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WORLD TRADE ORGANIZATION

Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 26-27 OCTOBER 1995

Note by the Secretariat

1. The Committee on Trade and Environment met on 26-27 October 1995 under the chairmanship of Ambassador Juan Carlos Sánchez Arnau of Argentina. The agenda for the meeting contained in WT/AIR/174 was adopted.

2. It was agreed that the Secretariat would circulate draft Rules of Procedure for the Committee, based on those of the General Council, for delegations' comments and that, if necessary, the Chairman would hold informal consultations in order that the Rules could be considered at the Committee's December meeting.

Stocktaking and planning of work

3. The Chairman reported on his informal consultations and presented his proposal for the Committee's work programme as it approached the Singapore Ministerial Conference (Annex 1). He said that several points had emerged from his consultations. The Committee had a complex and comprehensive agenda and there were high expectations about the outcome of its work. There was also an awareness that the Committee laboured under a number of constraints. Two perspectives on the Committee's future work programme had emerged: one, that efforts should focus on a limited number if issues; the other, that work should advance on all fronts at the same rate in order to present a balanced outcome to Ministers in Singapore. The Chairman was proposing, therefore, to keep all agenda Items under discussion but to move, whenever possible, to the analysis of those issues identified during the debate as the core of each Item. In May 1996 a further review of the work programme would take place. He said that his proposal represented a delicate balance. It was now incumbent on delegations to put forward specific proposals so that areas of interest to them could be addressed and progress made.

4. With respect to the Chairman's proposal on the schedule of meetings through to May 1996, some delegations suggested combining the March and April meetings. The Chairman said meeting dates would be confirmed at the 14-15 December meeting.

5. The representative of Egypt said that under Item 1 of the Committee's agenda, before addressing the compatibility of trade measures in MEAs with the WTO it was important to have a precise definition of what constituted an MEA, to examine the necessity and effectiveness of using trade measures in MEAs, and to examine how future amendments to MEAs would be treated. The obligations of MEAs were not static: more stringent measures could be taken if new scientific evidence revealed such a need, and less stringent or different measures could be advocated if those currently in use proved ineffective. The representative of Morocco shared this view.

6. Under Item 3(b), Egypt said it was important to discuss how to strengthen international cooperation on technical standards. On Item 6, risk assessment, a weighing of the economic costs against the environmental benefits, and the notion of proportionality should be addressed since some environmental benefits might not be so high as to warrant trade losses, especially for developing countries.

7. The representative of the European Communities said that in order to reach operational conclusions by Singapore it would be necessary to maintain a clear objective in the form of a sufficiently elaborate report to Ministers, to move from agenda Items to specific issues, and to have informal meetings.

8. The representative of Switzerland said that work should progress on all Items, but some were riper than others and these should be emphasized.

9. The representative of India said his delegation was prepared to move forward on several items, such as DPGs, TRIPS and market access, in order to arrive at a balanced outcome by Singapore, and along with the representatives of Bolivia, Colombia, Hungary, India, Korea, Morocco, Peru, Uruguay, and Venezuela said that the work programme should be balanced and open and welcomed the fact that delegations would be able to introduce new issues under each Item. The representatives of Korea and Malaysia, on behalf of ASEAN said that any papers on specific issues should be circulated well in advance of meetings.

10. The representative of Norway said it would be difficult to achieve concrete results by Singapore if too many issues were discussed. After four years, it should be possible to formulate substantive conclusions and possible recommendations on certain issues. The only way to set about this would be to intensify informal consultations among delegations and for formal meetings to be accompanied by informal, open-ended meetings. Without suggesting that any Items should be omitted, some issues had been discussed at length and if work were intensified on these, notably MEAs, TRIPS, market access, and DPGs, results could emerge by Singapore. One issue which was ripe was Item 1. It was clear that some parts of the multilateral trading system would have to be modified to accommodate trade measures in MEAs. Work on this Item should now be oriented towards results, and it should be feasible to envisage a draft understanding by Singapore which could operate on an interim basis until there was a more comprehensive package on trade and environment.

11. The representative of Brazil said that the Singapore meeting should not create expectations about prescribing changes in WTO rules. His understanding was that Ministers would review the work and terms of reference of the Committee; it was not clear there would be any result on amending WTO provisions. One important result could be the institutionalization of the Committee, which had proven to be a useful forum for analysis. Given the lengthy process of negotiation in order to arrive at a balanced work programme, it would be unrealistic to expect concrete results in the form of proposals for action which would privilege certain issues deemed as riper for results. The identification of certain issues under each Item should not hide the need to reach conclusions on the overall work programme. An analysis of all the issues should be undertaken by intensifying informal consultations, preferably coupled with the Plenary meetings, and by seeking collaborative arrangements with the TBT Committee and the TRIPs Council, as well as the UNCTAD, UNEP and MEAs Secretariats.

12. The representative of the United States said the Chairman's work programme and informal, open-ended meetings would put the Committee on the right track for producing a report for Ministers which included substantive results. Concerning the last two issues described under

Item 3(b) of the Chairman's proposal and a similar phrase in paragraph 2(d)1, she said the wording could give the impression that all the Committee was examining was developing more rules on environmental measures. She did not consider it should have preconceived notions about the nature of its results. Given the Committee's terms of reference, the point of departure could not be the need for further disciplines. For example, it might be determined that, in order to promote mutually supportive policies it was appropriate to recommend additional flexibility for environmental measures. In order to maintain a balanced approach, the understanding had to be that wording such as this was only illustrative and could also be read to allow for the possibility of more flexibility in the rules rather than further disciplines. She referred to the General Council's efforts in the context of Item 10 and said her delegation would wish to return to it in the near future.

13. The Committee adopted the Chairman's proposal for the Committee's work programme through to May 1996 which is attached as Annex 1 and, following the decision taken at the TBT Committee's meeting of 20 October, agreed to convene joint informal meetings with the TBT Committee on eco-labelling.

Item 1

The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements

14. The representative of the European Communities said this was a core-issue on the international agenda. It was generally recognized that the multilateral trading system should favourably consider trade restrictive measures taken pursuant to MEAs. As stated in Principles 7 and 12 of the Rio Declaration, international co-operation was the most environmentally effective manner through which to tackle transboundary and global environmental problems and it was likely to prevent the use of unilateral trade restrictions. The multilateral trading system should accommodate the use of trade measures in MEAs, although their compatibility with WTO rules might be questionable because the fact that such measures had been negotiated and agreed multilaterally was the best guarantee against the risk of protectionism. At the same time, it was widely agreed that unilateral trade action to deal with environmental challenges outside an importing country's jurisdiction should be avoided: it might lead to protectionist abuse and have the effect of interfering with countries' ability to exercise their right to determine their environmental policies. International environmental cooperation had resulted in 180 agreements for the protection of the global environment and conservation of natural resources, of which only 18 contained trade provisions; these allowed for the possibility of restricting trade to achieve the environmental goal effectively.

