.

D. OTHER ITEMS ON THE CTE WORK PROGRAMME

1. Item 10

Relations with Intergovernmental and Non-governmental organizations.

86. The Chairman recalled that, at the last meeting of the CTE Regular, he had asked for delegations' inputs on modalities, agenda and participation regarding the organisation of a symposium for NGOs on trade and environment. At that time there had been no comments from delegations. Since then, there had been some changes. On 9 April 2003, the Director-General issued an information note to all Members.[19] In brief, the Director-General had decided that the symposium would be broader in scope. This meant that in addition to environment it would also cover key areas such as agriculture, services, and development. The objective was to use this opportunity to focus on a number of key issues concerning the Doha Development Agenda and the status of the current negotiations. The event would be open to government officials as well as representatives from NGOs, members of academia and the media. It was being funded by the government of Norway, which had provided a special contribution to organise this event. A draft agenda of this symposium was on the WTO website.[20] It would take place on 16-18 June 2003 at the WTO in Geneva.

87. There were no comments from Members.

III. 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.*

88. With respect to paragraph 33, the Chairman noted that the CTE Regular normally considered two aspects separately: (a) technical assistance and capacity building, and (b) national environmental reviews. The previous day, however, the United States had submitted a paper on *both* of these aspects. He invited the United States to introduce its paper. The subsequent discussion was a mix of both aspects.

89. The representative of the United States apologized for the late submission of the paper on paragraph 33[21] and requested that it be referred to in any revision of the draft Cancún Report (see discussion under paragraph 139 below). The paper first identified a number of themes that delegations had raised in the context of the CTE's discussions on technical assistance and capacity building under paragraph 33. These themes included: the importance of capacity building as a means of assisting developing countries in preparing for the negotiations on trade and environment; the importance of a needs assessment – the report highlighted UNEP activities in this regard; and the key importance of enhancing coordination at national levels between trade and environment officials. Second, the paper highlighted US government efforts with respect to technical assistance on trade and environment and it detailed some US contributions, as well as the government agencies most involved. The third major area of emphasis was on environmental reviews, which was an important part of the CTE's discussions under paragraph 33. The paper provided some information on the US experience, noting that it had been an evolutionary one and that an important objective of conducting environmental reviews of US trade negotiations was to integrate environmental information into the dynamic negotiating process. The US Environmental Protection Agency was developing a training course in this respect, and the United States had been working with a number of countries in terms of

[19] WT/INF/59, 9 April 2003, "Information Noted from the Director-General".
[20] www.wto.org.
[21] WT/CTE/W/227, 29 April 2003, "Paragraph 33 of the Doha Declaration", Submission by the United States.

their efforts to conduct environmental reviews on the negotiation of free trade agreements. Finally, the paper referred to UNEP's efforts, particularly with respect to the environmental impacts of trade liberalization in selected sectors.

90. The representative of Australia informed the CTE Regular that it was organizing an APEC workshop on WTO trade and environment issues to be held in Bangkok, Thailand from 19-20 May. The workshop would involve senior officials from APEC economies directly involved in the WTO negotiations on trade and environment, focusing particularly on APEC developing economies. The objective of the workshop was to provide an opportunity for the exchange of information and views so as to facilitate a deeper understanding of trade and environment in the context of the WTO. Australia encouraged APEC WTO Members to finalize their arrangements to attend the workshop.

91. The representative of the European Communities, referring to the US paper, underscored the need for technical assistance for negotiators. He recalled that the European Communities had organized a seminar for negotiators from developing countries (mid-March to mid-April), in the Netherlands, which contained an element of trade and environment. Like others, the European Communities stressed the importance of achieving coherence between the environment and trade ministries. He recalled presentations in the UNCTAD by Cuba, Costa Rica or Mauritius where it had been stated that an agency to deal with environmental concerns in connection with trade had been set up. This was important because persons in charge of defining aid to development in different countries did not always consider environmental aspects, and this had to be done to ensure that all issues concerning both trade and environment be placed within the development dimension. Moreover, the European Communities considered that the work done by a series of international organizations, the UNEP in particular, was important. It referred to a workshop held for Latin American and Caribbean countries in March 2003.[22] Presentations at that workshop would be used to find out whether the needs for technical assistance could be integrated into EC development assistance. On coherence of environmental reviews, the circle of stakeholders needed to be enlarged to civil society and business representatives, and to follow up the possible effects of trade negotiations on sustainable development – be it environmental, social or economic. In this regard, the European Communities was in the process of preparing two workshops which would be dealing with sustainability and the environment for the regional agreements with Chile and Mercosur, and another one for the ACP countries.

92. For the representative of Canada, the US paper made a useful link between technical assistance and environmental reviews. He noted that anyone involved in environmental reviews realized that this was a learning experience and that all could benefit from interaction and others' experiences. Canada appreciated UNEP's efforts in this regard, and in particular the organization of capacity building events on trade and environment at the regional level that included participation of both trade and environment policy makers from developing countries – especially when these officials came from capitals. Canada, like others, had participated in the regional meeting that UNEP held in Mexico and considered that the best part of that meeting was the focus on *specific issues*, such as agriculture and environmental goods and services. As this seemed to be of greatest interest to participants as well, Canada suggested that UNEP focus more on such specific issues.

93. The representative of the UNEP informed the CTE Regular on past and upcoming technical assistance activities.[23] He also noted that the UNEP continued to prepare training material on integrated assessment, enhancing synergies between MEAs and the WTO, and liberalisation of environmental goods and services. The first of these documents would be available by mid-2003. UNEP thanked Canada's Department of Foreign Affairs and International Trade, and Environment Canada, for the financial support that had enabled the production of these documents.

[22] For more information on this, see: www.unep.ch/etu/mexico/Mexico2003.htm.
[23] The full text of the UNEP statement has been circulated separately as WT/CTE/GEN/13, 15 May 2003.

94. The representative of Brazil noted that the Canadian paper[24] provided a good example of the use of environmental impact assessments (EIAs) as a national instrument in trade negotiations. In fact, Brazil had always been supportive of EIAs since these were conducted on a voluntary basis and used as a national tool aimed at assessing the effects of trade liberalization. The value of EIAs was recognized by Principle 17 of the Rio Declaration[25], and reaffirmed by paragraph 6 of the DMD. However, it was important, in the case of developing countries, to highlight the difficulties faced not only by governments, but also by small and medium enterprises (SMEs), in internalizing the environmental dimension in their policies and business considerations. She indicated that such difficulties had not, in fact, prevented developing countries from taking a positive view on EIAs. In Brazil, for example, EIAs had been incorporated in environmental legislation for more than a decade. Moreover, Brazil had already declared its intention to undertake an EIA of the trade effects of the Free Trade Area of the Americas (FTAA).

