

# WORLD TRADE ORGANIZATION

RESTRICTED

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## Committee on Trade and Environment

### REPORT OF THE MEETING HELD ON 12 SEPTEMBER 1995

#### Note by the Secretariat

1. The Committee on Trade and Environment held its fourth meeting on 12 September 1995 under the chairmanship of Ambassador Juan Carlos Sánchez Arnau of Argentina. The agenda for the meeting was adopted as contained in WT/AIR/143.
2. The Chairman noted that the focus of the meeting would be on items six and seven of the Ministerial work programme. The Secretariat's background documentation for item six was contained in WT/CTE/W/1, and for item seven in PC/SCTE/W/7 and WT/CTE/W/6.
3. The Chairman also noted that, the Secretariat had prepared a paper on "the negotiating history of the coverage of the Agreement on Technical Barriers to trade with regard to labelling requirements, voluntary standards, and processes and production methods unrelated to product characteristics," which had been issued jointly with the TBT Committee as WT/CTE/W/10 and WT/TBT/W/11. He was continuing his informal consultations on the possibility of holding a joint informal meeting of this Committee and the TBT Committee concerning eco-labelling.

#### Item six of the work programme:

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

4. The representative of India noted that environmental measures covered a broad spectrum and included, *inter alia*, charges and taxes for environmental purposes, product requirements, including standards and technical regulations, eco-labelling, packaging and recycling requirements for achieving environmental objectives. It was becoming increasingly clear that such measures had significant effects on market access for those countries, a large majority of which were developing countries, who exported to markets that prescribed those environmental measures. The market access effects of environmental measures was a cross-cutting issue and should be examined in relation to other items, not in isolation. Depending on the kind of effects environmental measures had on market access, it was possible to analyse the reasons for the effects in order to arrive at possible conclusions and recommendations. The effects could be either positive or negative. Concerning the positive effects, it had been noted that environmental measures could provide market opportunities. However, such opportunities were not always easy to exploit and required expertise, technology and resources, which were not always available to the large majority of trading nations.
5. He defined the negative effects on market access as anything that made it difficult, more expensive or impossible to gain access to a market due to the adoption of environmental measures

or trade measures for environmental purposes as compared to the situation prior to their adoption. There were the various types of adverse effects on market access arising from environmental measures. The most common effect was the financial resources that needed to be devoted by a country which was trading in a market that had adopted such measures. For such a country to gain access to that market, substantial expenditure might have to be incurred to adapt to new standards, regulations, packaging or labelling requirements. If such financial resources were not available, market access would be adversely affected or even denied. Even assuming that the environmental measures were necessary, effective and fully justified, the question was whether the country trading in a market which adopted such measures should have to pay the cost or should use such financial resources for its own environmental objectives, on the basis of common but differentiated responsibilities. This issue assumed importance as countries adopting environmental measures were developed countries and those that had to cope with them were almost always developing countries.

6. Another negative effect of environmental measures on market access was related to technology and expertise. Requirements for environmental purposes relating to products which had negative implications for market access, for example, might involve technology and expertise which was not available in a particular country or only on a restrictive basis. Another element was whether a country had access to the material to cope with its trading partner's environmental measures. For example, environmental packaging requirements might require access to certain types of packaging materials that were not available in the country concerned and this had market access implications. Also, the administrative apparatus that might be required in the exporting country to meet and adhere to those environmental measures assumed importance for developing countries, particularly the least developed ones. It was important to recognize that developed countries had adopted a plethora of environmental measures which had negative effects on market access. Inasmuch as these covered developing country exports, developing countries were vulnerable to such effects. The next phase of the analysis would be to determine why these negative effects were occurring and how they could be avoided. His delegation's view was that most, but not all, negative effects were due to the fact that trade measures were not necessarily the best or appropriate choice to address environmental issues and that environmental measures were based on arbitrary standards and criteria.

7. Given the fact that it was accepted that environmental standards would differ from country to country, the existence of less strict environmental standards in a lower income country was not a sufficient basis for claiming that these standards were too low or that the country was manipulating its environmental standards in order to improve its competitiveness. Any attempt, therefore, to harmonize standards through the adoption of environmental measures with significant trade effects would be highly misplaced and counterproductive. It was the extraterritorial imposition of one set of standards through environmental measures that resulted in the most negative market access effects. Criteria for adopting environmental measures should be scientific, equitable and multilaterally-agreed. If not, the criteria would be arbitrary and would amount to thinly veiled protectionism, which would have disastrous market access effects.

8. Environmental measures with significant trade effects must be compatible with the open, equitable and non-discriminatory nature of the multilateral trading system, which meant that these measures must conform to its fundamental provisions, *inter alia*, MFN and national treatment, including effective equality of competitive opportunity. If Article XX of GATT 1994 were involved for environmental measures with significant trade effects, then it should be subject to the requirement that such measures not be applied in a manner which constituted a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevailed or a disguised restriction on international trade. Furthermore, the environmental measures should be

necessary and effective to the achievement of the stated objectives. His delegation was prepared to examine and consider whether any modifications of WTO provisions were required regarding environmental measures which had significant trade effects. In this respect, strengthened and increased discipline on WTO provisions might be justified so that these measures were not abused or resulted in negative effects on market access. Improved market access for developing countries was the key to enabling them to achieve environmental protection and sustainable development. It would be ironic if developed countries were to adopt environmental measures which had the effect of preventing developing countries from achieving environmental protection and sustainable development.

9. India's view was that any move to base environmental measures on PPMs-based criteria was misguided, arbitrary and counterproductive. It was logically untenable as it went against the fundamental premise that each country had a sovereign right to choose its environmental standards while accepting the common but differentiated responsibility of environmental protection. It was legally indefensible because of the extra-territorial dimension and the concept and jurisprudence of "like product" in GATT/WTO law. His delegation considered that PPM-related issues were the slippery slope that must be avoided. In sum, although environmental measures could have both positive and negative market access effects, the effects on developing countries seemed to be largely negative, which was attributable to non-availability and lack of financial resources, technology, expertise and material and absence of an administrative infrastructure. However, these negative effects could be mitigated or eliminated if such measures were based on reasonable standards, criteria that were scientific, transparent, multilaterally-agreed and equitable, and were compatible with fundamental WTO provisions. There was a case for improved and strengthened WTO provisions for environmental measures to ensure that they were not abused. The idea of adopting environmental measures based on PPM-based criteria was highly questionable and objectionable from both a legal and environmental point of view and had serious implications for developing countries' market access.

10. Concerning the second part of this agenda item, the representative of India said that trade liberalization and open, non-discriminatory and equitable markets were a *sine qua non* for developing countries to achieve the goals of environmental protection and sustainable development. However, in addition there needed to be appropriate domestic and international environmental policies in place. His delegation rejected the alternative view that trade liberalization should not continue except in qualified circumstances since trade liberalization for most developing countries was necessary if any progress were to be achieved towards environmental protection and sustainable development.

11. In addition, the notion of full internalization of environmental costs was unacceptable and infeasible. Principle 16 of the Rio Declaration clearly stated that national authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment. The factors which needed to be considered concerning environmental cost internalization were feasibility and the extent to which this principle could be promoted. In this respect, national authorities had the primary responsibility and it was doubtful that international pressure through trade measures could achieve meaningful results. Although public interest was an important factor, national authorities were best placed to make the policy choices. In the final analysis, the trade-off between environmental quality and income quality belonged to the sovereign economic space of a state. It should be taken into consideration that environmental cost internalization might cause distortions in international trade and investment and that it was misleading to consider it as an end in itself. Therefore, his delegation did not accept the claim

that the scale effects of trade liberalization were negative as long as environmental costs of production were not fully internalized and reflected correctly in market prices. He said that states had the sovereign right to exploit their resources pursuant to their environmental standards and priorities. Their only responsibility was to ensure that activities within their jurisdiction did not cause environmental damage to other states or areas beyond their national jurisdiction. Such transboundary environmental issues, which were best settled through MEAs, were the subject of discussion under item one.

12. His delegation noted the arguments that cited over-consumption, particularly in OECD countries, as the primary source of global environmental degradation. This was recognized in Principle 7 of the Rio Declaration which stated that, in view of the different contributions to global environmental degradation, states had common but differentiated responsibilities. Moreover, developed countries had acknowledged the responsibility that they bore in the pursuit of sustainable development given the pressures their societies placed on the global environment and their command of technologies and financial resources. In this regard, the empirical evidence cited in WT/CTE/W/1 provided pointers to possible conclusions for the Committee. His delegation agreed with the thrust of section I that trade liberalization was not merely beneficial to achieving the goals of environmental protection and sustainable development, especially for developing countries, it was a *sine qua non*. In addition, domestic environmental policy was a key factor in ensuring that trade liberalisation contributed to environmental protection and sustainable development.

13. There were several flaws in the argument that the first-best policy response might not be politically feasible, especially if it had serious competitiveness implications for the domestic economy and the negotiation of an MEA might involve such difficulties that unilateral action was instead necessary. First, the competitiveness implications were uncertain and there was considerable data and research in this connection. Second, stating that unilateral action was necessary because the negotiation of an MEA would be difficult had dangerous and disastrous implications for the multilateral trading system. This had been referred to as the "slippery slope", which had the potential to wreck all rules governing the international trading system. For this reason alone, if no other, this approach deserved to be rejected.

14. WT/CTE/W/1 correctly noted that arguments supporting the use of unilateral trade sanctions to secure changes in environmental policies abroad and the use by countries that internalized their environmental costs of compensating tariffs against competition from imports whose environmental costs of production had not been internalized were weak both analytically and empirically. Also, their use raised questions about the use of trade policy for extrajurisdictional, non-trade purposes and for neutralizing differences in competitiveness arising from national environmental resource endowments and constraints and/or differences in national policy objectives and priorities. These alone should be reasons for rejecting the use of such trade restrictions under any circumstances. He inquired as to whether any useful purpose would be served by discussing such topics as they were aspects which clearly fell outside the Committee's mandate. He considered that there was near unanimity of views on the WTO implications of such trade restrictions.

15. The representative of Egypt said that item six was a cross-cutting issue and there were no easy answers to the multitude of questions it raised. Although it might be argued that this item could be dissolved under other items, her delegation's concern was that such an approach would lose the focus on market access, especially in relation to developing countries, in particular to the least developed ones. Therefore, this item should be treated on its own, as it was central to the subject, particularly for the special attention it ascribed to developing countries. In addition, when

treating various environmental measures, the focus should be on two main aspects: (i) the consistency of such measures with effective environmental protection, i.e. whether the environmental claims triggering such measures were credible; and (ii) the market effects of different regulations implemented in different countries, including the costs of complying with the new requirements which might be higher for foreign suppliers than domestic ones.