15. The two main WTO legal issues concerned the treatment of MEA non-parties and the impact of the trade measure taken under MEAs on third countries. He enquired as to what would happen, for instance, if exports of non-ecological goods were banned from a non-party to control its production and consumption of goods covered by the MEA and prevent the undermining of the MEA's environmental objectives. The country affected by the import ban could argue that quantitative restrictions were WTO-illegal and could ask for dispute settlement. Here, he considered that the WTO should, in accordance with the UNCED principles, support the achievement of overwhelming environmental objectives while preserving the open, equitable and non-discriminatory character of the multilateral trading system. The challenge was to design a system which was geared to accommodating trade measures in MEAs while establishing safeguards against the application of unnecessary restrictions on WTO Members, especially MEA

non-parties, and preserving their right to demand that the Dispute Settlement Mechanism be used to prevent protectionist abuse.

16. In considering the options which had been proposed to clarify the relationship between WTO rules and measures taken pursuant to MEAs, a balance should be struck between the following principles: *flexibility/freedom*: flexibility for MEA negotiators to include trade measures in both present and future environmental agreements as necessary to achieve environmental goals; freedom for WTO Members to challenge a trade measure which they felt contravened WTO rules; *security/certainty*: security that trade measures in MEAs could be legitimate under the WTO and protected from undue challenge; assurance that such trade measures were implemented in respect of the principles of the headnote to GATT Article XX, which existed to guard against the use of trade measures for protectionist reasons or their arbitrary or discriminatory application. To date, no GATT/WTO challenge had been made against trade measures taken pursuant to an MEA. This has led to talk of their *de facto* WTO compatibility. A challenge to those measures would very likely face public hostility, particularly when the country challenging the measure was a Party to the relevant MEA, as the challenge could be seen as a direct assault on an environmental instrument enjoying international support. Arguably, *de facto* compatibility was not sufficient because it did not provide MEA negotiators with the legal certainty that the trade instruments they deemed necessary to make the MEA effective would not be challenged in the future. To establish *de jure* compatibility, two approaches had been developed: the so-called *ex post* and *ex ante* approaches.

17. The *ex post* approach envisaged granting a waiver under GATT Article XXV:5 for MEAs on a case-by-case basis. The advantage of this approach would be that in no case would a measure which was not based on broad international consensus escape WTO scrutiny, which provided a defence against protectionist abuse. However, apart from a relevant number of legal and procedural obstacles, which his delegation had noted in October 1994, any *ex post* approach such as an Article XXV:5 waiver seemed unsuitable as it would imply that environmental protection remained exogenous to the WTO and would place the WTO in a position of "judgement" on matters of environmental competence. This would be negatively perceived by the environmental community. Thus, it could be argued that although a situation of *de facto* compatibility was not sufficient, it was better than possible WTO scrutiny of the legitimacy of environmental objectives or of the necessity of measures taken to achieve those objectives.

18. The *ex ante* approach, which his delegation had proposed in the EMIT Group and in the Sub-Committee, was based on a collective interpretation of GATT Article XX which would imply that trade measures taken pursuant to MEAs which represented a genuine international consensus and complied with specific criteria in terms of necessity and least-trade-restrictiveness could derogate from WTO obligations. The advantage of developing criteria for trade measures in MEAs and for MEAs themselves would be greater certainty for those countries wishing in future to provide for trade measures in MEAs. As long as the MEA met criteria for being recognized as enshrining genuine international consensus and the measure met the criteria mentioned above, countries could be confident that they would not be challenged in the WTO. The main disadvantage of the *ex ante* approach was that it would be difficult to define criteria that were not so lax as to engender the fear of handing out a "blank cheque" to MEA negotiators in terms of the possibility of contravening WTO rules, but were not so inflexible that possible future trade measures taken for a legitimate environmental objective would not be unduly restricted.

19. To reconcile the need to accommodate the legitimate goal of environmental protection in the WTO when it was the expression of international cooperation with the need to preserve the open, equitable and non-discriminatory character of the WTO, his delegation had devised a

possible solution to embody the advantages of the two approaches in terms of the two sets of principles, flexibility/freedom and security/certainty. There might be a number of possible solutions that would be worth exploring. Without intending to be exhaustive or to limit the scope of future work, he outlined three possible forms of *ex ante* and *ex post* approaches: (i) an amendment to GATT Article XX entailing an additional paragraph (k), providing an Understanding setting out the provisions for preferential treatment of trade measures taken pursuant to certain MEAs; (ii) no amendment to Article XX but the same Understanding (slightly adjusted); and (iii) an amendment to Article XX(b), with an interpretative note to introduce a reference to measures necessary to protect the environment and to measures taken pursuant to MEAs to solve global or transboundary environmental problems.

20. The first approach consisted of an additional paragraph (k) in Article XX, mentioning explicitly MEAs and referring to an Understanding on the relationship between MEA-based measures and WTO rules. The proposal would take into account the needs and fears of environmentalists and the trade community. It would provide a legal and procedural framework for *de jure* compatibility of MEA-based trade measures. Recognizing that MEA-based trade measures should be accorded preferential treatment, it did not exempt such measures from the possibility of a challenge. WTO Members which were non-parties to the MEA in question would see in no way their right to resort to WTO dispute settlement restrained. In the event that an MEA-based trade measure were challenged by a non-party, a panel would apply a three step-approach, the same as in the Tuna-Dolphin panel: (i) the panel would review whether the measure had been taken under an MEA which was the expression of genuine international consensus and taken for the achievement of a legitimate environmental objective; (ii) if so, the panel would deem the measure to be necessary for the achievement of the environmental objective of the MEA; (iii) the panel would retain full competence to determine whether the measure had been applied in conformity with the requirements of the headnote to Article XX. In sum, a panel would examine whether a MEA met the criteria set out in the Understanding. If it found that the criteria had been met, then it would not examine a particular MEA-based trade measure to determine either the legitimacy of the environmental objective or the necessity of the measures taken to achieve that objective, but it could examine the application of the measures according to the provisions of the Article XX headnote. Where an MEA was found not to meet the criteria of the Understanding, then a panel would examine both the "necessity" of the measures and the application of those measures in the light of the headnote to Article XX. The MEA-based trade measure would not benefit from the preferential treatment for which provision had been made in the Understanding, and it would be subject to the panel's usual full scrutiny procedures.