95. On the other hand, Brazil was of the view that Sustainability Impact Assessments (SIAs) posed severe difficulties, especially to developing countries in that these added intangible elements to the concept of an EIA, changing its original concept and purpose. SIAs reflected the perspective of developed countries and were based on criteria and indicators that were exclusive to these countries. SIAs did not take into account the diversity of countries in the elaboration of these criteria, especially the diversity of developing ones. Hence, in Brazil's view, SIAs had the potential effect of constituting an additional means to prevent access of developing countries' goods and services into developed countries' markets. If SIAs were to be discussed and implemented in the future, it was important to alter the thrust of SIAs: instead of marginalizing countries for their deficiencies, SIAs needed to be used as an instrument to identify the difficulties faced by developing countries to implement sustainable development, and to act as a leverage to overcome such difficulties. Also, SIAs needed to aim at bringing environmental, economical and social benefits to *all* countries. In this regard, SIAs needed to go hand-in-hand with efforts by developed countries to reduce and/or eliminate subsidies that distorted trade and production.

96. The representative of the European Communities recalled that its paper[26] on the SIA DG Trade Seminar addressed many of the points raised by Brazil. The European Communities was well aware of the concern that SIAs could be viewed as yet another attempt to take away through the back-door what had been granted (for example by lower tariffs or non-tariff barriers) through an SIA that showed that it was not sustainable to keep the market open. That was certainly not the case. One of the results of the above-mentioned meeting had been the recognition of the need to work much harder to have a better dialogue with the other partners, such as Mercosur, and more specifically Chile. The European Communities would have a workshop with stakeholders, including, of course, the government side, on how best to address these issues of SIAs to ensure that they actually did what they were supposed to do: to provide information without a hidden agenda.

97. The European Communities stated that the CTE Regular needed to discuss concrete cases. Had any Member, for example, had the experience of an SIA that had been used as a market access restricting tool? The European Communities was not aware of that and further noted that if this was just a fear, it needed to be substantiated. The European Communities did not intend to use it in such a way. What was important, and that was the real issue, was that no Member – whether developed or developing – had the perfect tool. Such a tool had to be adapted for each particular situation. While there was no one-size-fits-all approach, there was a need for one; there was a need to know *ex-ante* what was being done by Members if one wanted to be serious about sustainable development.

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[24] WT/CTE/W/221, 24 January 2003 on "Initial Environmental Assessment: Trade Negotiations In The World Trade Organization", Submission by Canada.

[25] Principle 17 of the Rio Declaration on Environment and Development reads: "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority".

[26] WT/CTE/W/224, 21 February 2003, "Sustainability Impact Assessment Of Trade Agreements: Making Trade Sustainable?", Submission by the European Communities.

IV. PARAGRAPH 51

A. INTRODUCTION

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.

98. The Chairman recalled that, at the last meeting, Members had heard presentations on the potentially relevant aspects of the ongoing negotiations in agriculture and market access for non-agricultural products.[27] It had then been agreed that Members would, at this meeting, look at the possible environmentally relevant aspects of the negotiations in the Rules and Services areas. The papers presented by the Rules and Trade in Services Divisions had been circulated in advance.[28]

B. SECTOR BRIEFINGS

1. Rules

99. In introducing the statement on the environment-related issues in the Negotiating Group on Rules ("NGR") contained in WTO/CTE/GEN/10[29], the Secretariat noted that the cross-reference between paragraphs 28 and 31 showed that, in respect of fisheries subsidies, the negotiating mandate relevant to Rules explicitly took note of environment-related aspects. It was noted that the views of the participants diverged considerably as to the relevance or appropriateness of addressing environmental concerns in any new disciplines that might be developed in respect of fisheries subsidies. The demandeurs believed that certain kinds of fisheries subsidies contributed to excess fishing capacity and effort, which in turn contributed to stock depletion with serious negative environmental consequences, as well as negative effects on trade and development. They argued that the current rules of the SCM Agreement were inadequate to address these sorts of concerns in part due to what they viewed as unique characteristics of fisheries. Other Members questioned the link between subsidies and environmental damage to fisheries. In these Members' view, the cause of fish stock depletion was inadequate fisheries management, not subsidies. Moreover, they felt fisheries management was not an issue to be resolved in the context of WTO rules on subsidies, which needed to remain focused on distortions of trade flows. These Members questioned the rationale of categorizing and disciplining fisheries subsidies based on environmental considerations, and argued that if the existing subsidy rules were deficient in addressing trade distortions, this problem was not unique to the fisheries sector but required a horizontal solution. There had also been some preliminary indications that other environment-related issues could be raised in the negotiations at some juncture. For example, a few delegations had suggested revisiting – and possibly reinstating – the now expired non-actionable subsidy category, which excluded from the SCM Agreement certain narrowly defined environmental subsidies, among other kinds of subsidies.

100. The representative of the European Communities noted that, with respect to the issue of where the environmental aspects of fisheries subsidies should be addressed,[30] his delegation's recollection was that this had not yet been addressed by many delegations. In this regard, he argued that the NGR was *not* the only forum which could have views on environmental aspects. It was recalled that fisheries was an issue that had developed in the CTE. This showed that there existed a mechanism whereby issues that were developed from an environmental point of view could, at a later stage, when certain WTO rules came to play, be handed over to those with expertise on the rules. But

[27] These were subsequently circulated as WT/CTE/GEN/8 (Agriculture) and GEN/9 (Non-Agricultral Market Access).
[28] These are contained in WT/CTE/GEN/10 (Rules) and WT/CTE/GEN/11 (Services).
[29] The paper was introduced by Ms. Clarisse Morgan of the Rules Division. She pointed out that after GEN/10 had been circulated there had been two further submissions on the topic of fish, one from the European Communities (TN/RL/W/82) and one from Japan (TN/RL/W/84).
[30] Reference was made to paragraph 7 of WT/CTE/GEN/10.

this did not mean that the environmental aspects could be forgotten; the issue was one of trying to achieve a sustainable outcome overall. Whatever the outcome in the subsidies negotiations, it was clear that the issue remained one of achieving the environmental objectives that Members started out with.

101. The representative of the United States emphasized the seriousness of the CTE Regular's work under paragraph 51. Referring to the EC's comments[31], the United States noted that the mandate in the DMD, and the continuing work in the NGR rose out of many considerations, as well as pre-Doha discussions in the CTE. In fact, the United States had always identified the particular issue of fisheries as an opportunity for a possible "win-win-win" situation for trade, environment and development.[32] New disciplines in the WTO in this area could have a measurable positive impact on conservation efforts world-wide and could be an excellent example of how the WTO and international environmental agreements, specifically those that addressed management issues, could be mutually supportive.

102. The representative of Japan recalled that his country had a somewhat different point of view on the interpretation of paragraph 28 of the DMD (he referred to points made by his delegation earlier in the meeting, see under paragraph 6).

2. Services

103. In summarizing the key issues contained in WT/CTE/GEN/11, the Secretariat[33] recalled the Decision on Trade in Services and the Environment, adopted at Marrakesh at the end of the Uruguay Round.[34] In that Decision, Members recognized that there was a relationship between the protection of the environment and trade in services. They also recognized that environmental protection could involve taking measures that might deviate from Members' obligations under the GATS. However, such measures almost always related to the protection of human, animal, plant life or health and this policy objective was already addressed and covered by Article XIV of the GATS on general exceptions. The subject of the above-mentioned Decision was to explore whether there were other concerns relating to environmental protection that would *not* be covered by the exception provided for in GATS Article XIV. The Decision referred the matter to the CTE, with a request to examine the issues involved and report back with any recommendations. A report was made to the Singapore Ministerial Conference in 1996[35], but the matter was still pending before the CTE.