16. Environmental measures had positive effects when they were a source of job creation and market opportunities. They had negative effects when they unduly restricted market access, served as a guise for the protection of domestic industry and became excessively stringent, not credible and unacceptable. WT/CTE/W/1 addressed the environmental benefits of removing trade restrictions and distortions; it was equally important to her delegation to address the other aspect of item six, i.e. the effects of environmental measures on market access. WT/CTE/W/1 noted some salient aspects, which the Committee should consider in depth, such as tariff escalation and non-tariff barriers that were trade-distorting measures to which OECD countries often resorted. Such measures held back income growth in other countries, predominantly developing ones, impeded their exports of labour-intensive, potentially more environmentally-friendly goods, and obliged their producers to resort to alternative production opportunities, notably intensifying output of natural resource-based commodities to raise export earnings, which caused environmental damage possibly beyond sustainable limits.

17. In WT/CTE/W/1, tariff escalation was referred to as an impediment to market access for value added raw materials. This was true for the processing of raw materials and agricultural products. It was noted that tariff escalation added to the obstacles to economic diversification, as well as limited the resources available for better environmental protection and poverty reduction, which her delegation considered was the root of environmental degradation in developing countries. In this context, she said that the level of tariff escalation in major developed countries had increased in the Uruguay Round's aftermath. Such issues should be studied and their impact on developing country exports assessed. Her delegation considered these issues to be among the Committee's highest priorities, especially the impact of increased tariff escalation on agricultural products and other developing country exports.

18. Concerning the effects of environmental measures on market access with special emphasis on developing countries, which had not been dealt with in WT/CTE/W/1, her delegation considered that this should be addressed in a substantive study. The study should include an examination of the policy issues associated with environmental measures which obstructed market access, such as bans on chemicals, packaging, standards, government regulations and product content requirements. It would also be useful to draw on UNCTAD studies which showed that some environmental policy measures had different competitive effects on developing and developed countries and clarified the different levels of compliance costs countries incurred in order to abide by similar rules and regulations. Her delegation supported the request by the delegation of Sweden, on behalf of the Nordic countries, in July 1994, to associate UNCTAD in discussions on these issues. It would be worthwhile to examine bans on chemicals, including whether bans were applied because the production process was harmful and, if so, whether such bans could legitimize bans on the end-product, even if those chemicals were contained in the smallest proportion and could hardly be harmful. She inquired as to the conditions under which it would be decided whether it was legitimate to extend bans to the end-product and based upon which scientific evidence.

19. Second, she inquired as to the prospects of developed countries banning products based on "partial risk assessment" or the "precautionary principle" as an easy way out given the complexities and expenses attached to legislating such bans on the basis of technical standards,

scientific evidence or full risk assessment. The study should address the issue of "risk assessment" and weigh the economic costs, including the trade effects, against the environmental benefits and the notion of "proportionality," as discussed and implemented in OECD countries. The study could provide alternatives as to the possible extension of this concept and its application to trade with developing countries. The study should also focus on the effects on developing country exports, particularly in sectors which were environmentally sensitive and vulnerable and constituted the bulk of their exports, such as textiles and clothing, footwear and leather products, and wood products. The study should examine the question of competitive opportunities available to exporters and importers as a consequence of certain environmental measures, and whether they became distorted following a disproportionate bearing of the costs and how they impacted on WTO principles, notably national treatment and non-discrimination.

20. A further issue related to the numerous standard setting bodies, amongst which there was not necessarily any coordination taking place. She referred to the environmental management standards of the International Organization for Standardization (ISO), the World Bank's sectoral environmental standards designed to guide project lending, the United States Export-Import Bank's project standards, and the OECD, etc. With all of these environmental standard setting bodies and efforts simultaneously underway, there was a risk that competing programmes would emerge which would create new trade and environment tensions, rather than resolve existing ones. The implications for market access, particularly on developing country exports, of these standard setting bodies should be examined. It was worthwhile to examine the alternatives available for possible solutions, such as policy convergence and establishing common data, or baseline standards. In her delegation's view, the best way to proceed was through international consensus on the basis of an MEA.

21. The representative of Korea supported the comments of the delegations of India and Egypt. He noted that the first part of item six had been discussed several times, especially in the context of items three and four. Therefore, work under this item should be carried out in parallel with, and benefit from the discussions on those related items, while giving special attention to developing country interests. Concerning the relationship between trade liberalization and environmental protection, trade was not the root cause of environmental degradation. Production and consumption activities could cause environmental problems, and trade could magnify these problems. In other words, at the source of the environmental problems lay market or policy failures to internalize environmental costs, which could be amplified by trade.

22. His delegation agreed with the general principles of economic policy assignment and environmental policy considerations, noted in WT/CTE/W/1, which had several immediate policy implications. First, environmental problems should be dealt with at the source of the problem, rather than at the border. Second, trade measures should be neutral and not be used for policy purposes other than trade. Third, whenever trade restriction was considered to be necessary for environmental purposes, the opportunity costs of restricting trade, i.e. the foregone benefit of not having trade restrictions, should be borne in mind. He reiterated the importance of the principle of having a separate policy instrument for each policy objective. Attaining higher welfare through trade would serve as one policy objective, and achieving welfare improvements through environmental protection was another. The former required policy instruments toward trade liberalization and the latter required appropriate domestic environmental policy reforms and, if necessary, cooperative efforts among concerned nations. He agreed that trade policies should aim to reduce trade barriers, while remaining environmentally neutral; if they were to create (or fail to reduce) environmental costs, then separate policy instruments were called for.

23. As to the specific measures restricting or distorting trade and the environmental benefit of removing them, he considered that the analysis should proceed in line with the above-mentioned principles. The removal of trade restrictions and distortions, such as tariff escalation and export restrictions, would bring further benefits in trade terms as well as environmental benefits by increasing resources available for sustainable development and allowing sustainable resource exploitation, when implemented with appropriate domestic resource management policies. In this respect, the focus should be on how to assist and facilitate capacity building and structural adjustment in developing countries, given the benefit that could be obtained by trade liberalization.

24. The representative of Mexico said that this item encompassed two key aspects that the Committee should analyse in depth in order to comply with its terms of reference, which were based on the desire to find a way to strengthen positive interaction between trade and environmental measures in order to promote sustainable development, with special regard for the needs of developing countries, in particular the least developed ones and in a way that was compatible with an open, equitable and non-discriminatory multilateral trading system. She considered the first aspect, the effect of environmental measures on market access, to be a cross-cutting issue that should filter through to all other items. Although specific trade measures and environmental requirements were being discussed under other items, the aim was to shed light on the relationship between those measures and WTO provisions. The aim under this item was to identify the way in which such measures affected market access, especially for developing countries and to evaluate, on that basis, the extent to which the use of those measures contributed to sustainable development.

25. If past discussions and various Secretariat, UNCTAD and OECD studies were recalled, it was possible to distinguish the positive and negative effects these measures might have on market access and competitive opportunities. Recalling, as had other delegations, the importance of including the work of UNCTAD and other organizations in the discussions, she referred to the results of UNCTAD's empirical studies which had been discussed at the UNCTAD *ad Hoc* Working Group on trade, environment and development in June 1995. The analysis had clarified that the use of requirements which appeared to reflect high environmental standards might have positive effects on market access, depending on several factors, above all the technological and financial capacity of enterprises and countries to respond to environmental policies. Also, the recent OECD Report on Trade and Environment, which had been agreed at the Ministerial level in June 1995, which the OECD had submitted to the *ad Hoc* UNCTAD Working Group, noted that high levels of environmental protection in response to government policies or consumer preferences might have positive effects on the competitiveness of domestic producers and countries. It also noted that the development of new industrial sectors had been stimulated to provide the equipment and services needed to comply with new environmental protection measures and new market niches. The report recognized that countries with high environmental standards were likely to have a comparative advantage in the expanding market for environment-related technology, equipment and services, that high environmental standards were increasingly recognized as a market weapon, and that better information on environmental effects influenced consumers, who increasingly preferred environmentally-friendly products.

26. New environmental measures and requirements clearly had positive effects, not only on opportunities to compete in markets for the specific products subject to such requirements, but on markets for technology, equipment and related services. Unfortunately, the positive effects were confined to countries that had the financial and technological capacity to innovate and explore new market niches. The case of certain environmental measures and requirements, such as eco-labelling and packaging, illustrated that eco-labelling was increasingly being used as a market weapon and countries, particularly developing countries, had to adapt to such requirements,

usually at high cost in order not to win but to avoid losing market share. Certain new packaging requirements had, *inter alia*, generated new packaging and materials markets for countries that applied them, thereby displacing, in some cases, traditional packaging and materials that might be more environmentally-friendly. Their imposition on imports from third countries produced negative effects, not only on market access and opportunities to compete, but also on the exporting country's environment, such as in the case of PPM-related measures and requirements. Since the latter were based on criteria that suited the environmental and technological conditions of the countries that apply them, they had a discriminatory effect on third countries for which adaptation was economically costly, and in many cases, contradictory and/or environmentally counterproductive.

27. UNCTAD's empirical analysis illustrated that it could be more costly in relative and sometimes in absolute terms for developing countries to comply with specific environmental standards than for developed countries, as the lack of investment in the necessary infrastructure made the cost of compliance higher. Also, the required technology and input to comply with such standards might not be available since the criteria had been based on the environmental conditions and available technologies in the country applying them, which might also act to protect domestic industries. Increasingly, new environmental measures and requirements were having an adverse effect on developing countries exports and, in many cases, their inability to adapt was acting as a non-tariff barrier to markets for their products. These adverse effects resulted in a vicious circle where the more limited the opportunities to compete, the less resources were available to invest and to improve environmental policy. Environmental measures which restricted market access and reduced the trade opportunities of third countries, especially developing countries, did not help to promote sustainable development or ensure better global environmental results. The Committee, in accordance with its mandate, would have to find a way to ensure that new environmental measures and requirements did not have such adverse effects and that their use did not lead to protectionist advantages. These measures should be *de jure* and *de facto* compatible with basic WTO principles, particularly non-discrimination and national treatment, and the latter should be applied so as to provide equal opportunities to compete. Ensuring this would make an essential contribution to the Committee's goal of promoting sustainable development.