21. In terms of the need for predictability/security and flexibility, such a proposal provided some security to MEA Parties that where an MEA met the criteria set out in the Understanding, a panel would not examine either the legitimacy of the environmental objective or the necessity of the measures taken to achieve that objective. It was important to underline that MEA-based trade measures were nevertheless governed by the Article XX headnote. This would be a guarantee against protectionist or discriminatory abuse of those trade measures provided for in MEAs. The proposal would provide flexibility for environmental policymakers in terms of judgement on the legitimacy of environmental objectives and types of trade measures. By avoiding specifying those trade measures which might or might not be taken, the proposal would also maintain for the trading system the flexibility to develop more sophisticated or less distortive instruments by which to achieve environmental objectives. At the same time, there would be security for the multilateral trade system since the risk of protectionist abuse in the implementation of the trade measures would be dispelled by the preservation of the rights of Members to qualified WTO scrutiny. MEAs would retain full competence to judge the legitimacy of an environmental objective and to select the appropriate means for its achievement. The WTO would retain its full

potential to counter protectionist abuse of trade measures through the dispute settlement mechanism. With the goal of cooperation between the trade and environment communities, and with a view to the avoidance of the need for dispute settlement, the proposal could encourage consultation between the WTO Secretariat and the MEA Secretariat both during initial negotiations of an MEA and during any subsequent amendment.

22. A second approach would be to develop an Understanding that measures for which provision was made in Article XX might also include those taken pursuant to MEAs according to certain criteria. This approach would differ in format from the first but the preferential track would remain unchanged. The advantage of this option was that it would not require an amendment to a GATT Article and ratification by Members. The disadvantage was that the environmental window of the WTO would be less visible to the outside world, although in substance it would have the same impact as the previous approach.

23. A third approach would be to amend Article XX (b) so as to cover measures necessary to protect the environment and measures taken pursuant to MEAs. This would be well received by environmentalists. The possible coverage under this exception of extraterritorial trade measures to influence other countries' environmental policies raised concerns, and in order to address them it might be appropriate to include an interpretative note reaffirming some of the key notions included in Principle 12 of the Rio Declaration. An interpretative note could also include provisions to clarify the notion of an MEA and how the *ex post* scrutiny of MEA-based trade measures would be articulated through the WTO dispute settlement mechanism.

24. The representative of Hong Kong said the issues raised under this Item were directly relevant to the first two objectives of the Committee's mandate for Singapore. The first task was to ensure that trade measures taken under MEAs were WTO-compatible. It was incorrect to interpret the Committee's task the other way round, i.e. to ensure that WTO provisions were compatible with trade measures in MEAs, as WTO provisions took precedence over MEAs for the time being. At the outset of what might be a more pragmatic series of deliberations, the discussions should not drift in the wrong direction. In this respect, the Committee needed to have an adequate knowledge of the trade measures in question, the types and nature of trade measures in MEAs, the manner in which they were taken, and their trade and environmental effects on a case-by-case basis. The basis on which these measures were taken, namely the relevant MEA provisions, must also be studied and compared with WTO provisions as appropriate. An examination of WTO-compatibility must consider the openness, equity, and non-discriminatory nature of the multilateral trading system, which was a complex task.

25. The representative of India appreciated document WT/CTE/W/12 which outlined the requests made by the Ozone Secretariat to Committee Members so that a dialogue could take place on any decision on the dumping of products containing ozone depleting substances and of equipment manufacturing such products in Article 5 countries. His delegation had spoken in other fora of the basic domestic needs of developing countries, and would continue consultations with other interested Members on this subject as it was concerned about the circumstances in which trade measures were being proposed, as well as the choice of such measures and modalities for their application. In his delegation's view, trade measures were not the best way to deal with environmental concerns and it was against the adoption of any unilateral trade measure or trade sanction, even if introduced with the objective of safeguarding the environment. It was important for the Committee to consider the issues involved. In considering the definition of an MEA, several factors must be taken into account: (i) the MEA must have a wide geographical scope; (ii) it must include countries in different stages of development so as to balance the demands and aspirations of developing countries; (iii) the MEA must be open to all countries to join and on no

account should it condone the creation of an exclusive club, as any decision which was taken on this sensitive issue would affect all members of the international community; and (iv) the MEA should be under international auspices, as only then would it be credible and its implementing organs safeguarded.

26. He enquired about the characteristics of the trade measures which could be used to achieve MEAs' objectives. Issues of a local environmental nature must be addressed by the country concerned, respecting its national sovereign economic space, and it would not be desirable for individual countries to be pressured by external sources to redress local environmental problems. On the other hand, issues of a global environmental nature should be tackled on an institutional basis by the international community. Such issues would by definition require the cooperation of several countries and would be linked to the problems associated with physical transborder spillover. Of course, trade measures contemplated under an MEA to tackle such problems must be WTO-consistent. In this regard, he supported the suggestion by the delegation of Egypt for a necessity and effectiveness test.

27. The representative of Korea joined India in expressing concern about developments in the Montreal Protocol relating to meeting basic domestic needs for ozone depleting substances in developing countries and said he was interested in discussing this matter with other Members. Unilateral measures taken outside the jurisdiction of the importing country posed fundamental challenges to the multilateral trading system. The WTO was the appropriate and authoritative forum for addressing trade measures for environmental purposes. There was no reason to modify its provisions. All possible efforts should be made to accommodate trade measures within its framework. Bearing this in mind, his delegation did not support the *ex ante* approach which would lead to a broader interpretation of WTO exception clauses. Although efforts to clarify GATT Article XX were desirable, they should be distinguished from attempts to broaden its scope. His delegation was in favour of a case-by-case *ex post* approach based on Article XXV as only a few MEAs contained trade measures and most of these were not WTO-inconsistent. There was a need for the WTO to give guidance to MEAs which contained or would contain trade measures to enhance the predictability and compatibility of trade measures in MEAs; the criteria for such guiding principles would need to be elaborated. The recent decision to amend the Basel Convention showed the need for the WTO to develop guidelines, since he considered the amendment to be WTO-inconsistent. As such, a combined approach based on *ex post* procedures with concrete guidelines deserved consideration.

28. The representative of Egypt said that although no agreed synthesis had been reached, a number of valid theses and anti-theses had been elaborated and would need to be studied. First, out of 180 international environmental treaties and agreements, less than 20 included trade provisions which restricted trade for environmental purposes, and their legality had never been challenged under GATT/WTO. As trade measures had been used in MEAs to address different problems, it was difficult to formulate general conclusions: the relationship between the trade provisions in MEAs and WTO rights and obligations necessitated an examination of each MEA separately. Second, the *ex-ante* and *ex-post* approaches had been discussed at length but no solution was in sight. Third, the rule of one treaty taking precedence over another under the *lex posteriori* and *lex specialis* principles was of no avail. Her delegation considered that Article XX as interpreted to date was sufficient to cover trade provisions in MEAs, and that it could be coupled with an *ex-post* waiver approach.