104. During the Uruguay Round, around 47 members undertook specific commitments under environmental services. Those commitments focused on Modes 3 and 4, which were the two most important modes of supply for international trade in environmental services. In the Services Sectoral Classification List ("W/120"), developed during the Uruguay Round[36], environmental services included sewage services, refuse disposal, sanitation and similar services, and other environmental services. This current definition was under consideration in the context of both the Special Session of the Council for Trade in Services, and in the Committee on Specific Commitments.

105. The work taking place in the Committee on Specific Commitments focused mainly on classification issues. The proposals in that Committee were based on the assumption that the classification in W/120 was no longer adequate to reflect the commercial realities in international

[31] In respect of paragraph 7 in WT/CTE/GEN/10.

[32] The US representative recalled that this point had been made previously. For more detail, see paragraph 115 of the Report of the 8 October 2002 meeting of the CTE Regular, contained in WT/CTE/M/31.

[33] Mr. A. Hamid Mamdouh, Director of the Trade in Services Division.

[34] Paragraph 1 of this Decision states: "In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, to request the Committee on Trade and Environment to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Committee shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the Agreement."

[35] Footnote 10, *supra* (for services in particular paragraphs 153-158 and 210-211, under "Item 9")

[36] Services Sectoral Classification List, MTN.GNG/W/120, 10 July 1991.

trade in environmental services. Hence, several proposals had been made to revise that classification. One approach was to reclassify environmental services by focusing on environmental media, such as air, water, soil, waste, noise, etc. Another approach tried to focus on the creation of a classification based on a set of core environmental services and another set of incidental, or auxiliary services that might be related to environmental services. In the on-going negotiations in the Special Session of the Services Council, there had been seven proposals on environmental services submitted by various Members. The general themes that came out of those proposals were: (i) more liberalisation of environmental services was desirable; (ii) there were regulatory issues apart from liberalisation that would require some attention; and, (iii) the need to address the classification problems raised in the Committee on Specific Commitments.

106. The representative of the United States wondered whether any delegation had raised questions regarding the environmental implications of the Article VI:4 negotiations related to domestic regulation. It was his understanding that those negotiations had focused on issues such as transparency and the necessity test. With respect to transparency, these seemed somewhat obvious – in terms of providing greater access to the regulatory process for stakeholders, including civil society. But whether there were any potential negative or positive environmental effects on the issue of *necessity* was less clear.

107. The representative of Canada noted that there were still many WTO Members that maintained a range of barriers that limited trade in services, and, as a result, liberalisation of environmental services was a major concern of a number of goods and services industries. In the current negotiations, Canada was encouraging all Members that had not done so to make commitments in the environmental services area for all modes of service delivery. Moreover, Canada urged Members who already had commitments in this sector to reduce or eliminate existing restrictions on national treatment and market access and to broaden their commitments. On classification, Canada's approach to changes reflected its desire to safeguard the legal certainty of existing commitments in the GATS itself. Canada continued to believe that the United Nations Provisional Product Classification was the most appropriate system of classification to schedule GATS commitments, and therefore encouraged all Members to schedule according to that classification.

108. The representative of the European Communities recalled that the mandate in paragraph 51 was that of achieving a sustainable outcome of the negotiations. In his view, the discussion in the services area should not be limited to environmental services. A link could be drawn to a discussion paper prepared by the Secretariat on the environmental effects of services trade liberalisation.[37] In that paper the Secretariat came up with indicative points on the effects of trade liberalisation on tourism, land freight transport, and environmental services. The topic was complex; the effects depended on the kind of regulation in place. Sometimes adequate regulation needed to accompany liberalisation. Nevertheless, the European Communities believed that the right thing to do was to liberalize trade in order to maximize benefits for growth and the environment and development in a sustainable way. Paragraph 51 could be used as a way of discussing the subject from a broader perspective, thus avoiding dealing with issues in "clinical isolation" and missing the bigger picture. The question was how to do this and whether it was possible to assess *ex ante* what needed to be done. Hence, it was worth reverting to the above-mentioned Secretariat paper from October 2002.

109. Like other delegations, the representative of Egypt stressed the usefulness of presentations of the kind done by Mr. Mamdouh as they provided a concise overview of the key issues relevant to the environment for non-experts. With respect to the point made that liberalization under environmental services appeared limited,[38] he wondered what the explanation was and which countries were the more liberal ones. On the issue of classification, from a development point of view, he wondered if there were any positions for developing countries regarding the need to broaden or restrict

[37] WT/CTE/W/218, 3 October 2002, "Discussion Paper On The Environmental Effects Of Services Trade Liberalization", Items 6 and 9, Note by the Secretariat.

[38] Reference was made to paragraph 5 of WT/CTE/GEN/11.

classification. Finally, Egypt asked, in the context of regulatory issues,[39] whether the recognition of environment-related qualifications in the territory of another Member was something specific to environmental services or, rather, whether it was a cross-sectoral issue pertaining to all kinds of services. Would it affect primarily developing country providers of services, or not?

110. The representative of Venezuela wished to make a point on subsidies. Within the Services Council there was an in-depth discussion on the subject of service subsidies. Although the issue had been discussed in detail, no progress had been made. Some delegations did not even understand what subsidies could entail in the field of services; some had said there was no information, others that there was too much of it. Could the Secretariat comment on this? Had the Secretariat done anything in the way of an analysis?

111. The Secretariat first addressed the questions raised by the United States concerning the negotiations under Article VI:4 of the GATS. There was a need to distinguish between two types of regulatory issues. The work programme under Article VI:4 for the establishment of disciplines on domestic regulation was an attempt to develop disciplines which, from a trade policy point of view, were similar to those of the TBT Agreement on goods. This was a process to ensure that regulators – which used different regulatory instruments, such as technical standards, qualification and licensing requirements – did not use them to unduly restrict the supply of services, i.e., to impose disguised restrictions or unnecessary barriers to trade. In this process, environmental services had not been raised as a particular concern. The other set of regulatory issues concerned the ability of regulators to impose measures to *protect* the environment, or for any other purpose, which might be inconsistent with the GATS and would therefore need legal cover of the kind provided in Article XIV. Issues related to the supply of environmental services had not been raised in the context of the negotiations under Article VI:4, but rather in the context of discussing the proposals that were submitted to the Services Council to liberalize environmental services. There was, however, a relationship between work under Article VI:4 and additional commitments under Article XVIII, i.e. commitments that did not relate to market access or national treatment, but related to any other obligation or any other measure on which Members wished to negotiate commitments.