28. Another way to promote sustainable development was to consider the environmental benefits of removing trade restrictions and distortions, such as production and export subsidies, which would yield direct environmental benefits when the products they favoured were more polluting or were produced in a more polluting way than competing imported products. Significant benefits could also accrue from removing the bias against competing producers in other countries which had been forced into alternative, more environmentally damaging activities and whose loss of income had aggravated resource constraints necessary to address environmental protection. If the Committee wanted to strengthen the positive interaction between trade and environment in order to promote sustainable development, it would have to recognize and act upon the adverse environmental effects caused by the policies applied by countries that protected their agriculture, a sector which was particularly environmentally sensitive. Similarly, tariff escalation which had direct or indirect adverse environmental effects should be removed.

29. The representative of Australia said that a theme which clearly emerged from WT/CTE/W/1 was the importance of trade liberalization being accompanied by good environmental policies. Trade liberalization had the potential to deliver significant environmental benefits through promoting a more efficient allocation and use of resources. However, this potential would only be realized if complementary domestic policies were implemented to deal with the environmental costs involved in economic activity, including proper valuation of environmental assets to help discourage the degradation and depletion of natural resources.



WT/CTE/W/1 noted that the major differences of opinion on the relationship between trade liberalization and the environment arose over the design and sequencing of policies to address the fact that trade liberalization might exacerbate existing environmental problems, if proper policies for environmental protection and sustainable development were not in place. This was an area where empirical studies might make a valuable contribution, including UNCTAD's work.

30. From the point of view of maintaining a strong, equitable and non-discriminatory multilateral trading system, policies needed to address the root causes of environmental problems if they were to avoid unjustified trade restrictions. This meant that domestic policymakers must accept their responsibility to ensure that good environment policies were in place and that these policies were improved in tandem with economic growth and in line with the challenges that growth imposed as well as with the resources it made available. Improvements in social welfare would only be delivered if governments attached priority to maximizing environmental quality as well as to promoting economic growth. A strong multilateral trading system could provide a supportive environment for the adoption of good domestic environmental policies, including policies to promote the internalization of environmental costs. An important constraint which internalization policies might face was poverty, as the poor might lack the resources to avoid environmental degradation. Providing poor producers with opportunities for improving their incomes might be an essential ingredient in creating conditions to promote more sustainable resource use, encourage better environmental protection, and implement policies to internalize environmental cost. In particular, the Convention to Combat Desertification drew attention to the close association between socio-economic conditions, widespread poverty and desertification and highlighted the importance of action by the international community to establish an enabling international economic environment as a means of supporting the efforts of countries to combat desertification.

31. The multilateral trading system could make an important contribution to assisting the actions of domestic policymakers in addressing desertification and other environmental challenges through creating opportunities to earn income. However, in practice there had been important limitations on these opportunities. The long experience with tariff escalation, agricultural trade restrictions, and the textiles trade illustrated how the use of trade measures by wealthier countries could limit the options available for other countries, and could have important implications for income transfers and the distribution of wealth. Trade policy had too often been an instrument for the major economic powers to shift onto other countries the costs imposed by domestic policy choices. The debate about the linkages between trade liberalization and the environment offered an opportunity to highlight these issues and to educate domestic constituencies about the adverse international consequences which could occur if equity considerations were not taken into account when trade and trade-related measures were adopted, including environmental measures.

32. A basic question that needed to be asked when considering alternative measures for achieving domestic policy goals was whether any of these measures would shift the costs of achieving domestic policies onto other countries. Increased environmental consciousness in many parts, with its strong awareness of the global dimensions of environmental issues, was an opportunity to carry this message to domestic decision making processes. As a first step, it was important to consider that many countries, faced with extensive poverty and serious environmental problems, were marginal participants in world trade and relied on exports of a few commodities. The trade and environment debate could help draw renewed attention to the situation of those countries. The close relationship between poverty and environmental degradation highlighted the need for action, including the provision of technical assistance, to ensure that all countries could take advantage of the opportunities provided by the multilateral trading system to promote sustainable income-generating activities. Improvements in market access opportunities and in

other trading conditions needed to be complemented by assistance to countries, particularly the least-developed, to adopt policies that would translate these opportunities into improved social welfare.

33. His delegation considered that the Committee could focus on identifying a number of areas where the multilateral trading system could contribute to the promotion of sustainable development, including reduced tariff escalation on processed products, and further reform of trade restricting and distorting policies for agricultural and natural resource-based products. Agricultural trade was one area of direct relevance to environmental considerations as it had a more immediate interaction with the environment than most other areas of trade. Over-use of resources and unsustainable practices could lead to severe land degradation and impose a heavy price in terms of future reductions in agricultural productivity. In many countries the promotion of ecologically sustainable agricultural production was a key requirement for both alleviating poverty and protecting the environment. The multilateral trading system could make a significant contribution to the promotion of more sustainable agricultural production, by generating income earning opportunities for the rural poor. As was recognized, agricultural trade was one area where the multilateral trading system had not fulfilled the vision of the GATT founders. Weaker disciplines and trade restricting and distorting policies in the major industrialized countries had contributed to an agricultural trading system which had encouraged over-use of resources, poor land management practices and inequities in access to markets and resources. In the major industrialized countries, the provision of agricultural assistance through output-related policies had contributed to their environmental problems. As noted in WT/CTE/W/1, studies suggested that these policies had exacerbated environmental problems associated with agricultural production through reducing agricultural diversity, encouraging over-use of pesticides and fertilizers, increasing soil erosion, promoting intensive animal production practices linked with pollution and overgrazing, and increasing ecologically sensitive areas. These policies had affected the ability of other countries to pursue sustainable agriculture and rural development. Production-distorting agricultural policies had contributed to an agricultural trading environment which was often characterized by depressed and volatile prices that had severely reduced rural returns in many countries and by undermining local production through competition from subsidized imports. Low agricultural prices and farm incomes had encouraged poor farming practices that degraded the resource base, and hindered investment in sustainable land management. The Agriculture Agreement, and recent policy changes in several countries, represented important, but only the first steps in the direction of reforming trade distorting agricultural policies. There was great opportunity for unilateral reform initiatives, and further multilateral reform, to enable the agricultural trading system to become a more supportive environment for the adoption of sustainable agricultural practices and for creating income-generating activities to assist the poor.

34. He said that the Committee could contribute to domestic and international debates on the relationship between trade and the environment by emphasising that an essential complement to a strong multilateral trading system was good environmental policies, and if the trading system was to deliver its promise of improvements in social welfare, then economic growth must be accompanied by better environmental protection. The Committee could draw attention to the equity issues raised by the use of trade and trade-related measures, including measures for environmental purposes, and emphasize that improvements in one country's welfare should not be achieved in ways that shifted the costs to others. Also, it could highlight the environmental reasons for further action, including strengthened technical assistance, to ensure that all countries could benefit from the multilateral trading system and promote sustainable income generating activities, particularly least developed countries. The Committee could focus on areas where further reform of trade restricting and distorting policies could make a significant contribution to the promotion of sustainable development, including tariff escalation for processed products, and

trade-distorting subsidies and access restrictions for agriculture and natural resource-based products.

35. The representative of Hong Kong endorsed the recurrent themes that trade was not the root cause of environmental degradation and that environmental problems were best solved at their source by environmental policies. Concerning the relationship between environmental measures and market access, his delegation did not consider that, as a general rule, environment-related trade restrictions were warranted. Trade sanctions were costly at the importing and exporting ends as they created market distortions and risked breaching and undermining WTO rules and objectives. Furthermore, they were rarely necessary and seldom effective in achieving environmental goals. Nor was there justification for trade sanctions to address the competitiveness impact of environmental policies on domestic industries. There was no evidence of a systematic relationship between existing environmental policies and their competitiveness impact.

36. His delegation was guided by the fundamental idea that trade and environment were mutually supportive. The arguments were well known that trade induced economic growth, investment, education and technology transfer and that better living standards, social awareness and technical knowhow were prerequisites for effective environmental protection. An assurance of improved market access was particularly important for developing countries, especially the least developed ones. Empirical studies had dispelled the myths that trade liberalization might result in lower environmental standards, or lead to industrial migration to pollution havens. He said that the challenge was the ability of Members to translate these ideas into action and to capitalize on the complementarities which existed between sound environmental policies and trade liberalization. Tariff escalation in primary commodities was a priority area for which results could be achieved.

37. He commented that there were issues arising from the pursuit of environmental issues which were likely to prove highly controversial and which would not likely clash directly with WTO principles, such as the concept of cost internalization. His delegation was mindful of the implications of the policy proposal, referred to in WT/CTE/W/1, that progress be made in designing efficient environmental policies to value environmental resources correctly. The advocates of this policy would have to answer, among others, to questions concerning WTO-conformity. For example, there were WTO rules which dealt with the pricing of goods below normal value and subsidized exports, but the reference points must be objective and quantifiable. He inquired as to whether the proposal to value environmental resources correctly was synonymous with the suggestion that environmental costs should be fully reflected in prices and, if so, was the intention to bring in the idea of "anti-ecodumping" duties or "green countervailing" duties and how would the "dumping margin" or the "subsidy" be determined. He asked whether it was reasonable to suggest that governments were rendering an export subsidy if they did not charge their industry the full cost of environmental clean-up, for example, for waste disposal or water treatment. He raised these questions to underline his delegation's concern, which others might share, about the WTO-compatibility of environmental measures. Regarding the Polluter Pays Principle, his delegation had no serious objection in principle. However, Members must be able to decide on the rate at which this issue was addressed depending on their economic circumstances.

38. The representative of New Zealand referred to the central issues concerning the environmental benefits of removing trade distortions. First, there was no emphatic evidence from empirical studies that trade liberalisation has systematically harmed the environment, and there was considerable evidence to show that trade liberalization could make a powerful contribution to environmental protection. Second, there might be instances where trade liberalization did not contribute to environmental protection, but sound domestic environmental policies which

addressed problems at their source, rather than trade policy measures which addressed problems at the border, were the most effective policy tool. Third, the benefits of trade liberalization included that it improved the efficiency of resource use, lessening demands on the environment; generated new resources to tackle environmental problems and poverty; raised incomes and thereby appeared to reduce rates of population growth; facilitated exports of environmentally-friendly goods and services; and helped developing countries diversify their economies. Fourth, agricultural trade liberalization appeared to be particularly environmentally beneficial.

39. In approaching this issue, his delegation emphasized the distinction between measures which would yield environmental benefits and be WTO-consistent and measures which might also provide environmental benefits but were WTO-inconsistent. These two types of measures needed to be addressed differently. His delegation considered that trade liberalization was environmentally positive for the reasons cited above. Where negative environmental effects arose, they could usually be mitigated by appropriate domestic policy measures. It was clear to his delegation that trade protectionist measures were in most instances not environmentally positive.