29. In that regard, she supported the suggestions of India for defining specific criteria, and added the following: (i) the universal scope of MEAs. There should be a clear distinction between MEAs negotiated under the aegis of the UN and regional or plurilateral agreements;

(ii) amendments to MEAs should be addressed separately, in terms of their scope, application, level of signatories, and trade provisions; (iii) the domestic versus international impact of trade provisions in MEAs. It was important also to apply a necessity and effectiveness test and to assess the impact of the trade provisions. Before initiating any negotiation on reinterpreting Article XX, there would need to be a review of which Articles in WTO Agreements might need reinterpreting to explicitly adapt them for environmental protection. Coordination of trade and environment on a horizontal basis in WTO Agreements was of vital importance and should be studied in depth before addressing Article XX on its own.

30. The representative of Mexico noted that several delegations had outlined approaches which involved to some extent derogation from WTO rules for trade measures in MEAs, but said it was premature to comment on them as the Committee had not yet analyzed a number of elements which were essential in assessing their suitability. Some delegations placed emphasis on concepts such as necessity, effectiveness, least trade-restrictiveness, and proportionality, and she agreed on the importance of considering these before reaching any conclusions on the WTO-compatibility of trade measures contained in MEAs. An assessment of the need for possible changes to WTO provisions would have to be based on an evaluation of the need for using different trade measures for environmental purposes, including the need to include trade measures in MEAs. One approach proposed under this agenda Item involved renouncing the WTO principle of non-discrimination and she questioned whether that would be justified in the case of a measure which could not be considered necessary, effective or proportional and how this could be reconciled with the Committee's mandate that any recommendation for changes to the WTO must be compatible with the non-discriminatory nature of the WTO.

31. Document WT/CTE/W/12 illustrated how the analysis could be advanced on the basis of case-by-case studies. Her delegation was interested in examining in the context of the Basel Convention the necessity for including the prohibition of transborder movement of hazardous wastes for recycling purposes, bearing in mind that recycling capacity existed in countries which would not be able to import raw materials as a result. She questioned the effectiveness of the measure, as the prohibition applied only to trade from one group of countries to another, and the logic of the proportionality of the measure from the perspective of effectiveness and trade impact and whether it contributed to sustainable development. Consideration also needed to be given to the question of discrimination between MEA Parties. Document WT/CTE/W/12 raised questions which would have to be addressed, among them the definition of a consensus-based measure. Principle 12 of the Rio Declaration stated that global and transborder environmental problems should be addressed through international cooperation and MEAs. As such, the discussion centred on specific trade measures contained in MEAs and not the MEAs *per se*. However, defining what constituted an MEA was important. She said that her questions and comments were not intended to prejudge the validity of any specific MEA or its purposes but were intended to encourage the analysis of issues before any approach was discussed.

32. The representative of Chile said that the discussions to date on Item 1 indicated that there was no fundamental incompatibility between trade measures in MEAs and the WTO and that there were only a limited number of MEAs which required trade-related measures to accomplish their objectives. When these measures had been included, efforts had been made to bring them into line with WTO disciplines. An equilibrium needed to be found. Trade measures should only be included in MEAs exceptionally when no suitable environmental measure existed to achieve the objectives. Parties using trade measures in MEAs should ensure that they were not discriminatory and were the least trade restrictive. There was a need to have a degree of proportionality between trade measures and the environmental objective. For example it would not be acceptable to apply measures which caused significant trade distortion to achieve limited environmental objectives.

33. The representative of Norway said this Item was at the core of the trade and environment interface as it raised the question of how to ensure the compatibility of trade measures taken pursuant to MEAs with WTO provisions while avoiding protectionist abuse. Of the two main options which had emerged in the Committee's discussions, his delegation favoured an *ex ante* approach based on a collective interpretation or a modification of Article XX. An *ex post* approach would not provide policymakers with the flexibility to negotiate an MEA nor security in relation to the trade rules. Under the *ex ante* approach, parameters could be set for the use of trade measures in an MEA to promote sustainable development and avoid disguised protectionism. The GATT had a tradition of not interfering in other fora's work; for example, commodity agreements were exempted from GATT/WTO disciplines through Article XX. Also, no GATT/WTO dispute stemming from measures taken pursuant to MEAs had arisen. Thus, trade measures for environmental purposes should not be subject to an disproportionate number of criteria in relation to other issues covered by Article XX. His delegation considered the following criteria to be essential to ensure that trade measures taken pursuant to MEAs did not accommodate protectionism but served the genuine purpose of environmental protection: (i) the MEA should satisfy formal criteria concerning openness; (ii) the MEA should be specific with regard to the use of trade measures; (iii) trade measures in MEAs should be necessary to achieve the environmental goal; and (iv) the least trade restrictive trade measures that allowed for achievement of the environmental goal should be chosen. If a dispute were referred to WTO dispute settlement, expertise on the MEA should be included.

34. The representative of Switzerland attached importance to progress on Item 1 as it would have implications for discussions on other items. Of the MEAs in place, only a few contained trade measures and only a few of those measures could be considered contrary to WTO principles. There had been no WTO challenge to any MEA which contained trade measures, which might suggest it was not urgent to achieve a pragmatic solution. However, international environmental law had evolved rapidly in the past few years and recent developments in the Montreal Protocol and the Basel Convention had revealed a trend to strengthen existing and include new trade measures in MEAs, so that it was necessary to adopt a preventive attitude and develop rules before a dispute occurred. After having reviewed document WT/CTE/W/4, his delegation supported an *ex ante* approach to reconcile trade measures in MEAs with the WTO. An *ex post* approach had important drawbacks in that it would examine WTO-compatibility of trade measures in existing MEAs and not ensure that future trade measures in MEAs would be WTO-consistent. In this respect, WTO procedures for granting waivers were not adapted to environmental problems and should be changed to take them into account. A permanent waiver, which would permit trade measures to be taken to achieve MEA objectives, would not be reconcilable with WTO Article IX. Also, an *ex post* approach would entail establishing a hierarchy between MEAs and the WTO, which his delegation considered undesirable and which international law had attempted to avoid.

35. An *ex ante* approach presented several advantages. It would produce a durable solution for some trade and environment conflicts. It would contribute to strengthening juridical security by introducing the necessary predictability for the negotiation of future MEAs which conformed to WTO rules. It would avoid establishing a hierarchy between MEAs and the WTO. In elaborating such a solution, it must be made clear that unilateral measures should conform strictly to WTO disciplines, that multilateral solutions were preferable to unilateral ones, and that the WTO was not an environmental organization.