112. In respect of the question raised by Egypt on the limited level of commitments on environmental services, this was a point of comparison vis-à-vis tourism and financial services where most commitments had been made. In tourism, for example, more than 110 Members had made commitments, and on financial services it was close to 100. The representative of the Secretariat did not have the figures at hand in terms of the break-down between developed and developing countries, but believed that the extent to which developing countries had liberalized environmental services was less compared to developed countries. Regarding the concerns of developing countries, the Secretariat noted that some had pointed in particular to regulatory issues. On qualifications (paragraph 16) this was not a concern particular to environmental services, it was general in nature.

113. Turning to Venezuela's question on subsidies, the Secretariat had not done any specific work on subsidies relating to environmental services. The reason was that a subsidy in general was disciplined under the GATS to the extent that it was discriminatory. The rules of MFN and National Treatment addressed any measure that modified conditions of competition between services and service suppliers, including subsidies. The current negotiations focused on subsidies which might have trade distortive effects in services. But discussions had not advanced significantly and no issues specific to environmental services had arisen. Normally, subsidies provided for environmental reasons did not discriminate between services suppliers with different origins.

114. The representative of Australia stressed that environmental services played an increasingly important role in enhancing human health, preventing environmental degradation, and assisting with the clean-up of pollution and environmental damage. Australia felt that it was important, therefore,

[39] Reference was made to paragraph 16 of WT/CTE/GEN/11.

that Members considered carefully their ability to improve access for the promoters of such services, as Australia had done in the offer it had tabled. Australia encouraged Members to look carefully at their services schedules, and at the offers made in the negotiations. Like Canada, Australia encouraged Members that had not yet submitted offers to do so.

115. The representative of the United States wished to clarify his previous question. Assuming that the built-in agenda negotiations, such as those under Article VI:4 on domestic regulatory measures, were to be covered under paragraph 51, he was aware of the fact that some NGOs had raised concerns about potential constraints about the right to regulate with respect to a potential necessity test. These were not necessarily specific to environment but could include other legitimate objectives as well. The question then was: to what extent had delegations in recent discussions explored whether these kinds of concerns might be valid?

116. The Secretariat reiterated, without wishing to make a judgmental answer, that it was possible that the negotiations under Article VI:4 could have an effect on environmental services. There were two aspects to this. The first aspect was on the necessity test, which stated that measures relating to qualification requirements, licensing requirements, and technical standards must not constitute unnecessary barriers to trade. On the other hand, one could look at it from the point of view of the imposition of measures aimed at protecting the environment in sectors such as those referred to by the European Communities – tourism and transportation. Here the question would be, to what extent it was necessary to impose such measures which may restrict the supply of tourism or transportation services in order to serve an environmental protection policy objective.

117. The representative of the European Communities noted that the level of detail and knowledge in the current debate was something which was absent in the debate the European Communities was having with its NGOs. All the better if the message which came out of the WTO was that there was broad agreement that there were no constraints imposed by the GATS *per se* on any of these measures – that it was a political choice for governments. In general, the European Communities felt that the CTE Regular debate on paragraph 51 was finally picking up in the direction of a real substantive exchange of issues, based on the input from the Secretariat. Nevertheless, the European Communities recalled its earlier, more ambitious, proposal under paragraph 51 on joint sessions with the Committee on Trade and Development ("CTD") and considered that more could be done under the current agenda item.

118. The representative of the United States supported the EC comment on the fact that the current analysis on services had enhanced the CTE Regular's work under paragraph 51. Hopefully, this sentiment could be carried over to future discussions, whether on services, agriculture, rules, non-agricultural market access, etc. More active involvement from Members would be useful – for it would be negative to have a situation in which WTO Members had been provided with the opportunity to consider the environmental aspects of the negotiations and not followed it through.

C. OTHER PARAGRAPH 51 ISSUES

119. The Chairman recalled that in the context of the last meeting's discussion on non-agricultural market access, and in particular on the issue of environmental goods, the representative of the OECD had informed the CTE that the OECD was working on a comparison of the three lists of environmental goods (APEC, OECD and the Japanese list).[40] This work had now been completed and was available to Members (copies were made available in the room). He wondered if Members had any objections to circulating this document. There were none.[41]

[40] WT/CTE/M/32, paragraph 72.
[41] The OECD document will be circulated shortly as WT/CTE/W/228.

120. The representative of the UNCTAD drew the CTE Regular's attention to an upcoming UNCTAD Expert Meeting on Definitions and Dimensions of Environmental Goods and Services in Trade and Development to be held back-to-back with the CTE meetings from 9 –11 July 2003.[42]

121. The representative of Venezuela thanked UNCTAD for planning the event and wondered about the possibility of financing the attendance of experts from capitals.

D. CONCLUSION

122. The Chairman noted that there was now a need for Members to consider the next step. After Doha, the CTE Regular had started off with general discussions on paragraph 51. However, at the last couple of meetings, there had been substantive briefings from the Secretariat on the environmental aspects of the ongoing negotiations. So far, this had been done in four areas: agriculture, non-agricultural market access, rules and services. He recalled that the mandate was to "act as a forum to identify and debate" the environmental aspects of the negotiations, in order to "help achieve the objective of having sustainable development appropriately reflected".

123. As he saw it, there would need to be some form of a report on paragraph 51 to the General Council for transmission to Ministers at Cancún. While paragraph 51 was not covered by the specific reporting requirements in the DMD contained in paragraphs 32 and 33, the CTE was a body subordinate to the General Council and like all other such bodies would have to produce an account of what it had done. In fact, all Heads of Delegations had received a letter from the Chairman of the General Council, Ambassador Pérez del Castillo, indicating that subordinate bodies needed to complete their reports for the General Council meeting of 24-25 July. The Chairman suggested that the Secretariat briefly summarize the CTE Regular's activities under paragraph 51 for transmission to Ministers in Cancún.

124. The representative of Canada thought that the Chairman's proposal was a sensible one. The CTE Regular had a responsibility to report to Ministers on what had been done with the Doha mandate. If nothing was reported, this would give Ministers the sense that nothing had been done. In fact, the CTE Regular had actually followed-up with the sectoral briefings, and this could be reported on in a factual way.

125. While the representative of the European Communities agreed with the Chairman and Canada, he noted that the issue was one of the level of detail, and how to draft the report. For a report to Ministers, the European Communities wished to see some flavour of the debate without too much detail. Moreover, given that it was a separate mandate (not mandated under paragraphs 32 or 33), it needed to be a free-standing exercise. The CTE Regular could use the mandate to flag other sustainability issues which were elsewhere in the mandate, and in the DMD. There was a need for some more time for reflection on this, but, in any case, the Secretariat could start working on the text.

126. The representative of the United States agreed with the European Communities on the point of giving Ministers some flavour of the debate, without too much detail, and that the Secretariat could begin to prepare a draft. However, the United States wished to leave open, for the time being, the exact form in which the text would be memorialised.

127. The representative of Egypt noted that generally his delegation was not in favour of crowding a report to Ministers with non-mandatory reporting requirements. Nevertheless, if there was a consensus, Egypt would not stand against it.

[42] The full statement has been circulated separately as WT/CTE/GEN/12, 9 May 2003.