40. WT/CTE/W/1 pointed towards ways in which WTO Members could garner environmental benefits from measures, such as the elimination of trade distortions, which also were WTO-consistent and had the attraction of avoiding friction between achieving environmental goals and international trade obligations, as well as gave concrete expression to the objective in Agenda 21 of making trade and environment mutually supportive. In the first best versus second best debate, his delegation agreed that governments should seek the more environmentally effective policy response, i.e. the one which tackled the problem as close to the source as possible, rather than opt for second best trade solutions which were environmentally less effective. The argument that unilateral action to apply trade measures might be necessary where first best policy responses were not politically feasible, especially if they had adverse competitiveness implications for the domestic economy, was contrary to the goal set out in Agenda 21 of promoting sustainable development through trade liberalization. His delegation and other OECD governments had rejected demands to introduce protectionist or WTO-inconsistent trade measures to compensate for real or perceived negative competitiveness effects of environmental policies. UNCTAD's recent study on the internalization of environmental damages in agriculture concluded that it was difficult to establish whether welfare costs tended to be greater for trade or environmental distortions. Whether or not the welfare loss of a second-best trade restriction had been outweighed by the environmental gain, there was a strong argument against the use of trade policy as an environmental tool. As the UNCTAD study noted, that was because the political process had a limited ability to distinguish spurious from legitimate claims for protection.

41. Regarding the opportunities for mutually supportive trade and environment policies, WT/CTE/W/1 identified several WTO-consistent policy approaches, which were imperfectly implemented at present. These included reducing tariff escalation in primary commodity importing countries, reducing certain production-boosting subsidies especially domestic agricultural support and export subsidies, and reducing border protection which engendered unsustainable overproduction in agriculture in particular. WT/CTE/W/1 noted that tariff escalation was apparent in the forestry, mining, fisheries and agriculture sectors. The environmental effects of tariff escalation would depend on specific circumstances, but it appeared to be generally valid that it encouraged undesirable environmental effects in a variety of ways and also was generally recognized as undesirable from a trade policy perspective. Nonetheless, tariff escalation in major developed country markets had increased in the Uruguay Round, for example for hides, skins and leather products. This suggested, as had been mentioned by other delegations, that this was an area where there could be future scope for removing trade distortions which also would contribute to improved environmental protection. His delegation also noted that

WT/CTE/W/1 had reminded his delegation that export restrictions, duties, taxes and charges, could produce the reverse effect of tariff escalation and potentially distort decisions on the location of processing facilities.

42. Agriculture was identified in WT/CTE/W/1 as a specific sector for which trade liberalization would appear to be particularly environmentally beneficial. Production-related subsidies appeared to be particularly culpable in increasing the intensity of use of fixed factors of production, discouraging diversification, leading to over-grazing and extension of farming to marginal land or, where this may be mitigated by 'set aside' type measures, a consequent pressure to intensify production on remaining available land; intensive use of agri-chemicals, and reducing farm incomes by suppressing prices on world markets, with consequent environmentally damaging rural poverty in many developing countries. In addition to the negative environmental effects of targeted export subsidies, his delegation underscored the harmful effects for efficient producers, particularly those using extensive production methods, which were generally recognized as causing less environmental problems than intensive agriculture.

43. There were important caveats which should be added to the statement in WT/CTE/W/1 that agricultural trade restrictions and distortions were being wound down through the Uruguay Round results. In fact, it had achieved modest reductions in export subsidies but minimal reductions in internal support and border protection had been reconstituted into high tariff equivalents, with, in some cases, only limited impact on actual protection levels because of "dirty tariffication". Thus, a priority from a trade and environmental policy perspective, would be to secure substantial real reductions in domestic support and protection, as well as accelerated reductions in export subsidies in future negotiations. His delegation was conscious that removing agricultural trade distortions in some countries would lead to higher returns to more efficient farmers, which some had contended would have a similar negative environmental effect in developing countries to that already experienced from over production in other countries at present. Appropriate domestic policies were the solution in such instances. It was also necessary to note in this context the fundamental differences in resource use patterns between developed and developing countries. Higher returns would enable developing countries to establish a more profitable and diversified economic base, reduce the need to farm marginal areas, and provide additional resources with which to address environmental problems. Sustainable development would not be furthered by denying countries access to markets for their products, depressing prices through the use of trade restrictions and distortions, or maintaining policies which led to inefficient and wasteful practices in the subsidising country.

44. There would also be a need to monitor the effects on environment and trade of replacement policies. Subsidies to encourage certain environmentally friendly farming practices, such as organic farming or the controlled open air holding of livestock, raised questions about the extent to which such subsidy programmes were decoupled from production, even though they might contribute to its reduction. In this respect, his delegation endorsed the OECD statement that public funded assistance for pollution control "should not create significant distortions in international trade and investment". WT/CTE/W/1 also noted that subsidisation of pollution control and prevention was not consistent with the Polluter Pays Principle, as well as being bad trade policy.

45. Regarding other commodity sectors of interest to his delegation, WT/CTE/W/1 referred to the concern that trade liberalization might encourage extension of farming onto marginal forest land in exporting countries. Specific case studies pointed to some real issues here, but it should be borne in mind that the absence of trade liberalization might also increase pressure on the environment in countries which had protected agriculture sectors and strong domestic demand.

Moreover, when agricultural commodity prices were depressed through trade distortions, the resulting rural poverty might encourage unsustainable practices, often in forest areas. It might be useful to examine ways in which WTO-consistent measures could contribute to sustainable development. For example, if the effect of tariff escalation was that post-Uruguay Round rates of effective protection on wood products were close to 30 per cent, thereby discouraging investment in sustainable forest management in exporting countries, substantially reduced tariffs on wood products could facilitate sustainable forest management.

46. Regarding the concern that trade disciplines were possible threats to the maintenance of high national environmental standards, his delegation considered that higher standards were not precluded under the trade rules, but had to conform to agreed disciplines. As for "pollution havens", his delegation and other OECD governments had agreed in the 1995 OECD Report to Ministers that analytical work had not identified systematic evidence of countries deliberately resorting to low environmental standards, nor evidence of significant industrial migration to countries with lower environmental standards. The Committee should consider the environmental benefits of trade liberalization, which could be manifold and tangible. Although the discussion had focused on the commodity sector, many of the arguments to which his delegation had referred were valid for other economic sectors too.

47. The representative of Argentina referred to the importance of discussing distortions which affected the price formation system and why this was important for the environment. Trade was not at the root of environmental problems, which were due mainly to market and intervention failures. Identifying and eliminating intervention or policy failures was a prior and essential step towards correcting any environmental deficiencies in the price formation system. This being so, it was possible to determine the intervention or policy failures the WTO was capable of considering as being those that affected and were transmitted by international trade. Subsidies and tariff escalation were probably the most pernicious policies from an environmental viewpoint.

48. Concerning the environmental effects of these policy failures, he said that they principally distorted prices which, in turn, altered the distribution system of remuneration for factors in the production process. When the price of traded goods reflected the real cost of the factors involved in their production and distribution, it could be assumed that there was an efficient allocation of remuneration and resources and that international trade helped in spreading this achievement. The real cost of these factors in a situation of perfectly balanced competition was determined by the market, i.e. by the free interplay of supply and demand. Through the price formation system, the market determined the appropriate remuneration for each factor involved in the production process, including environmental factors such as land or other natural resources. This tended to promote the exploitation of natural resources where their productivity was the highest and their economic exploitation took the lowest environmental toll. A policy failure, such as a subsidy, would be responsible for causing the over-exploitation of a resource if it resulted in the remuneration for that factor (or resource) which did not cover its cost of reproduction (in the case of renewable resources), or was less than its replacement cost (in the case of non-renewable resources).

49. Tariff escalation schemes, on the other hand, tended to displace the processing of products far from their production source, which had direct and indirect environmental consequences. The former were related to the greater transport capacity needed to export the product in its primary form. The latter was related to import restrictions and was mainly faced by developing countries which were obliged to over-exploit the resource in order to obtain the necessary foreign earnings. In the case of commodities, and for the reasons cited earlier, the effects of these policy failures were passed on to producers located beyond the jurisdiction from where these policy failures were

virtually “exported”. He gave a hypothetical example of a country subsidising fertiliser use, which was considered to be a substitute for the factor “land” to the point that the remuneration of the land factor in the composition of a crop was altered. As the earth factor was highly relevant in the cost breakdown of a crop, this alteration would affect its price. If the country were also a large producer and had sufficient capital to maintain this policy over an extended period of time, its policy failure would eventually affect international prices for that crop and would thus force producers living beyond its jurisdiction to adopt one of the following alternatives: apply equivalent subsidies, assuming they had sufficient financial resources; or, conversely, cut back on the remuneration of the “land factor”, thus causing the resource to be over-exploited; or, abandon the market.

50. Subsidies could have a double negative environmental effect. For example, producers located within the market which were given a subsidy would be encouraged to increase their fertiliser use, with all the environmental disadvantages it implied, such as pollution of the ground-water and waterways. The producers located outside the subsidised market, which had been forced to lower the prices for their crops, would have to over-exploit the land factor, abandoning crop-rotation systems, using marginal land for crop-growing or turning their attention to cultivating other crops for which their land was less suited. This did not mean that the problem could be solved by applying additional trade restrictions to counter the subsidies, which frequently occurred and which triggered subsidy wars between the major exporters. Apart from generating a negative spiral for the entire international trading system, these additional restrictions did little to isolate the phenomenon especially when such a policy “failure” was exported by a major producer. The proper way to tackle this was to cooperate to eliminate the failure and to preserve free trade. In other words, when the price of traded goods reflected their environmental cost, free trade tended to favour environmental goods but, where the price formation system was already distorted, promoting trade restrictions was not an environmentally valid solution.

51. For this reason, his delegation considered that the key to bringing production and consumption patterns in line with environmental goals did not lie in the application of trade restrictions but rather in an adequate pricing policy, which was one that permitted the market to reflect the environmental cost of the production process. This was because the environmental impact of the economic process was centered, for the most part, on production and consumption patterns, which operated independently of whether the goods produced were distributed within or beyond national borders. The fact that the goods produced were distributed within or beyond national borders might help spread the positive and negative environmental consequences of the economic process, but not create them. Thus, international trade, similar to the environment, was the victim of distortions in the price formation system, which meant that an agricultural subsidy, for example, might have a negative environmental effect and result in a restriction on free trade. His delegation was not suggesting that the elimination of policy failures would suffice, in itself, to guarantee sustainable agriculture. Removing the trade distortions that affected both the environment and the earnings of producers who were victims of such practices, especially in developing countries, was a necessary and essential condition, but that alone would not suffice. Other items of the work programme hinged on the implicit question of when and in what circumstances the Committee would be prepared to accept restrictions on trade for the sake of an environmental benefit. However, at issue under this item was a far more favourable challenge for free trade, i.e. which trade restrictions could be removed in order to obtain environmental benefits. In this respect, his delegation considered that there existed a clear, positive synergy between free trade and the environment.