36. Trade liberalization was not in contradiction to the need to better protect the environment. A regular dialogue between environmental institutions and the WTO and between authorities responsible for trade and for environmental matters at the national level was necessary to further the pursuit of these two objectives. In this regard, his delegation welcomed the contact

established between the WTO Secretariat and the Montreal Protocol Secretariat. As had been stated by the WTO Secretariat at the Montreal Protocol's last meeting, the establishment of such a dialogue "would appear to be one of the best means of ensuring that any risk of entering into potentially conflicting obligations under separate international agreements is avoided".

37. The representative of Australia said the *ex-ante* approach focused on the development of a set of criteria to clarify when trade measures taken pursuant to MEAs should be considered as qualifying for an exception under GATT Article XX. The same or similar criteria could also be applicable to Article XIV of the GATS. A set of criteria or principles should not, however, be seen as peculiar to an *ex-ante* approach; it could also be important in implementing an *ex-post* approach to guide WTO Members in their consideration of a request for the granting of a waiver. Criteria also figured prominently in alternative approaches that had been suggested, such as combining the *ex ante* and *ex post* approaches. Also, an approach based on Article XX(h) would give a key role to the development of criteria or principles to clarify when MEAs containing trade measures should be seen as falling within its scope, and would also provide scope to consider MEAs on a case-by-case basis.

38. Further work in relation to MEAs would benefit from distinguishing between two broad issues. The first was the WTO's contribution to international efforts to further the objective of mutually supportive trade and environment policies to promote sustainable development. This was centred on the contribution which the WTO might make to achieving good policy outcomes on those environmental concerns that required the use of trade measures in MEAs. The second focused more on legal than policy questions and involved clarifying Members' WTO rights and obligations in relation to trade measures used in MEAs. This legal clarification might be an important step in contributing to mutually supportive trade and environment policies, and providing greater certainty and predictability to trade and environment activities. Discussions of *ex ante*, *ex post* and combined approaches illustrated there were a range of options for achieving a legal clarification. However, the Committee's mandate required it to take a broader policy view and not focus only on elaborating the options for legal clarification. Principles or criteria could be developed to provide guidance on when the use of trade measures in MEAs would be compatible with the open, equitable and non-discriminatory nature of the multilateral trading system. These criteria or principles could make an important contribution to advancing the aim of making international trade and environment policies mutually supportive and to promoting an informed dialogue between trade, development and environment communities as called for in Agenda 21. They could also prove useful to those involved in MEA negotiation and implementation and could assist them in their efforts to put into practice the objective of making trade and environment policies mutually supportive. They could provide a good basis for the Committee's further consideration of the various options for achieving a legal clarification. In particular, they could help identify the approach which would be most effective in responding to the challenge posed in Agenda 21 of making sure that international cooperation on trade and environment issues was consistent and reinforced the process of sustainable development. The development of principles should draw from experience to date with the use of trade measures in MEAs. A starting point was the model provided by Article XX, whereby the GATT/WTO had always recognized there were overriding public policy objectives which required the use of measurers inconsistent with its basic provisions. At the same time Article XX involved a number of disciplines and safeguards to ensure these exceptions were used in a WTO-consistent manner.

39. The approach taken in Article XX revolved around three key issues. First, identification of the public policy objectives it covered. Second, specification of the circumstances in which trade measurers inconsistent with the other GATT obligations could be used; for example, the requirement in Article XX(b) that measures must be necessary for the protection of life and

health. Third, safeguards to ensure fair and equitable treatment of WTO Members in the application of the trade measures.

40. In relation to the first issue, international cooperation to address transboundary, regional or global environmental problems was important. MEAs might involve the use of trade measures to protect an environmental resource located outside the jurisdiction of the country imposing them. In some cases, this might be a global resource, as in the Montreal Protocol. In others it might be an environmental resource located in another country, in which case the MEA might reflect the need for cooperation and a shared responsibility between importing and exporting countries to address a specific environmental concern, as in CITES and the Basel Convention.

41. As a GATT Panel had noted, there was nothing in the text of Article XX that indicated that sub-paragraphs (b) or (g) only applied to policies to protect living things or conserve exhaustible natural resources located within the territory of the country invoking these provisions. This suggested that Article XX could cover policies to protect animal or plant resources or conserve natural resources located outside a country's territorial jurisdiction and that were implemented in cooperation with other countries concerned such as through an MEA. The issue of the location of the environmental resource being protected needed to be clearly distinguished from the separate issue of the use of trade measures to force other countries to change policies pursued in their own jurisdiction. A number of panels had concluded that Article XX provided no cover for the unilateral use of trade measures for such purposes. Guidelines should also clarify that the overriding public policy objective being addressed could include the protection of environmental resources located outside the territorial jurisdiction of the country imposing a trade measure specified in an MEA and include a number of requirements guaranteeing the multilateral and open nature of the MEA. These requirements would ensure that the agreement had been negotiated in a way that was fair and equitable and was representative of a broad range of the international community. A number of these requirements had already been proposed: for example, (i) the negotiating process and membership of the agreement should be open on equal terms to all interested countries; (ii) other countries should be able to join the MEA on comparable terms to existing Parties; (iii) the agreement should provide for adequate participation by countries with an interest in trade in the products covered.

42. A second issue in developing a set of guidelines modelled on Article XX was the specification of the circumstances in which trade measures inconsistent with other WTO obligations could be used to achieve MEA objectives and whether it was possible to use such trade measures to advance MEA objectives in a manner compatible with the basic principles of the multilateral trading system. This issue concerned the range of products which could be subject to trade measures and the extension of trade measures to MEA non-parties. Guidelines modelled on Article XX which, for example, specified that the trade measures must be *necessary* for achieving MEA objectives would limit the range of products that could be affected. This would normally confine trade measures to products directly linked to environmentally-damaging behaviour, such as ozone depleting substances and to products containing those substances in the Montreal Protocol species subject to specific trade-related threats in CITES, and wastes defined as hazardous under the Basel Convention. This approach also required that the application under an MEA of trade measures to non-parties must be necessary for the achievement of the environmental objectives. The treatment of non-parties in the Montreal Protocol, CITES and the Basel Convention would appear to follow this approach: (i) trade measures applied to non-parties in the Montreal Protocol, were necessary as the environmental goal of protecting the ozone layer would not be achieved unless there was global regulation of ODS; (ii) in CITES, the extension to non-parties of the requirements imposed on Parties was necessary as the goal of protecting endangered and threatened species through international trade would otherwise be undermined by trade with

non-parties; (iii) in the Basel Convention, the extension to non-parties of the requirements imposed on parties was necessary as the goal of protecting human health and the environment against the dangers of trade in hazardous wastes would otherwise be undermined by trade with non-parties.