128. The representative of Brazil agreed with Egypt but noted that it could be useful for the CTE to show Ministers that work had been done under paragraph 51. In such a case, the report needed to be factual, and not enter into details.

129. The representative of the Philippines shared Egypt's concerns and stressed that it would not be in a position of including issues that were not mandated in the report to the Ministerial Conference. Also, there was a need to take into account parallel developments in the CTD.

130. The representative of Singapore, like the Philippines, reserved its position at the current stage. Singapore shared the feelings expressed by Egypt and Brazil in respect of reporting on non-mandated issues. Nevertheless, if there was going to be a report, it had to be factual and short, without adding to any controversy. There was also a need to check progress in the CTD.

131. The representative of the United States wished to clarify its position. In response to the suggestion by the Chairman and the European Communities, the United States was certainly not contemplating any kind of *new* reporting requirement. In any event, the report to the General Council would necessarily have to include something on discussions under paragraph 51 – and the point by the European Communities was simply a matter of *how* it was to be presented. He reiterated that there would, in any event, need to be some reporting to the General Council through the report which the CTE had to do at the end of the year.

132. The representative of Thailand echoed the comments by others regarding the report on paragraph 51. There was no mandatory requirement to report. But since there had been a discussion in the CTE Regular under this paragraph, Thailand would not object to having some kind of a brief, factual report. Considering that the paragraph was also about developmental aspects, he suggested that the Chairman could perhaps liase with the CTD to check for progress in that committee.

133. The Chairman noted that the positions expressed were not far apart. On substance, he had in mind a very brief factual account of one or two paragraphs on what had been done under paragraph 51. He recalled that the CTE *anyway* needed to report to the General Council, and it was this report – the CTE's report to the General Council – which he had referred to. It would be a shame if the Committee did not report on the fruitful discussions which had taken place under paragraph 51. With this clarification, he again suggested that the Secretariat make an attempt to provide a draft, which Members would be able to comment on before the July meeting.

134. The representative of the Philippines asked for some clarification on what the status of the report on paragraph 51 would be – whether it would be part of the report to the Ministerial Conference, or just to the General Council. This was a systemic concern for the Philippines.

135. The Chairman clarified that it was his intention to fulfill the obligation of the CTE Regular as a body subordinate to the General Council to report to the *General Council*. This was not a mandate specific to the CTE – it was in response to the request from the Chairman of the General Council. It would be a separate text from the Cancún Report. He asked whether this was now clear.

136. The representative of the Philippines confirmed that the issue was clarified.

137. The European Communities stressed that while it was the General Council that had requested these reports, it could not be precluded at the current stage that the report would be forwarded, in one way or another, to Ministers. The argument that there was no reporting requirement in the DMD with respect to paragraph 51 could be made for many other issues, such as Special and Differential Treatment. There was a need for a coherent approach in this regard. The current debate could not be closed under the impression that the CTE Regular had decided that any such report under paragraph 51 would stop at the level of the General Council.

138. The Chairman stressed that the CTE Regular's mandate was to report to the General Council. Whether or not to pass the report on to Ministers would be a decision that Members would take in the General Council.

V. CANCÚN REPORT

A. INTRODUCTION

139. The Chairman recalled that at the last meeting Members had discussed how to approach the mandate contained in paragraphs 32 and 33 with respect to the CTE Regular's Report to the 5th Ministerial Session, in Cancún. At that meeting, it was agreed that the Secretariat would prepare a first draft of the factual element of this report. Hence, the basis for the current discussion would be the first draft[43], which was in its entirety factual in nature. He stressed that the exercise was only relevant to the work undertaken by the CTE under paragraphs 32 and 33 since the Doha Ministerial Conference, in November 2001. With regards to any eventual substantive aspect of the report (recommendations), no formal proposals had been submitted at the time of the meeting. He reiterated that late arrival would make it difficult for the CTE Regular to give them due consideration.

140. The Chairman first asked delegations to provide a *brief general comment* on the draft.

B. DISCUSSION

1. General comments

141. The representative of the United States considered that the draft was an excellent summary of the discussions under paragraphs 32 and 33.

142. The representative of Canada considered that while the draft was a good one, it could have been even more so if it had contained an annex that provided a wider sense of what had been completed over the years in the CTE. He commented on the usefulness of the CTE list of documents[44] and stated that a similar summary of the discussions, by agenda item, would also be useful. Canada suggested that on some of the agenda items the CTE could perhaps reach a conclusion in regards to whether they were still of interest. Canada recalled the statement made by the Director of Trade in Services Division[45] (see paragraph 103 above) in respect of the mandate given to the CTE and to which the CTE had never responded. Perhaps it was time to reconsider if there was anything there at all to discuss: should the CTE have a perpetual agenda that never ended? The CTE needed to think about coming to conclusions on some issues, even if the conclusion was that there was limited interest or that it was not possible to reach a consensus.

143. The representative of the European Communities considered the draft for what it was: a *first* draft that could be improved; but this, he stressed, did not mean that he was critical of it. It was clear that the report, the factual part, would be a substantive document which would be referenced in the future and hence it needed to adequately reflect the discussion. As had been noted before, the discussion on labelling, after today's debate, would need to be reflected in a much more concise fashion – but that was not foreseeable. Nevertheless, in the view of the European Communities, some items had been presented in a way that did not reflect even the short debate that had taken place; agriculture was an example of this. It had not only been the Cairns Group that had spoken on Agriculture. At the March meeting of 2002, despite being tired of responding to all issues at all times, comments had been made that balanced the picture a little bit. If there was a need, this would be done again. The European Communities had a different view on the role that subsidies could play, positive and negative in the field of agriculture and in relation to trade. So, he stressed, he was on record, if

[43] JOB(03)/73, 10 April 2003, CTE Regular, Report to the 5th Session of the WTO Ministerial Conference, First Draft.
[44] WT/CTE/INF/5/Rev.1, 5 February 2003, "List of Documents", Note by the Secretariat, Revision.
[45] WT/CTE/GEN/11, 16 April 2003, see paragraph 3.

necessary, again on that point. However, there were other points as well, and some fine tuning would have to be done. But that did not mean that the European Communities could not live with the structure. Nevertheless, what was attributed to the European Communities needed to be correct and what was stated on behalf of the European Communities could not be misquoted, or politically incorrect. The European Communities would be happy to provide these comments in some other form as well. Moreover, the European Communities was of the view that recommendations for future actions would have to be developed.

144. The Chairman stressed that the ambition was to *improve* on the first draft, this was the very reason for the current discussion. He recalled that the front page of the first draft clearly stated that discussions in the remaining meetings would be duly reflected in the report.[46]

145. The representative of Venezuela urged the Secretariat to send the draft, once translated into Spanish, to Venezuela.[47] This would enable Venezuela to make official comments on it.

146. The representative of Kuwait noted that he had some concern, similar to that of the European Communities, on paragraph 11 of the draft. He felt that the Secretariat had not appropriately reflected Kuwait's concern – even though the text was factual.