52. In focusing on the analysis of the distortions affecting commodities, his delegation considered that the Committee should concentrate on the analysis of these distortions in order to

identify those with the most damaging environmental consequences in order to propose a process for their elimination to the Ministerial Conference. The Committee's aim would be two-fold: to promote free trade and to improve the environment in producer countries. He gave three economic reasons for which it was necessary to examine distortions affecting commodities. First, as commodities were at the beginning of the production chain, any distortion in the way their prices were formed by an intervention, such as a subsidy, would have a potential effect on all the supply of products for which they were used as an input. Second, given the commodity cost structure, any distortion in the valuation of the environmental factor would have a considerably greater effect than an equivalent distortion on the cost structure of a manufactured product. Third, given the fungibility of commodities, any distortion created by a subsidy was immediately transferred to the international price system which meant that its possible negative environmental effects were easily projected through international trade.

53. He considered it important for any recommendations that the Committee might make to the Ministerial Conference to reflect a balance between the interests and the subjects of the work programme. In this respect, his delegation had three comments. First, the subjects currently being discussed in this new trade negotiation forum, namely the relations between trade and the environment, were centered on the environmental consequences of production processes and methods (PPMs). However, the objectives related to consumption were being only marginally considered. Even in the case of eco-labels, which were supposed to rectify consumption patterns by inducing the consumer to give preference to a given product over another by comparing the relative environmental toll they took, the bulk of consumer information was concentrated on an evaluation of PPMs. For example, this was the case for standards under consideration in sectors which were sensitive for developing countries, such as footwear and textiles. As such, his delegation considered that the issues centred almost exclusively on PPMs, while consumption targets seemed to be considered exempt from environmental responsibility. Second, PPMs were directly related to the availability of the capital factor in any given society. The greater the capital wealth, the greater the possibilities that a society would have to sacrifice immediate returns for the sake of future returns or an immediate environmental advantage. Paradoxically, in order to do this, developing countries, even though they bore less responsibility for global environmental deterioration, frequently found that they had to adopt defensive positions as if they were indifferent to environmental demands. Consumption patterns were taken as a fact of life to which they had no access. As such, the discussions ended up concentrating on the negative environmental consequences of their shortage of capital wealth. Third, although his delegation did not want to amend the agenda for negotiations on the relationship between trade and environment, for then the agenda would extend beyond the Committee's purview, it wished to highlight the opportunity that this item offered. This item did not lead to an analysis of the negative environmental consequences of the shortage of capital, but, rather to the possible negative environmental consequences of the irrational use of excessive capital. For all the above reasons, his delegation considered that this item should be a priority in the package of recommendations that the Committee submitted to the Ministerial Conference. He proposed that, once the October stocktaking was completed, an informal and specific mechanism should be set up within the Committee in order to identify trade distortions that affected commodity price formation systems, which had the greatest negative environmental effect and to propose mechanisms that would result in their elimination.

54. The representative of Norway considered that, in general, the findings of WT/CTE/W/1 coincided with his delegation's views, for example that no environmental benefits whatsoever might be obtained from trade liberalization or economic growth alone, without an appropriate policy framework in place. If this were not in place, trade liberalization might lead to negative environmental consequences in some cases. No law of the market stated that the additional



resources generated by liberalization or growth would automatically be spent on environmental measures. Thus, policy intervention could and should be used to secure the internalization of environmental costs, without which the idea of choosing first-best policy responses would be a theoretical exercise. In the real world, there was not always sufficient time to wait until such ideal solutions were in place.

55. Concerning the relationship between trade, transport and the environment, his delegation noted in WT/CTE/W1 that the general notion was that trade was held responsible for pollution caused by the transport and distribution activities it involved. However, WT/CTE/W/1 examined the matter from alternative angles, for instance by including all relevant costs in the calculations. Such academic honesty was important to the Committee's fact finding mission and would help it make recommendations on the possible necessity of modifying WTO provisions. In this regard, his delegation considered that the Committee should come up with substantial recommendations. There was a broad agreement among governments from developing as well as developed countries on several MEAs with possible trade effects. The challenge was to find ways to reconcile the need for effective implementation of MEAs with basic WTO principles.

56. His delegation considered that the focus in Part II of WT/CTE/W/1, on the environmental effects of trade restrictions and distortions, was more useful than the opposite approach, which was frequently encountered in trade and environment discussions. The examples that were presented suggested that there might be coinciding interests between trade liberalization and environmental protection. One example was that tariff escalation in some sectors led to pressure to increase extraction of raw materials which had negative environmental consequences, as well as reinforced the obstacles to economic diversification in developing countries. This was a useful lesson to learn.

57. The representative of Switzerland concentrated on environmental measures related to products standards and PPMs. Domestic environmental policies had become increasingly important and in many countries, such as in his own, an increasing sensitivity for environment issues could be observed, in particular a stronger consumer demand for products which did not harm the environment. This general trend indicated that more attention was being paid to the environment, which might result in the adoption of stricter environmental product and process-related product standards, by the private sector and governments, which could impact on market access.

58. According to the Technical Barriers to Trade Agreement, countries could adopt mandatory product standards that were necessary to protect the environment. However legitimate these standards were, they might create difficulties for developing country producers which had to adapt their products to these requirements or assess their conformity according to the procedures laid down in the standards. To cope with evolving consumer preferences, eco-labelling schemes had been worked out and applied in the last few years. Some concerns about the trade impact of such schemes had been expressed by a number of developing countries. In this respect, eco-labels were, in most cases, voluntary, which meant that a product could be sold without such a label. Currently, the proportion of eco-labelled products on the market remained rather limited and, therefore, did not impede unlabelled products from competing. Also, eco-labelled products were often sold at higher prices than those of goods which did not meet the conditions required to use an eco-label. Therefore, eco-labelling did not necessarily have a negative impact on market access. Compliance costs might be high for some exporters, especially when the requirements to be fulfilled to receive an eco-label did not take into consideration the specificities of the producers and when the eco-labelling schemes encompassed PPM requirements. In order to facilitate the adaptation of developing country products to high environmental standards and their access to

complex conformity assessment procedures, technical assistance by developed countries could contribute significantly. In this respect, widespread participation in the work of the International Organization for Standardisation (ISO) was important.

59. Concerning the trade impact of domestic policies and specific market access conditions, transparency was important. In order to avoid new barriers to trade resulting from specific environmental requirements, mechanisms, such as consultation between importing and exporting countries were essential. Existing transparency mechanisms might not be sufficient and, even if they were, there might be a problem of inadequate compliance. Transparency through exchanging information, for example through the International Trade Centre (ITC), had to be promoted by the private sector as well as by governments. The Secretariat should prepare a document in which the concrete problems of developing countries regarding market access and the possible solutions could be listed. This would also contribute to clarifying the Committee's strategy for work on this item and to defining the results that should be achieved. An examination of the concrete obstacles faced by developing countries when looking for new or expanded market opportunities could address some of the many uncertainties which affected the issues under this item. Also, it could address how existing WTO provisions were applied, such as Article 12.3 of the TBT Agreement.

60. Regarding the environmental benefits of removing trade restrictions and distortions, he recalled that trade liberalization generally had a positive environmental impact by improving the efficient allocation of resources, promoting economic growth and increasing general welfare, provided that it was accompanied by the implementation of effective environmental policies. However, trade restrictions in a multilateral context might be necessary to avoid environmental damage (e.g. transfer of hazardous waste). This was a complex issue and the real environmental effect of the reduction and elimination of trade barriers depended on a country's stage of development and on its global policy framework.

61. The representative of the European Communities focused on the market access-related issues of item six which his delegation considered could be directed towards a practical approach, in the framework of defining a well-balanced, results-oriented agenda for the Committee's work until the Ministerial Conference. He recalled the UNCED conclusion that trade, environment and development could no longer be considered separately in the pursuit of sustainable development and that developing countries had specific concerns in the trade and environment debate. While much progress had been made in reaching a better understanding of the trade, environment and development interface, many developing countries still viewed the growing demand in industrial countries for higher environmental standards with apprehension. While they expected production and consumption patterns of the developed world to be modified, they also feared that high environmental standards and regulations could hinder their market access opportunities. His delegation was sensitive to these concerns; trade and environment issues must be approached so as not to jeopardise development prospects or threaten overall export performance.

62. Implementing the concept of sustainable development implied respecting the Rio Principles, notably those affirming "the need for giving special attention to the special situation and needs of developing countries, particularly the least developed and those environmentally vulnerable", and recognising that "standards applied by industrialised countries may be inappropriate and of unwarranted economic and social cost to developing countries". Environmental issues of common concern were complex and required discussions and negotiations among countries on environmental priorities and commitments, as well as an equitable burden sharing, so as to take into account the common but differentiated responsibilities of countries at different levels of development. The major task faced by the Committee was how to contribute to rendering

compatible and supportive the right to environmental protection at a high level with the right of all countries, especially developing ones, to benefit from trade through market access opportunities.

63. A number of provisions included in WTO Agreements seemed to demonstrate that the WTO system was prepared to allow a degree of flexibility vis-a-vis developing countries in the application of measures which might have a negative impact on market access. Some of these provisions were, to different degrees, related to environmental measures. Other provisions, whose applicability was not environment-related, provided examples of preferential market access treatment for developing countries. The Committee could examine how best to allow developing countries to benefit from differentiated schedules for compliance, such as time limited exceptions or other forms of phase-in/phase-out periods when complying with relevant obligations of an environmental nature which had an impact on market access. The condition attached to such preferential treatment should be that the achievement of the environmental goal for which the measures was taken should not be undermined. Where this occurred, emphasis should be put on technical assistance to developing countries to help them meet higher environmental standards.

64. Another means of ensuring a certain flexibility to developing countries could be the development of an environmental *de minimis* clause, derived from Article 9.1 of the Agreement on Safeguards. This would imply that, when the very low market share of a product originating from a developing country contributed only minimally to the environmental damage attributable to the product in question, then its market access opportunities could be preserved unchanged, despite the full implementation of the environmental measure. His delegation had not fully analysed the possible legal implications of this possibility, nor had they thought of criteria for its practical implementation. However, when dealing with the inter-relationship between trade and environment and its possible negative market access impact, an approach which ensured flexibility should be pursued. Concerning the suggestion which had been made to set up a database for environmental measures, this deserved further attention under item four, rather than under item six, in order to clarify what this instrument might look like. However, he emphasized the need to avoid duplication with schemes which had been established by UNCTAD and ITC. Also, in case the database were to take the format of a notification system, he stressed the importance of avoiding any duplication with notification already envisaged by WTO Agreements. In general, his delegation remained committed to ensure the maximum transparency of environmental measures likely to affect trade.