43. A third issue in the Article XX approach was a safeguard to ensure fair and equitable treatment of WTO Members in the application of the trade measures used. Article XX achieved this through its preamble which imposed less strict or "softer" obligations of MFN treatment and national treatment than required by basic WTO provisions. This suggested that the treatment accorded to non-parties should be centred on whether they met the requirements necessary for achieving the MEAs objectives and not on the fact that they were non-parties. The Montreal Protocol, CITES and the Basel Convention all adopted this approach. While the Montreal Protocol banned imports of controlled substances from non-parties, it permitted trade with a non-party if a Meeting of the Parties determined that the non-party was in full compliance with the control regime and had submitted data to that effect. CITES permitted trade with a non-party on the same terms as with Parties if the competent authorities in the non-party had issued comparable documentation that substantially conformed with the requirements of CITES for permits and certificates. While the Basel Convention prohibited trade with non-parties, Article 11 permitted trade with a non-party if that trade was governed by a bilateral, regional or multilateral agreement that imposed requirements that were not less environmentally sound than those of the Convention.

44. Work could focus on exploring three issues in particular: (i) defining the public policy objective being addressed; (ii) defining the circumstances in which the use of trade measures that might be WTO-inconsistent to achieve this public policy objective would be compatible with the basic principles of the multilateral trading system; and (iii) elaborating safeguards that could ensure fair and equitable treatment of WTO Members in the application of these trade measures.

45. The representative of Japan said the points upon which to focus discussions were: (i) the most effective way of achieving environmental goals; (ii) the criteria for eligible MEAs; and (iii) the reconciliation of trade measures in MEAs with WTO rules. In the case of global and transboundary environmental problems, multilateral cooperation was the prerequisite for effective action. An MEA was one of the most effective tools for dealing with environmental protection. International environmental cooperation was mutually supportive and compatible with the preservation of the principles of international trade since both initiatives shared the objective of attaining the balance of equality and fairness.

46. Concerning the criteria for an eligible MEA, first the level of participation had to be considered. MEA Parties should include all the major producing and consuming countries and the countries affected by the trade measures. This condition would contribute to building a common ground for possible joint work between the WTO and other international organizations. Second, the MEA should contain a provision which defined clear conditions under which the trade measures could be applied based on an agreement concerning scientific justification for the measures, the real cause of the problem and the trade effect, and the necessity of applying those measures. Third, the MEA should have a variety of tools, including non-trade measures. The cost and effectiveness should be examined before applying a trade measure, since in some cases it would be accompanied by disadvantages for third parties. It might also risk challenging the fundamental principles of MFN and national treatment and could create disguised protectionism. Therefore, the menu of remedies in MEAs should consider alternative non-trade measures so as to minimize the risk of trade restriction. As such, a mechanism to make an overall judgement

concerning the best method from both an environmental and trade perspective needed to be developed.

47. In terms of reconciling MEAs and the WTO, the accommodation of trade measures pursuant to an eligible MEA with WTO rules required consideration of: (i) the legal foundation; and (ii) the modality of the approval mechanism, namely an *ex-ante* or *ex-post* approach. The idea of a trumping clause or a collective interpretation of Article XX had been raised, but this sort of comprehensive *ex ante* approval system raised concerns that environmental protection might override WTO rules. There also existed a danger of the WTO's eventual inability to check the abuse of trade measures which were disguised protectionism. The waiver approach was considered to be *ex post* and WTO approval would be made on a case-by-case basis. This would effectively address potential concerns raised by the *ex ante* approach. However, there seemed to be a preference for the *ex-ante* approach, since an MEA's legal stability would be assured by defining in a generic way the status of environmental issues within the WTO. The Committee should further examine the two approaches by comparing their positive and negative effects. Setting aside the question of how a final judgement should be made, it would be useful to develop certain guidelines to determine which trade restrictive measures would be allowed. These guidelines could take the form of a check list which covered the requirements for an eligible MEA, including the cause of the environmental problem, level of participation, and scientific justification for the use of trade measures. This check-list would also serve as a guideline for future MEAs that might contain trade restrictive measures.

48. The dispute settlement mechanism for trade measures in MEAs needed further discussion. A WTO Member, non-party to an MEA, could have recourse to the WTO dispute settlement process for disputes concerning trade measures taken pursuant to MEAs. Trade measures for environmental purposes which were not pursuant to MEAs required a cautious approach so that WTO-consistency could be maintained. Here, the risk of protectionist abuse was high and a rigid discipline was required. Countries should avoid taking unilateral trade restrictions to redress environmental problems of a transboundary nature or that lay outside their jurisdiction. If it were necessary to use trade measures to protect the extra-territorial environment, those must be based on MEAs among related countries.

49. The representative of Morocco said the use of trade measures in MEAs was linked to consideration of GATT Article XX, which allowed countries to take trade measures to protect human, animal and plant life and health. Discussions on these issues in the Committee would benefit from participation of experts from the UN, FAO, UNCTAD and other international bodies. The result could be the preparation of a draft amendment to Article XX(b) containing a reference to MEAs, or to add another paragraph such that MEA Parties could benefit from preferential treatment if MEA trade provisions were in conformity with WTO principles and were applied without a protectionist objective. The delegation of the European Communities had outlined a useful solution to the issue in this respect.

50. The representative of Venezuela said that the proposals which had been outlined under this Item were tantamount to renouncing the principle of non-discrimination. Three alternatives had been raised to ensure the compatibility of trade measures taken pursuant to MEAs and the WTO. The first, which seemed to have been disregarded by many delegations, was that it might not be necessary to modify the WTO as exiting provisions enabled countries to develop an environmental policy without acting against WTO provisions. He said that consideration of this alternative should be continued. In panel reports which had included an environmental aspect, it had not been necessary for the panel to evaluate the environmental justification of the measures. This had not prevented in some cases a measure being found to have been applied in a GATT-consistent

manner. If some environment-related trade measures had been found to be GATT-inconsistent it was because they contravened the rules that required a measure to be non-discriminatory, the least trade restrictive and necessary according to Article XX, and not because the panel had disregarded environmental objectives in favour of a rigid set of norms that prevented the development of a national environmental policy.