147. The representative of Egypt noted that his comments were in the same line as those of the United States. The report should not be lengthy. Those who were looking for details could read the minutes of the meetings. This was a report to be read by *Ministers*. Other committees would have similar reports – hence there was a need to pinpoint what had been discussed. Otherwise, if the European Communities wanted to elaborate on agriculture and eco-labelling, Kuwait and Saudi Arabia on energy, and, probably, Japan on fish – the CTE Regular would end up with a 100 page report. Egypt believed, like the United States, that this was a good and a balanced report. It reflected the different views, whether on eco-labelling, energy or other issues.

148. The representative of Korea considered that, in general, the draft report reflected the discussions in the CTE Regular since the Doha Ministerial Conference in a correct and well balanced manner. However, Korea was of the view that one aspect needed to be improved. Paragraph 10 of the draft report, on "win-win-win" aspects in Agriculture, described only the opinions of one side of the debate and created some misunderstandings. Many agriculture importing countries, including Korea, did not make comments very often on this issue, simply because they did not wish to duplicate the discussion in the Committee on Agricultural Special Session. But this should not be taken to signify agreement with the opinions of some Members provided in the draft. Hence, Korea hoped to see paragraph 10 corrected to show the opinions of all Members.

149. The representative of Brazil thanked the Secretariat and supported Egypt's statement.

150. The representative of Australia considered that the draft was a balanced document, factually accurate, and close to the final version. He was interested in comments from those who thought that it did not accurately reflect the discussion. The representative of Australia did not consider this to be the case. His delegation had carefully considered the minutes of the meetings of the CTE and wondered what particular angle on agriculture, for example, had not been included.

151. The representative of Japan considered the document excellent. In almost all parts, the sentences were well balanced and factual. On fisheries, in paragraph 12, Japan was a little bit distracted by the words "reinforced" in the fifth line, because it seemed to imply a hierarchy between

[46] The front page of the draft states: "This first draft is presented to Members subsequent to the agreement reached at the last meeting of the CTE Regular. It is intended to be a basis for discussion. It may be updated to reflect (i) discussions at the remaining meetings prior to the 5th Ministerial Conference, (ii) comments and corrections from Members and, where appropriate, (iii) recommendations for future action." [footnote omitted]

[47] The Spanish version of the text was circulated on 30 April 2003, and the French version on 25 April 2003.

the WSSD and the WTO. Whatever the WSSD stated, Members in the WTO needed to work according to the Doha mandate. Hence, "reinforced" was a bit too strong. Japan preferred some other wording, such as "noted". A second point concerned the last sentence in paragraph 16: "A number of Members called for case studies, particularly with respect to the impact of subsidies on fisheries resources." Japan did not believe that this accurately reflected the situation. The real situation was that Japan had been requesting the demandeurs of fisheries subsidies to provide case studies on which subsidies actually caused stock depletion, but unfortunately not a single case had been provided.

152. The representative of India expressed appreciation for what was a balanced and precise report. Like Egypt, India believed that the CTE Regular should not attempt to make a long report – otherwise negotiations would continue until the Ministerial Conference, as had happened in 1996. The work needed to continue in the manner the Secretariat had started it.

153. The representative of Indonesia wished to put on record their appreciation to the Secretariat for the report. He wished to ensure that what his delegation had said during the current meeting would be taken in account in the second draft.

154. The Chairman assured Indonesia, and other Members, that what had been said at the current meeting and was relevant to the report would be reflected in the second draft. The Chairman thanked delegations for their comments and noted that, in general, there seemed to be a feeling that the report was a good foundation for further work. Considering this, he invited Members to make specific comments on the report. He noted that the Secretariat would, of course, record anything that was said orally, but nevertheless encouraged Members to also submit their comments in writing. This would make the job of incorporating them easier. He suggested that any such comments be submitted to the Secretariat no later than **Monday, 2 June**. This would give Members more than a month and the Secretariat enough time to issue the redraft sufficiently ahead of the next meeting, on 7 July.

2. Specific comments

155. The representative of Kuwait was of the view that the last sentence of paragraph 11 stood in contradiction with Ministers' instructions in the DMD. In paragraph 32, it was very clear that Ministers had instructed the CTE to give *particular* attention to the effect of environmental measures on market access. However, according to paragraph 11, Ministers were being told that the CTE was *not* the right forum for discussing this issue (energy). There was a need to re-draft the sentence, even though it was factual. In discussing energy, the Kyoto Protocol or the UNFCCC, there were many important issues that were not reflected in the draft. One of these was that the Kyoto Protocol and the UNFCCC dealt with emission resources. Kuwait had made very clear that emission resources were a very complex concept that covered not only products but also different gases, activities, and economic sectors;[48] herein was the rationale for restructuring carbon content of fuel taxation. It was in this context that the CTE Regular needed to address the issue of adverse effects of Annex 1 countries' measures on trade or on market access, in particular the discriminatory aspects of some OECD countries, if not all, with respect to petroleum products. This was in line with the mandate of paragraph 32 and it was a valid point which had not been captured in the report.

156. The Chairman assured Kuwait that his intervention had been duly noted. He stressed, however, that a "factual report" meant that both views – or sides of the argument – had to be reflected.

157. The representative of Canada, recalling his earlier comment in respect of widening the coverage of the report, believed that it would be useful if the opening part contained an additional, short section on information regarding work undertaken between 1996 and 2001. This section could include information such as numbers of meetings held, submissions made, and information exchanges with MEA secretariats. Otherwise, Canada was concerned that the report only described what had

[48] For more detail, see paragraph 71 of WT/CTE/M/30, 11 September 2002.

happened since Doha. Since there had only been one previous "real" report (the Singapore Report[49]), one could wonder what had happened between Singapore and Doha. The Secretariat document listing all documents, by item of the work programme, could be easily annexed to the report.[50] Similarly, it was Canada's understanding that in the context of some regional trade seminars there had been work done by the Secretariat to summarize the overall discussion. On technical assistance and capacity building, Canada noted that there was more data that could be drawn from the work done by the OECD, which could usefully be added.

158. More fundamentally, Canada had noted that the CTE had *never* reached conclusions on anything, not even on the fact that it did not want to talk about certain things anymore. Canada mentioned, in particular, three areas. The first was Item 3(a) on the relationship between provisions of the multilateral trading system and charges and taxes for environmental purposes. There had only been one document prepared by the Secretariat in 1997, and never a submission by Members. Canada suggested that perhaps a conclusion could be drawn from this. The second issue was Item 7 on Domestically Prohibited Goods (DPGs). While there had been some submissions by Members in the mid-1990s, there had been nothing in recent years. Third, on the work programme on Trade in Services and the Environment (Item 9), Canada recalled the statement by the representative of the Secretariat[51] who had basically recalled that the CTE had been given a mandate and never responded to it. Perhaps one could conclude that there was no consensus on the need for modifications of the trade rules in the area of trade in services for environment. If conclusions were not made on some points, the CTE would become irrelevant. If it never reported on anything and it maintained an endless agenda that never brought it anywhere, who would come to its meetings – and for what purpose?