65. In response to interventions concerning agriculture, his delegation would like to dispel the idea that it was reluctant to discuss the relationship between agricultural trade and the environment for ideological reasons. However, the Committee should pursue a results-oriented approach, based on the definition of a well-balanced agenda for future work. In this light, discussing agriculture within the Committee would certainly not be a results-oriented approach. As had been mentioned during the last CSD session, which had addressed, among other things, sustainable agriculture and rural development, the Agriculture Agreement represented a considerable achievement toward the reform of agricultural policies. The CSD concluded that the emphasis should be on ensuring its full implementation so that distortions affecting this sector would be reduced as much as possible. In this respect, it should not be underestimated that, in addition to the commitment to implement the Agriculture Agreement, the Common Agricultural Policy was undergoing a major reform which was meant to discourage internal overproduction which was likely to have negative environmental effects. Article 20 of the Agreement on Agriculture, "continuation of the reform process", envisaged that "negotiations for continuing the process would be extended one year before the end of the implementation period," which meant 1999. Against this background, his delegation considered that it would be advisable not to re-open the discussion on agriculture in this Committee for timing and competence reasons. Furthermore, by

engaging in philosophical discussions on agriculture, the Committee risked misallocating its scarce resources of time and attention.

66. The representative of Canada said that trade was crucial for wealth creation. Growth in national income was central to improved resource use and conservation. Increased national income provided the needed resources for environmental policies and programmes. Trade acted as a magnifier of other economic policies. Thus, his delegation considered that negative environmental effects were not caused by trade *per se*, but rather by unsustainable production and consumption processes. Sound trade policies that favoured economic growth and efficiency thus had a positive indirect effect on the environment; conversely, restrictive trade policies that distorted resource use and allocation had negative effects. UNCED's key message concerning the importance of cooperation and partnership between the developed and developing world in dealing with environment and trade issues remained relevant. His delegation was receptive to developing country concerns that a number of environmental policies, particularly packaging and labelling, might pose particular adjustment problems for them. His delegation had proposed an approach to address this issue with respect to eco-labelling and it looked forward to future discussions in this Committee and in the TBT Committee. In many cases, differences in countries' circumstances would mean that different standards and policies were appropriate from an environmental perspective. As such, he questioned the appropriateness of the imposition of unilateral trade restrictions based on national standards given his delegation's strong belief that the Committee should work toward internationally-agreed standards to further environmental objectives. It shared the same concern regarding the adverse impact of trade restrictive policies, particularly with respect to trade-distorting agricultural subsidies and tariff escalation. Trade distorting agricultural subsidies reduced market access for lower-cost producers and resulted in overproduction, which not only had severe environmental effects but also encouraged unsound agriculture policies in other countries.

67. Tariff escalation was another major concern. His delegation had pressed strongly in the Uruguay Round for sectoral liberalization through the zero-for-zero approach and tariff harmonization. While much had been achieved, the removal of the market access barrier imposed by tariff escalation in a number of key sectors had not been achieved. Again, this came back to the central point of efficient resource use. Reduction in tariff escalation should have a positive, albeit indirect environmental effect. Thus, the Committee could not overlook the links between trade liberalization and environmental protection as key elements toward the realization of the concept of sustainable development. He referred to the delegation of Argentina's intervention at the November 1994 meeting, which set out a number of the potential synergies under this item. The Committee should review the issues in light of these synergies and linkages in preparation for the October stocktaking exercise.

68. The representative of Japan said that accumulation of empirical data through case studies, as contained in WT/CTE/W/1, was important. However, in most cases, theory did not keep up with reality. Given the variety of the nature and seriousness of environmental issues in each country, it might be risky to rely on a trade model approach or to apply a general and simplistic prescription to all countries, including developing ones. While pointing out the importance of theoretical models for specific trade measures and sectors, more time was necessary to draw a conclusion for each item with persuasive empirical proof. The OECD had concluded that mutually supportive trade and environmental policies would lead to sustainable development, which were the prerequisites for environmentally sound development. The best prescription for each country facing these problems could be described according to factors such as geographical condition and the state of economic development. Trade was not primarily responsible for environmental

degradation. However, the importance of trade in each country's economy varied and it was difficult to generalize as to how much environmental impact trade as a whole would have. There was a need to guard against disguised trade protectionism. Although the best trade and environment policy choice was the responsibility of each country, the WTO had a role to safeguard the rule-based trading system from disguised trade protectionism and WTO-inconsistent unilateralism. He gave subsidies and their environmental effects as an example. There was a risk that some countries might be tempted to use subsidies in order to maintain their domestic industries' competitive advantage.

69. Concerning transboundary or global environmental issues, he referred to the role of other international fora in developing a solid foundation on international consensus, which was crucial to develop effective remedies in this area. If those prescriptive remedies involved trade policy, international consensus was all the more important. This task could not be accomplished by the WTO alone; rather the environmental organizations should take the lead and this message should be transmitted to them. In sum, a policy mix of trade and environment, balanced and tailored to each country's situation, needed to be introduced. As a matter of course, the further effort of internalization of environmental costs would be effectively facilitated through technical assistance from the developed to developing economies. As for the agricultural sector, the Agriculture Agreement would have positive environmental effects in developing countries if it were faithfully implemented.

70. The representative of the United States referred to the impact of particular environmental measures on market access and looked forward to discussing in greater detail particular measures. Concerning the second part of this agenda item, he noted that when market prices correctly captured the value of environmental resources, trade liberalization could make a strong contribution to better environmental protection and conservation. When these resources were undervalued, trade could contribute to environmental degradation and, as a result, policy adjustments were called for. Examples of possible policy adjustments which could be taken in parallel with trade liberalization included strengthening environmental cooperation and domestic environmental regimes. Although the Committee was not the appropriate place to develop international environmental policy, work on this issue should recognize the connection between cost internalization and trade.

71. Eliminating market access barriers and distortions could make an important contribution to environmental protection. However, the potential for this contribution could only be realized in the context of sound national environmental policies. The critical junction for ensuring the coherence for trade and environment policies was at the national level, for which national environmental reviews were a valuable tool. While much of the commentary so far had focused on the potential environmental impact of subsidies, particularly in the agricultural sector, this was but one of a variety of market access barriers and distortions that had equal potential for adverse environmental effects. As examples, he noted the potential impacts of high tariff rates and the export practices of state trading companies that could artificially stimulate production and lead to environmental concerns. One area where there appeared to be a clear cut win-win situation for market access and the environment was in improving and securing market access for environmental protection goods, services and technologies.

72. The representative of Uruguay said that the analysis of the issues contained under this item should be guided by Agenda 21 in order that the multilateral trading system could make a positive contribution to sustainable development, particularly through improving market access for developing countries. This would include several aspects which were of fundamental importance, notably the question of tariff escalation. Trade liberalization would be particularly beneficial for

the environment with respect to the agricultural sector. Existing distortions and restrictions in this sector, such as those introduced through subsidies and the price formation system, had a negative environmental effect in both subsidizing countries and efficient producer countries. If these were eliminated it would be possible to better allocate resources. For this purpose, she said that the Committee should examine how eliminating these policies could make a positive contribution to the environment, and not merely to some countries. She noted that the Uruguay Round results on agriculture had made it possible to take an important step forward. However, it was also clear that given the Committee's mandate, there was much more that needed to be done post-Uruguay to eliminate trade-restricting and distorting measures which had environmental effects and to improve market access for developing countries. As such, both aspects of this item concerned one essential issue, i.e. the balancing of the Committee's work and the results that it would achieve by the Ministerial Conference.

73. The representative of Brazil said that discussion on this item should not lose sight of what had been stated at UNCED, where the international community's attention had focused on this issue as it was of particular importance for the achievement of sustainable development. The Rio Declaration and Agenda 21 stated clearly that greater market access for developing country products would have beneficial environmental effects in so far as, among other effects, it would generate the necessary resources for improving environmental standards. Trade liberalization was also essential for sustainable development as it promoted greater efficiency through a better allocation of resources, thus avoiding over-exploitation or unsustainable use of natural resources. His delegation shared some of the concerns expressed by several delegations regarding market distortions introduced through trade barriers, not only caused by environmental measures, but also by trade measures with significant environmental effects, particularly in the agricultural sector. At the November 1994 meeting, his delegation had proposed that discussions on market access should focus on: (i) the effects of internal taxes on tropical commodities; (ii) the effects of agricultural subsidies on the environment; and (iii) the difficulties faced by developing countries in diversifying exports.

74. First, the effect of high domestic taxation on the competitiveness of tropical products could be assessed, which might amount, even if it were in conformity with Article III, to an import duty, given that these products were not normally found in industrialized countries. Second, as had been mentioned by several delegations, agricultural subsidies not only shifted costs and redistributed income which could be used to support of sustainable development in the developing countries, it also depressed international commodity prices and induced over-exploitation of natural resources in developing countries, which were faced with the need to generate wealth from exports. Third, although Agenda 21 supported developing countries' efforts to diversify exports, this had been made more difficult due to tariff escalation in industrialized countries, in proportion to the degree of processing and transformation of the good imported. Contrary to the situation in industrialized countries, many developing countries, including Brazil, practised tariff structuring according to escalation, with the intent to promote industrial production of greater aggregated value. His delegation supported Egypt's proposal that the Secretariat should prepare a study of the effects of environmental measures on market access, with special emphasis on developing countries. The terms of reference of such a study should also include his delegation's suggestions and should deal with the issues in relation to case studies, and not only academically.

75. He supported the comment that the WT/CTE/W/1 would have benefitted from UNCTAD work and other intergovernmental organizations' input in the elaboration of background papers on this issue. Had this collaboration been solicited, the section on timber trade and other tropical wood products would have better reflected the current international debate in this area. As it was, his delegation regretted that the linkage implied in WT/CTE/W/1 between forest management in

some countries and market access failed to take account of recent developments in these countries. Although it was clear that the use of trade restrictions had uncertain impacts on deforestation, the conclusion that a "multilateral agreement would seem to be called for" in this particular instance was premature. His delegation considered that this section of WT/CTE/W/1 was unwarranted and unbalanced, especially given the lack of reference to the Non-legally Binding Statement of Principles on Forests.