51. The problem posed by non-discrimination in the application of environmental measures had to be examined. It was not acceptable to facilitate the adoption of measures which were contrary to Articles I and III as a way in which to put pressure on countries which had opted, for legitimate reasons, not to join a particular MEA. This went beyond the Committee's mandate and would establish an undesirable precedent. The concept of like product should be better defined before considering options concerning the application of trade measures on imported products. Another element which should be clarified was the unilateral application of PPM-based measures which were WTO-inconsistent. The Committee should take a decision to this effect before going into detail on the best way of adopting any measures that were WTO-inconsistent. His delegation considered that current WTO provisions were sufficient to enable Members to attain legitimate environmental objectives.

52. His country had been successful in the process of industrial restructuring required to adapt to new and stricter environmental standards, as in the cases of the Interamerican Commission on Tropical Tuna and the Montreal Protocol, where sustainable development models had been adopted. This was due, in large part, to the technical and financial cooperation in these mechanisms. Nevertheless, his country faced severe restrictions which were not based on environmental objectives and which were incompatible with WTO provisions. Therefore, it would be unacceptable to introduce changes to the WTO which would allow easier recourse to trade restrictions for environmental purposes unless there were serious efforts to provide incentives to assist developing countries to convert their industries and incorporate environmentally sound technology. It was not necessary or desirable to make any changes to the WTO which would have the effect of giving a loophole for disguised protectionism. He supported the proposal by the delegation of Egypt to examine the necessity, effectiveness and proportionality of environmental measures.

53. The representative of the United States said that her delegation attached importance to solving environmental challenges through international cooperation and viewed trade measures as an important and sometimes central element for achieving environmental objectives in MEAs, such as the Basel Convention and CITES. She noted the increase in the number and scope of international environmental negotiations since UNCED. Only a limited proportion of existing MEAs included trade measures, but an examination of negotiations underway indicated that trade-related elements were being considered. This underlined the importance of coordination between trade and environment officials at the national and international levels, and the importance of the Committee's work. She noted the references to effectiveness and necessity as criteria to be considered, and questioned whether MEA negotiators did not think about whether trade measures were necessary and whether trade measures would be put in place if they were considered to be ineffective. If trade officials considered that they would have come to different conclusions then that was an issue which would be best worked out in capitals, not in the Committee.

54. Document WT/CTE/W/12 provided information on recent developments in relevant MEAs which had trade provisions. It could be updated in the future on, for example, the FAO's Code of Good Conduct for Responsible Fishing. Document WT/CTE/W/12 included an annexed set of questions that the WTO Secretariat had provided to the Montreal Protocol Secretariat on a

proposal being considered by Parties. Her delegation was concerned that the WTO Secretariat had taken upon itself to submit this list of questions. The recipients of the questions might misunderstand some of them to contain implicit suggestions as to the handling of the proposal in question. Also, the questions might create undue expectations that a substantive response might be forthcoming from this Committee. It was difficult to respond to questions such as those that had been raised by the Montreal Protocol Secretariat at this stage in the discussions. Without a common understanding of how current WTO rules related to MEAs, it was difficult to imagine how to collectively answer such questions. The fact that the Committee was receiving such enquiries underlined the importance of work on this Item.

55. The representative of Canada said that MEAs should have clear environmental objectives and obligations. The only appropriate and effective way to address transboundary environmental issues at the international level was through MEAs which had broad-based participation. On this basis, WTO rules should not be an arbitrary impediment to the use of trade measures that might be included in MEAs. He reiterated that trade measures should not be expected to be a regular feature of MEAs, given that trade measures were not necessarily the most effective means to achieve environmental objectives. Any such trade measure, however, must be clearly specified in the MEA itself. His delegation's support for multilateral approaches reflected its opposition to unilateral actions. There was no basis for providing authority in the WTO for the use of unilateral trade restrictions to apply environmental programmes or standards in an extraterritorial manner. It is not for one country or group of countries to decide for others what action should be taken domestically or in the global commons. The danger of such unilateral actions being captured by protectionist pressures was clear. His delegation had a preference for an approach to this issue on a case-by-case basis that recognized MEAs' evolving nature, as exemplified by the Basel Convention; while his delegation had supported the original trade measures, it opposed the recent amendment that expanded their scope. Some *ex ante* approaches could amount to the writing of a blank cheque, without full knowledge and consideration of the nature and future effect of such trade restrictions. This was not acceptable.

56. It was up to national governments to evaluate the environmental objectives and provisions of MEAs, not the WTO. However, the WTO had an interest in specific trade measures contained in an MEA in the context of the rights and obligations assumed by WTO Members, which could not be set aside. For instance, in considering an Article XXV waiver approach, it would be necessary to know what was exempted from the rules and on what basis that should be done, prior to assessing the impact of any proposed measure. In addition to assessing the relative merits of alternative approaches to accommodating trade measures in MEAs in the WTO, the merits of developing guidelines should be considered. Guidelines could be aimed at assisting environmental policymakers in their consideration of the possible future use of trade measures in MEAs, would make it more likely that new trade measures in MEAs would operate in a WTO-consistent manner, and would help to promote compatibility between trade and environmental policies.

57. The representative of New Zealand said recent developments described in document WT/CTE/W/12 underscored the importance of making progress on Item 1. Regarding the questions which were annexed to document WT/CTE/W/12, he recalled that the Montreal Protocol Secretariat had initiated the process by seeking WTO advice and the WTO Secretariat had not sought a role for itself, and said his delegation was comfortable with the Secretariat's approach in this instance. He recalled the Committee's aim of making trade and environment policies mutually supportive, and supported the importance of effective coordination between trade and environment officials, particularly in capitals. The Committee's task was to consider whether and how the WTO could accommodate the use of trade measures which were necessary to achieve

legitimate environmental objectives, while at the same time ensuring that they did not create unnecessary trade restrictions or undermine the trading system.

58. The representative of Argentina recalled his delegations' proposal for a combination of the *ex ante* and *ex post* approaches, whereby criteria would be adopted to serve as guidelines and as a compliment to Article XX for trade measures in MEAs. An *ex ante* approach would be accompanied by a sort of waiver so that measures under MEAs would be consistent with the criteria which had been outlined by the delegations of Australia and the European Communities. With the adoption of the new work programme, the Committee's work was now more focused and it was likely that clear cut proposals and responses would emerge. Progress should not prejudge or prescribe the results which would be attained by Singapore. The first step was to identify the problems. The second step was to propose solutions. Then solutions would have to be adapted in order that Members could accept them. The only precondition his delegation considered on the outcome of the Committee's work was that the balance be respected, which did not mean that operative and concrete recommendations needed to be made on every Item but that there should be no Items which were taboo. His delegation would consider the proposal by the European Communities, although certain changes to the WTO might be implicit and this would call for a degree of prudence. Whatever flexibility was called for with respect to MEAs, there needed to be an unambiguous renunciation of unilateral action.