159. The representative of the Czech Republic noted that some trade and environment issues were discussed in non-WTO bodies, sometimes even in more detail and depth. There had been a wide range of positions expressed so far, so it could not come as a surprise that in certain cases there seemed to be a promising level of convergence in opinions while in others they differed. From the WTO point of view, a first step would be to agree on concrete issues that should be subject to discussions in the CTE, and on other issues that needed to be left to other WTO bodies. The CTE work programme needed to be mandated accordingly. For example, and more specifically, during the discussion in February 2003 and especially during the course of the current meeting, there had been a strong feeling that *labelling* was an issue for the TBT and SPS Committees. Although, the representative of the Czech Republic generally agreed with this, he considered that eco-labelling was specific enough to deserve special attention. This had led him to the conclusion that the CTE was the right place for the debate on selected aspects of eco-labelling, and the only WTO body that could, in an appropriate manner, take into account the environmental aspects.

160. In the area of the TRIPS Agreement and paragraph 32(ii), the Czech Republic pointed at the discussion in the TRIPS Council. While some aspects of the relationship between the TRIPS Agreement and the CBD had been discussed in the CTE Regular, there was a problem of possible duplication of work. Moreover, the issues could not be resolved within the WTO alone, and, in the view of the Czech Republic, the emphasis had to be put on the work of other international bodies, such as the CBD and FAO. On the substance of the issue, the Czech Republic could not see any legal incompatibility – or potential conflict – between these two agreements. Nevertheless, the Czech Republic took into account the requirements of many developing countries in this field and welcomed all presented inputs in the CTE.

161. By contrast, on *environmental goods*, recent discussions in the Negotiating Group on Market Access had resulted in a generally shared conclusion that the CTE was the appropriate body to take decisions regarding classification. The Czech Republic proposed to make a recommendation in the

[49] See footnote 10, *supra*.
[50] See footnote 44, *supra*.
[51] See paragraph 103 for more detail.

area of paragraph 32(i) which took into account the findings of recent multilateral events and initiatives of UNCTAD[52], UNEP and OECD.[53] On *energy*, the Czech Republic shared the view of many Members that this sector presented a potential win-win situation. Existing subsidies needed to be eliminated or diverted from fossil fuels into the promotion of energy efficiency and the use of renewable energy sources. Fuel taxation needed to reflect possible degradation of the environment, as well as carbon content. The extraction of fossil fuels was not subsidised in the Czech Republic. While a carbon tax was currently not applied in the Czech Republic, in the framework of the future environmental tax reform, the Czech Republic would be considering further ecologization of the Czech tax system.

162. It was noted that the negotiations on *agriculture* had not developed favourably for the "Friends of Non-Trade Concerns". The Czech Republic refused the idea that environmental subsidies in the area of agriculture damaged international trade. To the contrary, environmental subsidies could positively affect the conservation of nature, biodiversity and the maintenance of landscapes; these were necessary tools for the implementation of non-trade concerns in agriculture.

163. The Czech Republic stressed that time was pressing and urged all Members to do their best to achieve consensus on recommendations for the completion of the Cancún Report. The Czech Republic would not go into more detail and remained open to discuss any reasonable proposals and recommendations, including those going beyond the above-mentioned areas.

164. The representative of Venezuela reiterated that he did not want to give any official comment before he received the translation in Spanish and had sent it to his government. Nevertheless, he supported the comment by Kuwait on paragraph 11. He totally disagreed with the last sentences to the effect that some Members considered that the CTE Regular was not the correct forum to discuss the impact of measures to mitigate climate change. Of course, the CTE was not the forum to discuss climate change – nobody was arguing this point. The issue was about market access, about barriers to gas and gasoline and similar products. The last sentences did not add anything and were confusing.

165. The representative of the European Communities noted that he did not wish to give the Chairman detailed comments since he needed more time, and because there was a need to finish the discussion today on other issues. Moreover, he felt that there was a question of process: there would be a new report that would have more on labelling, etc., so the whole exercise would have to start again. Hence, bearing in mind that there was a need to keep it to only one exercise, the Secretariat could perhaps be asked to quickly produce a new report on which combined comments could be made. If the Secretariat could be as quick as it had been in producing the minutes of the meetings, perhaps only a week would be lost, and this would enable Members to comment in a complete way.

166. For transparency reasons, the European Communities would flag the main issues where it saw a need for improvement. The European Communities felt that the presentation on *market access* was slightly misleading. It could be deducted from paragraphs 3 and 4 that there was one faction that wanted improved market access and another that wanted to protect environment and health and these two positions were incompatible – protectionist vis-à-vis liberalist. However, there was more depth to the issue. Another point on market access was made regarding the need to be careful about the flexibility on environmental measures, which had been read across to SPS and other things. This was not reflected as it should be, there was a need to be careful about using the right word.

167. On *agriculture*, this had already been commented on (paragraph 143 above). On *fisheries*, things were moving very quickly and reference had been made to the EC paper. A couple of important comments had been made on the link between subsidies and overcapacity. The last major point was *TRIPS* where the European Communities also believed that its position was not 100 per

[52] For more detail, see paragraph 12 of WT/CTE/M/32, 4 March 2003.
[53] For more detail, see paragraph 9 of WT/CTE/M/32, 4 March 2003, as well as WT/CTE/GEN/3, 20 November 2002.

cent rightly reflected between the two extreme positions in the draft on the CBD. On *SIAs*, a major effort had been made to move the issue, but a little more was needed. All this was just a flavour for delegations – however, there would be no surprises on other issues, or major other issues. The rest would be small things.

168. The representative of Korea, in reverting to the issue on agriculture, stressed the positive effects of agricultural subsidies on the environment. Agricultural production was not only about the production of agricultural products – it contributed to the environment in various ways. In other words, the benefits of agriculture could not be provided only through a market mechanism, or the "invisible hand". For example, in Korea, agriculture was the main use of land and agriculture had had the function of maintaining cultural values, landscapes and biodiversity. Thus, current subsidies to producers were helpful and sometimes necessary to guarantee providing an optimal level of agricultural production and accompanying environmental benefits. Korea hoped that its argument on agriculture subsidies could be duly reflected in the report.

169. The representative of Australia expressed concern that some delegations – he referred to Korea and the European Communities – seemed to be putting down positions that had not been made over the last two years. Australia also had some minor comments. However, the question of whether or not comments were accepted and incorporated into the report was an important one. Australia did not consider that Members could start introducing new issues with a view to including them in the report. Australia wished to hear the process which the Chair envisaged in this regard.

170. The representative of New Zealand expressed a similar discomfort to the one expressed by Australia. On agriculture, the report reflected points that had been registered previously on substantive discussion under, essentially, paragraph 32(i). Hence New Zealand did not consider that it was correct to introduce points of substance in the context of a discussion of the report itself.

171. The representative of the European Communities noted that the "multifunctionalists" had made their point at the March 2002 meeting in paragraph 30 of the report of that meeting.[54] Hence this was not something new – it had simply not been repeated.