76. The Chairman said that the wealth of statements and proposals on this item had contributed to drawing a clear distinction between the two aspects of this item, the effect of environmental measures on market access and the environmental benefits of removing trade restrictions and distortions. In this regard, it had been broadly recognized that the first aspect, market access, also touched upon other items, such as eco-labelling, packaging, and labelling requirements. Concerning the second aspect, the environmental benefits of removing trade restrictions and distortions, issues which had been mentioned included the environmental impact of subsidies and tariff escalation on, particularly, the agricultural sector. In this respect, several delegations had misgivings about continuing an analysis of this item which focused on agricultural aspects.

77. It was agreed in response to the requests by the delegations of Egypt, Switzerland and Brazil that the Secretariat would prepare a study on the impact of environmental measures on market access, bearing in mind the background work in this area which had been done by other international organizations, including UNCTAD, and focusing on specific cases as had been suggested by the delegation of Japan.

Item seven of the work programme:

The issue of the export of domestically prohibited goods

78. The representative of Canada introduced a communication on behalf of the delegations of Nigeria and Senegal, contained in WT/CTE/W/11, to establish a technical sub-group on domestically prohibited goods (DPGs) and requested the Committee to reach an agreement on this proposal at the earliest possible opportunity. Given that this proposal concerned the process by which discussions on this issue could be advanced, he suggested that it be considered during the stocktaking exercise

79. The representative of Brazil recalled that at the Committee's February 1995 meeting, his delegation had said that once all items had been subject to an initial discussion, the DPG issue would be one which merited close attention as a priority for the Committee's work. His delegation had already expressed its support for the language contained in the 1991 draft Decision on Products Banned or Severely Restricted in the Domestic Market. Although some adjustment might be necessary, any further work on DPGs should build on what had been accomplished by the DPG Working Group, which had mobilized considerable support. As the Committee pursued a further elaboration of the draft Decision, it might find that arguments against its adoption, which had been expressed at the February meeting, did not withstand close scrutiny from a technical or legal point of view. In his delegation's view, for instance, notification of DPGs might or might not lead to the adoption of appropriate measures by the importing country, which ultimately was responsible for the protection of human, animal or plant life or health in its territory. It was clear that the Marrakesh Decision on Trade and Environment had defined the competence of the Committee to address DPGs. The measures proposed in the draft Decision would greatly enhance transparency in the trade of goods dangerous to human health and the environment. His delegation regretted that at the February meeting the draft Decision had been considered by many

delegations only as a good basis for future discussions, or, even, that the issue should be considered again from its first principles. Rather, the DPG Working Group, which met from 1989 to 1991, had already sufficiently covered this issue, and any attempt to duplicate its work would only serve as an excuse for inaction.

80. His delegation continued to strongly support the adoption of the language contained in the draft Decision. Given the lack of information available to developing country DPG importers and their insufficient capacity to efficiently control imports of hazardous products, it was unavoidable that they would have to rely on developed countries' moral responsibility to assist them in dealing with this problem through the basic disciplines of notification and best endeavour measures on DPG exports, as had been proposed in the draft Decision. By adopting such measures, capacity would be built in the international community to effectively monitor and control trade in hazardous goods which were not specifically covered by other international instruments. Given that interdependence was a fact in the current global economy, consideration should be given to a ban on DPG exports, based on the principle of common but differentiated responsibility recognized in the Rio Declaration.

81. The representative of Senegal said that the proposal which had been communicated by his delegation and the delegation of Nigeria, WT/CTE/W/11, should be considered at the stocktaking exercise.

82. The representative of Nigeria considered that as the Ministerial Conference was approaching, the Committee needed to quicken its pace on the treatment of its work programme. It needed to be more concrete, result and policy-oriented, and less normative. Against this background, his delegation offered its views on this item. The problem of DPGs unfortunately had not disappeared. It was ever-present and there was still a need for multilateral cooperative action to deal with it. In his delegation's view, clear and unambiguous rules were essential and needed to be defined to govern international DPG trade, where necessary. At the February meeting and following his delegation's wide-ranging consultations, there was widespread recognition that multilaterally-defined rules were required. However, a number of delegations had raised general, as well as particular questions that would have to be addressed in this regard. The observation had been made that there was a need for a clear identification of product coverage. Corresponding to this observation, the question which merited a response concerned whether there were gaps in the existing corpus of international agreements in this area which would be covered by the proposed DPG agreement. Preliminary assessments show that product scope included some consumer products; cosmetics, for example particularly those containing carcinogens, and other harmful substances; certain pharmaceuticals for both human and animal use; and, food additives.

83. As a result of the differences between the WTO membership and that of the Basel Convention and the Amended London Guidelines, gaps existed not only membership and in product and item coverage, but also in information flow. A DPG agreement within the WTO would bridge these gaps, and would provide enhanced information flow. In further dealing with the product scope and item coverage, it might be useful for countries to draw up a country roster with a list of DPG items of concern. Also related to this initial question was the concern of a few delegations that the proposed DPG agreement might duplicate work in other fields. His delegation considered that it would not do so. The suggested product coverage, and particular items, such as those listed by his delegation, which were contained on pages 4 to 5 of DPG/W/5 (1989), showed that the risk of duplication was minimal, and that, on the contrary, an agreement would strengthen the network of interrelated agreements in this area. Furthermore, his delegation shared the view expressed in WT/CTE/W/6 that differences in the procedures used in the different international agreements and instruments led to differences in the amount, periodicity, etc. of information



exchanged among parties. His delegation was confident that the proposed agreement would lead to a strengthening and not a weakening or duplication of work in this area. From the foregoing, it also necessarily followed that any DPG agreement would have to take into account developments since the draft Decision.

84. The logical question which was presented at this stage, concerned the status of the draft Decision in the event that the Committee decided to proceed with the formulation of a DPG agreement. In his delegation's view, action would simply be discontinued on the draft Decision. Nevertheless, since valuable work had been accomplished, he suggested that if other delegations agreed, it could be used as a reasonably good basis for recommencing work on the draft agreement. His delegation reaffirmed its earlier position at the February meeting that the draft Decision presented a reasonable basis for re-opening DPG discussions in the hope of concluding an agreement. More substantively, the concern had also been expressed that Articles 2.3, 2.4 and 3.5 of the draft Decision accorded priority to international instruments that might contain WTO-inconsistent provisions and that Article 3.1 raised the issue of extraterritoriality, as well as the undecided issue of the use of trade measures for environmental purposes.

85. Clearly, there was a consensus that the provisions of a DPG agreement should be WTO-consistent, and should meet the tests of non-discrimination and least-trade restrictiveness. Proceeding from this understanding, any residual ambiguity could be corrected with improvements in and precision of language. It was recognized that great sensitivity surrounded the concept and policy of extraterritoriality. From his delegation's perspective, the objective of any DPG agreement was not the extraterritorial imposition of the standards of one country on another. For the vast majority this was neither acceptable nor feasible, at least on this subject. At the same time, it should be recognized and accepted that the DPG problem was transborder, which necessitated multilaterally-agreed cooperative actions by both exporting and importing countries. Although each country was responsible for what it decided to import, at the same time, exporters also shared the responsibility for their exports. For DPG exports, it was logical to argue that there should be a reasonable degree of responsibility on exporters to monitor and control the export of products which, it should not be forgotten, had been domestically prohibited for sale or severely restricted on the basis of danger to human, animal and plant life or the environment. There were sensitivities to and risks in, but also advantages to the use of the strategy of trade restrictions for environmental purposes. However, this complexity was yet another compelling reason for multilateral cooperative action. The strategy and policy needed further discussion, on a case-by-case basis, such as on DPGs, in order to arrive at mutually-agreed positions.

86. A necessary follow-up question that had been raised concerned the essential elements of a DPG agreement. In his delegation's view, it should include, but not be limited to the following: (i) obligations on Members to monitor and control international trade in goods which were banned or severely restricted for sale, distribution or consumption in the country of production for health or safety reasons; (ii) provisions for import restrictions and export restrictions, the latter appropriately formulated to be conditioned, for instance, at the request of the importing country; (iii) publication/notification obligations, as well as maximal transparency provisions; (iv) a Prior Informed Consent procedural element; (v) a dispute settlement provision connected to a liability/compensation arrangement; and, (vi) technical assistance for the training of officials in developing countries that required such training.

87. Consequently, his delegation considered that there was a need for a technical sub-group of the Committee to deal with the details and complexities of a DPG agreement, which it continued to judge indispensable. In spite of the usefulness of the one to two day Committee meetings, it

appeared necessary and almost inevitable that for tangible progress to be made on this and other items, smaller, open-ended, fully transparent technical sub-groups under the Committee's authority would need to be established. Therefore, his delegation and the delegation of Senegal submitted the proposal, which had been circulated in WT/CTE/W/11 and introduced by the delegation of Canada, for the Committee's consideration.

88. The representative of Mexico considered that the issue of DPG exports was one of the central elements of the Committee's work. Considering that trade was central to this issue and that it needed to be dealt with through multilateral action and cooperation, her delegation appreciated the delegation of Nigeria's research in this area and would closely analyse the ideas that it and other delegations had been put forward. For the time being, her delegation said that the WTO should not duplicate other international instruments or move into areas outside its competence, such as environmental policymaking or standard setting, and that precautions should be taken to prevent cooperation in this area from leading to extraterritorial measures. Her delegation's point of departure was the principle that it was each country should define and apply its own policies and measures needed to protect human and animal life and health or to preserve plants. This having been said, in principle, there could and should be more cooperation with regard to transparency, through notification obligations, and with regard to technical assistance. Her delegation hoped that the Committee's deliberations would lead to tangible results and that the draft Decision was the starting point for success in this area.

89. The representative of Japan said that his delegation did not object to the proposal to set up a working group to discuss further the DPG issue. It had been noted that trade restrictive measures to control DPGs needed to be introduced due to their environmental risks for other countries, especially for developing countries. However, it had also been stated that such measures might trigger other trade restrictive measures to deal with environmental problems of other countries. In this respect, this issue should be examined both in the light of ensuring both WTO-consistency and environmental protection. Also, this issue might be related to discussions under item one, regarding the relationship between MEAs and WTO-consistency.

90. The representative of Switzerland considered that the information contained in WT/CTE/W/6 revealed that most DPGs and hazardous wastes were covered by existing international conventions or instruments, which provided different mechanisms for information exchange. Some of these, such as the Montreal Protocol and the Basel Convention were legally binding and had been ratified by a large number of States. His delegation considered that they seemed to deal effectively with the management of the products they covered and that any additional effort to address the export of these goods in the Committee would duplicate what had already been accomplished in an efficient way in other international fora. Regarding chemicals and pesticides, his delegation welcomed the Decision taken by the 18th UNEP Governing Council to establish an intergovernmental negotiating committee with the mandate to prepare an international legally binding instrument for the application of the PIC procedure for certain hazardous chemicals in international trade. The conclusion of a legally binding instrument would specify the conditions that exporters of domestically prohibited chemicals and pesticides would have to fulfil in order to trade these substances in a legally binding manner. Furthermore, the last UNEP Governing Council had invited the Executive Director to convene a Government-designated group of experts to recommend which further measures were needed to reduce the risks from a limited number of hazardous chemicals, either within or beyond the scope of existing PIC procedures. Concerning sanitary and phytosanitary measures, his delegation was not opposed to the idea of a review of the relationship between the SPS Agreement and the Committee's work related to DPG exports. He noted that the Montreal Protocol had entered into force in 1989 and the Basel Convention in 1992 and other instruments were also very recent. However, first

analysis showed that progress had been made in their implementation, even if the specific points dealing with exports were still difficult to assess.

91. The representative of the European Communities said that since the DPG discussion at the February meeting, several events had occurred. First, the UNEP Governing Council had adopted a Decision in May 1995 to develop a legally binding instrument for the application of the PIC Procedure for certain dangerous chemicals in international trade. His delegation strongly supported the preparation of an international conference for the adoption of an international legally binding instrument for the application of the PIC procedure. It also supported the establishment of a Government-designated group of experts to make recommendations to the 19th Government Council on possible additional measures to further reduce the risks posed in this area.

92. He noted that the European Commission had organized and chaired a Conference on International Trade in Dangerous Chemicals in Brussels from 5-8 July 1995. The aim of the Conference had been to: (i) to assess the effectiveness of the Council Regulation N 2455/92 concerning the export and import of certain dangerous chemicals; (ii) to discuss the role of industry and trade in the framework of the notification and PIC schemes; (iii) to analyse the situation, particularly in developing countries, with regard to the management of chemicals in general and of information exchange procedures on chemicals specifically; and (iv) to identify elements to be considered in future measures and policy in this area. Thirty-seven countries had been present, as well as representatives of international organizations, industry and trade, and NGOs and there had been effective and valuable input from all participants. Among the conclusions of the Conference, developing countries had underlined the need for training, capacity building, and technical assistance when they were faced with decisions on import, use, handling, recycling, recovery or final disposal of hazardous wastes or other dangerous chemicals. It had also been stressed that an effort was needed to increase access to information and transparency, to simplify the procedures (in particular those related to customs), and to harmonize the documents and the notification schemes. His delegation said that since it would be useful for the Committee to be informed of these results, it would provide the Secretariat with a final report and the conclusions for distribution.

93. His delegation considered that, to some extent, the Committee could play a role in three specific ways. It could: (i) fill the gaps; (ii) improve existing mechanisms; (iii) play a role of incentive. The degree of complementarity with other international instruments should be carefully examined to make the Committee's role as useful as possible. In any case, the Committee should not go beyond the framework of its competence. As stated in WT/CTE/W/6, the identification of gaps and the needs to improve existing procedures were not available at this stage, and many technical questions remained unanswered. Therefore, as a first exercise, it was essential to identify the practical problems for importing countries, including the specific products, in particular those not covered by international instruments, the difficulties met in the establishment of notification and information exchanges, border controls, and consultation procedures. Subsequently, the Committee could examine the different ways to provide solutions in an effective and practical manner. In his delegation's view, a case-by-case approach should be followed and preference should be given when facing any deficiencies to coordination and substantive support to existing and possible future international instruments. As substantial work would be needed for a complete analysis, the proposal made by the delegations of Nigeria and Senegal to set up a technical group of experts should be given positive consideration.

94. The representative of the United States said that his delegation continued to be willing to constructively contribute to the discussion of this issue. There appeared to be a widely held view

that work in this area should not duplicate that of other international organizations. His delegation supported the ongoing work of UNEP and FAO on a legally binding PIC. He suggested that it would be useful to arrange in the near future to have the relevant Secretariats provide the Committee with a presentation on the current PIC regime and the development of a legally binding PIC. Based on his delegation's knowledge of the PIC regime, it would seem that the Committee should be humble as it pursued discussions on DPGs. For example, under the present PIC regime, notifications were effectively vetted to ensure that they met the regime's criteria before they were given any status. This had been a valuable feature of the instrument as it weeded out notifications that should not have been submitted.

95. One question that would have to be looked at when working on this issue was how the WTO might provide safeguards to ensure that it did not lend weight to notifications of products that were not truly banned or severely restricted for health and environment reasons. As he had previously noted, the countries most interested in this issue had stated that they saw the main purpose of the Committee's work as filling the gaps in coverage of existing international agreements. As he recalled, specific areas which had been mentioned were consumer products, machinery and pharmaceuticals. Much of the discussion of the problems faced by developing countries because of DPG trade focused primarily on products that were now covered by the London Guidelines and the Basel Convention, or would be soon covered by the legally binding PIC. His delegation shared the delegation of the European Communities' view that it would be useful to develop further information on the practical difficulties that were faced by developing countries due to trade in the areas that had been identified as gaps. He underlined that, while his delegation would participate constructively in discussions on DPGs, this was without prejudice to where these discussions would lead and any result would have to be part of a broader package. He said that he appreciated the spirit in which the proposal of the delegations of Nigeria and Senegal had been offered, which attempted to bring the Committee to an action oriented phase of its work, and it was with that in mind that his delegation would reflect on it in the stocktaking exercise.

96. It was agreed that the Chairman would undertake informal consultations as part of the stocktaking exercise with respect to the proposal which had been made by the delegations of Nigeria and Senegal, as well as other proposals, such as that of the delegation of Brazil, in order to determine how to proceed on this item.

#### Other items

##### Item eight of the work programme:

##### Trade-Related Aspects of Intellectual Property Rights (TRIPS)

97. The representative of Egypt followed up on her delegation's statement at the June meeting, which had focused on environment and TRIPS and stressed the importance attached by her delegation to this issue. She recalled that at the last meeting it had been decided to further pursue and explore issues of compatibility and complementarity of the TRIPS Agreement and the relevant MEAs, particularly the Biodiversity Convention and the Montreal Protocol. Given the number of salient points which had been made on the issue of TRIPS and the environment, it was incumbent on the Committee to pursue this matter further, particularly in light of the fact that it was still unfamiliar to many delegations. In this respect, she asked the Secretariat to take up the issue in a more analytical framework which would complement WT/CTE/W/8.

98. She recalled the request made by the delegation of Korea and others to go into more substantive and analytical work, particularly in respect to Articles 27.2 and 31, which dealt with compulsory licensing. The question remained open as to how to interpret Article 27.2; it could be interpreted in a narrow manner, placing the burden mainly on presumably developing country Members to prove the link between patent protection and possible detriment to human, animal or plant life, health protection, or prejudice to the environment. Or it could be interpreted broadly, in a manner consistent with the precautionary principle, which was a guiding principle of the Biodiversity Convention. She said that, assisted by an analytical Secretariat paper, the Committee should consider alternatives for interpretation of aspects, such as whether the interpretation of Article XX was relevant in the context of the TRIPS Agreement when specifically addressing biodiversity and the sustainable use of the genetic resources, or whether the spirit of the Biodiversity Convention should prevail, or whether the issue should be left as an open question to be addressed on *ad hoc* basis by panels in case of a dispute. As a matter of urgency, and as her delegation considered that this item should be further addressed by the Committee in 1996 following the October stocktaking exercise, she proposed that a Secretariat paper should be prepared for December 1995 so that the Committee could take it up in early 1996.

99. The representative of Brazil supported the proposal by the delegation of Egypt. He said that the implementation of the TRIPS obligations at the national level should take into account MEA provisions, such as those contained in the Biodiversity Convention regarding the transfer of technology and sharing of benefits. As noted in WT/CTE/W/8, the TRIPS Agreement could contribute to facilitating access to technology, particularly through the application of some of its Articles, such as on incentives to technology transfer, compulsory licensing, and disclosure of information. Also, the special condition of developing countries, which benefit from a transition period before fully implementing TRIPS, should be kept in mind. During the period until the expiry of this transition period, negotiations relevant to the implementation of MEA provisions regarding the transfer of technology and sharing of benefits would have to include the multilaterally-agreed principles on IPRs. Nevertheless, it would probably be mostly in the realm of domestic legislation that developments which might affect the conditions under which these transfers of technology and schemes for the sharing of benefits would come into light. Therefore, it was important that the Committee and the TRIPS Council's discussions benefit from the information that only governments could provide on how they envisaged complying with the TRIPS Agreement's obligations, in order that IPR obligations and the need to foster sustainable development were mutually supportive. In this regard, the Secretariat could compile information regarding the development of national legislation which could have an impact on the trade-related implications of IPR provisions of MEAs, as well as information about the on-going IPR-related negotiations in other fora.

100. The Biodiversity Convention was of special interest in this regard and the November meeting of its Conference of the Parties would start discussions on these topics. The work of its Subsidiary Body for Scientific, Technical and Technological Advice, which had just held its first session, might also be relevant for the implementation of the TRIPS Agreement. He noted specifically the possible contribution which could be made by that forum on the future revision of Article 27.3(b) in four years as regards the possible exclusion of patentability of micro-organisms. He said that a Secretariat study, which had been suggested by the delegation of Egypt, should take into account the discussion in the Biodiversity Convention's Conference of the Parties in November. His delegation's view was that the multilateral IPR regime might not adversely affect the implementation of related MEA provisions. However, it had to be recognized that the discussions were still at a preliminary stage and it would be some time until clear trends were identified. For this reason, he recommended that the Committee, as well as the TRIPS Council,

give further consideration to this item, at regular intervals, in order to contribute to its international development.

101. The Chairman took note of the contributions by the delegations of Egypt and Brazil with suggestions on this item which must be taken into account at the stocktaking exercise. One of the objectives of this exercise could be to identify those issues which required the preparation of further studies by the Secretariat.

#### Schedule of meetings

102. The Chairman recalled that at the February meeting, it had been agreed that a stocktaking exercise would be held after the Committee had completed its first run through of its work programme. He recalled that this stocktaking exercise would be an important element of the October meeting. He envisaged that this exercise would clarify where the Committee stood on items of the work programme and how Members wished to elaborate a programme of work for the remainder of the period until the Ministerial Conference. It was agreed that the Chairman would hold individual informal consultations prior to the October meeting in order to prepare for the stocktaking exercise and consider the Committee's future agenda.

103. He further reported that informal consultations would continue on the request for observer status from the International Organization for Standardization (ISO). He also informed the Committee of the requests for observer status by the World Customs Organization (WCO) and the United Nations Industrial Development Organization (UNIDO). It was agreed to postpone discussions on these requests until the necessary consultations had been concluded.