172. The Chairman thanked Members for their support of the document as a good basis for improvement, and possibly a report. Again, he ensured Members that all oral comments would be taken into account and reminded delegations that written comments, in terms of drafting – not just general ones – would be appreciated. This needed to be received before 2 June to give him and the Secretariat a chance to prepare the second draft.

173. The Secretariat referred to the suggestion by the European Communities that the Secretariat could somehow quickly process the comments heard at the meeting into a new draft. Following the procedure set out by the Chairman, the next step would be to update the draft for the substantive issues that had come up during the current meeting. In doing so, the Secretariat would also take into account corrections, omissions which had come up during the debate of the report itself. In this regard, the Secretariat urged Members to put their comments into writing by 2 June as this would facilitate taking them into account. For example, the Secretariat referred to the general comments made by the European Communities in respect of market access to the effect that the draft gave the impression that there were two distinct sides of the debate. It was difficult to see how one could

[54] Paragraph 30 of the Report of the Meeting held on 21 March 2002 (WT/CTE/M/29, 7 May 2002) reads: "30. The representative of the Czech Republic said that at the Doha Ministerial Conference the Czech Republic had supported new multilateral trade negotiations, with attention to agriculture and trade and environment. The Czech Republic had established an Intersectoral Steering and Coordination Commission for WTO Affairs to ensure its active participation. For several years, the Czech Ministry of the Environment had cooperated with the Ministries of Industry and Trade, and Agriculture; this cooperation would be intensified as farming and environmental conservation were closely linked. Today's agricultural systems should promote environmental values by maintaining landscape, conserving biodiversity and protecting historical features. Society demanded that farmers manage their land in ways which also provided environmental services to the community. Besides food production, farmers should care about the quality of public goods, such as rural landscape (recreational value, benefits to tourism). Consumers were also demanding organic farming products, which did not use synthetic inputs, such as fertilizers and pesticides."

reflect this in another way; hence, the importance of suggesting drafting text. Without any more specific comments the Secretariat would not make any further changes to that section.

174. The representative of the European Communities felt that there had to be some confusion. What he had been saying was that the Secretariat would *anyway* have to redraft the part on labelling, for example, because of the earlier debate during the day – this was what the first page of the report stated.[55] Did this mean that there would be a need to give comments twice? This was a small point, but what actually needed to be done was to redraft in light of all the material on the table, and then issue a second draft.

175. The representative of the United States wished to make a procedural point. He stressed that it would be very helpful, for transparency reasons, to have any comments provided in writing to the Secretariat circulated.

176. The Chairman considered that the United States had made a valid point and stated that any such comments would be circulated as Job documents.

177. The representative of Japan wondered if the comments to be made by June 2 would be on the first draft, and whether this would include the morning's discussion.

178. The Chairman confirmed that the basis for comments to be made for 2 June would be the first draft of the Cancún Report.[56] The Secretariat would also take into consideration comments made orally at the current meeting.

179. The representative of the European Communities recalled that paragraph 32 referred to "recommendations, where appropriate, with respect to future action, including the desirability of negotiations". He stressed that the European Communities would probably be among those delegations that would want to recommend certain actions to the Ministers. This did not need to be negotiations, that was clear. It could be about other issues, such as the intensification of work, or changing the direction of this work. The European Communities wished to flag this now as it was still finalizing its internal debate on exactly how it was going to proceed. It could be useful, in this regard, to consider whether there was a need for deadlines, or whether there was a need to urge delegations to come forward as soon as possible on these issues – as the Chairman had done in previous meetings. The fact that nothing, or almost nothing, had been said at this meeting should not mislead delegations into the opinion that nothing was forthcoming. The European Communities was reflecting actively on whether it should or should not recommend something. It was clear, obviously, that one option was *not* to recommend anything and just keep the mandate as it was. Although the Chairman had urged delegations to come forward, the European Communities was sorry that it could not bring anything forward at this meeting, but nevertheless, it did not want to hear that it had never spoken about this on future occasions. Clearly, the European Communities was reflecting on this particular issue.

180. The Chairman reminded the European Communities that he had, at the last meeting, strongly encouraged all Members to come with recommendations as soon as possible.[57] If there was a recommendation the European Communities would wish to make it would of course be considered. If there were none, so be it. On process, however, time was running short. The report would be based on whatever had been said and whatever had been tabled by the 7 July meeting of the CTE Regular. This was formally the last chance before the General Council meeting.

181. The representative of Australia recalled that on the issue of recommendations, he had made his views clear at the last meeting. Australia's position had not changed since then.

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[55] See footnote 46, *supra*.
[56] See footnoted 43, *supra*.
[57] Paragraph 99 of WT/CTE/M/32, 4 March 2003.

182. The representative of the United States shared Australia's concern and recalled that the United States too had made this point at the last meeting. In fact, the point was even more relevant now; it would be extremely difficult to be sympathetic to a late submission of potential recommendations and to have time to consider them on their merits and to seek consensus. The next meeting would be the last for the CTE Regular to finalize the report.

183. The European Communities felt that the Committee was being unnecessarily cautious on this particular issue. For example, there had been a very good debate on labelling, and if someone wanted to recommend that a better work programme was needed, or more technical assistance so as to achieve that – it should not be too late to discuss this. One of the reasons the European Communities was quite late was that it wanted to have a substantive debate based on a paper. This did not mean that the level of ambition had to go in one particular direction. There might be useful things that could be recommended to Ministers that were completely innocent, and which might actually be helpful for the debate and for getting these issues addressed in a pragmatic and professional manner. Hence, when the European Communities raised the point about recommendations, it did not necessarily mean it had in mind a grand new work programme on trade and environment. That was not the case.

184. The representative of Brazil reiterated the comments made by her delegation regarding recommendations from the last meeting. On the EC point, she could not see where the problem was as all the discussions held at the current meeting would be reflected in the factual part of the report. In fact, this captured everyone's concerns.

C. CONCLUSION

185. In concluding, the Chairman quoted the text on the first page of the draft Cancún Report:

> "This first draft is presented to Members subsequent to the agreement reached at the last meeting of the CTE Regular. It is intended to be a basis for discussion. It may be updated to reflect (i) discussions at the remaining meetings prior to the 5th Ministerial Conference, (ii) comments and corrections from Members and, where appropriate, (iii) recommendations for future action." [footnote omitted]

186. He reminded delegations once again that they had an opportunity to give written comments until **2 June 2003**. If necessary, the Chairman would call informal meetings to ensure that the CTE Regular would be in a position to adopt the report at its meeting of 7 July 2003.

VI. OTHER BUSINESS

187. The representative of Venezuela urged the Secretariat and Members when scheduling meetings to take into account MEA meetings held at the United Nations in Geneva. There was a need to avoid overlap of meetings. For example, many delegations, particularly small ones, were not present for the current meeting precisely because they were attending the on-going Basel Convention meetings.

188. The Chairman recalled that there had been a discussion at the last meeting on dates of the meetings of both the CTE Regular and Special Session. The dates for all meetings in 2003 had been agreed by Members. The Secretariat would take into account the concern expressed by Venezuela in booking future meetings.

189. He recalled that the next meeting of the CTE Regular would be on **7 July 2003**.