59. The representative of Pakistan said that for developing countries a degraded environment was partly a manifestation of poverty and if poverty and unemployment were not addressed an undue emphasis on the environment might lead to new protectionism. Many developing countries were concerned that increased environmental standards in developed countries would constrain trade opportunities and efforts to link trade and environment would create loopholes that could be exploited to restrict trade. Despite some evidence of links between trade and environment, the way to deal with this issue posed more questions than answers, such as the extraterritoriality of national laws, appropriate dispute settlement mechanisms to ensure that environmental policies were not employed as disguised trade restrictions, and the appropriate role of environmental subsidies.

60. The Chairman noted that the Secretariat had received several requests for information and advice from MEAs. There was no WTO procedure which would permit it to adequately reply to such requests and the establishment of new procedures went beyond the Committee's mandate and was of interest to the WTO in general. For this reason, he had referred this matter to the Chairman of the General Council who, he understood, would be consulting on the issue. After the General Council had taken up this matter, he would inform the Committee of the results.

61. There were several views on how to tackle Item 1, the *status quo*, *ex ante* and *ex post* approaches. He noted there was a certain similarity between the status quo and the *ex post* approaches. Other delegations preferred a combination of the approaches which had been outlined, and several possible solutions existed in order to ensure the compatibility of MEAs which contained trade measures and WTO provisions. Among the solutions which were being explored were a change in Article XX, the development of principles, the drawing up of an interpretive understanding, and the possibility of setting up procedures to be followed by dispute settlement panels in dealing with environment-related matters. Another aspect was the non-party issue. In this regard, there was a close link between Items 1 and 5, which related to the dispute settlement procedures in MEAs and the WTO. All these aspects would have to continue to be explored.

Item 3(a)

The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

62. The representative of Canada reiterated his delegation's concerns about eco taxes which it had outlined at the October 1994 meeting. The concern was not about national measures aimed at addressing the local impact of products at the consumption or disposal stages. The effectiveness of eco-taxes was enhanced if they were applied to all products being consumed and disposed of in the domestic markets, and WTO transparency, MFN and national treatment obligations would have to be met. Rather, the concern was about measures aimed at local environmental impacts at the production stage in countries of exportation, because of concern over the transboundary impact of the application of domestic non-product related PPM standards to imports. This reflected his delegation's fundamental belief that harmonization of non-product related PPM requirements was in general not environmentally desirable given different absorptive capacities, as recognized in Principle 11 of the Rio Declaration, and importing country standards might not be environmentally appropriate in the exporting country. He noted the danger that these standards could be captured by protectionist interests.

63. The representative of New Zealand said it was preferable to continue to focus first on the generic usefulness of border tax adjustments (BTAs) for environmental purposes. He recalled his delegation's analysis at the September 1994 meeting of the effect of BTA on increasing or decreasing the effectiveness of the domestic environmental charge or tax. His delegation had presented several scenarios to examine the generic effect of extending domestic environmental taxes to the WTO through BTA. The first case was where the domestic tax or charge was imposed to address environmentally unfriendly local production. The conclusion here was that imposing the tax or charge on imports of the like product or exempting exports of that product would reduce the effectiveness of the domestic tax or charge in achieving the environmental objective. Therefore, taxes and charges aimed at production externalities might be most effective when there was no BTA. The second case was where the tax or charge addressed environmentally unfriendly domestic consumption; here, imposing the tax or charge on exports of the product, or exempting imported like products, would reduce the effectiveness of the tax in achieving the environmental objective. Therefore, BTA would contribute to the effectiveness of the domestic tax or charge. Another scenario was where the tax was on an input which was consumed in the production process. The conclusion was that for BTA to account for the value of the input tax contained in the price of the final product would run counter to the environmental objective. BTA would therefore not be appropriate for imports or exports of the final product. They would, though, be appropriate for imports or exports of the input.

64. Having examined in a general way the case of a single country, his delegation had examined the global or transboundary case. The third case, therefore, was where production had a transboundary environmental externality. The conclusion was that exempting exports from domestic taxes or charges would reduce the effectiveness in achieving the environmental objective. For imports, the situation was complex and more work was needed. The final case was where consumption had transboundary environmental externalities and the main conclusion was that BTAs on imports would contribute to the effectiveness of the domestic measure. The situation for exports was more complex. It was necessary for the Committee to continue to bear in mind such general considerations in approaching the BTA issue.

65. The representative of Switzerland said the use of economic instruments, specifically eco-taxes and charges, was efficient and innovative. The trade effects of eco-taxes depended on the

manner in which they were conceived, the market in which they were applied and the stage of the life of the product. During the establishment and the implementation of an eco-tax, account should be taken of WTO rules in order to avoid undesirable trade effects and these measures should be transparent and respect national treatment. The trade effects of eco-taxes on products and on PPMs should be clearly distinguished. As had been noted by the delegation of Argentina at the September 1995 meeting, product taxes were desirable from a trade perspective as they did not include any distortions if they were applied at the consumption stage and they affected equally domestic and imported products. According to the 1970 GATT Working Party conclusions, a BTA was possible for taxes which were imposed directly on a product. These taxes were WTO compatible as national treatment was respected. The problem was more complicated with respect to taxes on PPMs, which were domestic by definition, affected exclusively domestic producers and thus could place them in an unfavourable competitive position since taxes differed from one country to another. It was considered that WTO rules permitted BTA for inputs incorporated in the final product but not for unincorporated PPMs. An energy tax would appear to be excluded. However, footnote 61 of Annex II of the Subsidies Agreement suggested a different conclusion. TRE/W/20 (paragraph 34) stated that: "presumably this footnote would allow for exemption, remission or deferral of taxes levied on the energy, fuel, and/or oil inputs consumed in the production of an exported product. This could have important implications for competitiveness issues that often arose with regard to proposals for such energy taxes". This issue would have to be examined further as it could influence work on eco-taxes. He requested the Secretariat to prepare a document on the negotiating history of provisions concerning BTA in the Subsidies Agreement.

66. The representative of Mexico said that the main concern under this Item did not relate to national measures whose purpose was to affect the local environmental impact of products, either through consumption or disposal. The effectiveness of these measures were clearly established and substantiated. The main concern was measures imposed on environmental externalities in the production process of other countries. The effectiveness of taxes and charges in this case was dubious. These elements should be reviewed on the basis of information compiled from national experience. The analysis should distinguish between the four different types of externalities which had been identified by New Zealand, which could serve as a basis for further discussion.

67. The Chairman said that the Committee would discuss this item in February 1996 and focus on the adjustment of environmental taxes at the border and their WTO-consistency. The Secretariat would prepare a study on the negotiating history of provisions concerning BTA in the Subsidies Agreement.

Item 3(b)

> The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

68. The representative of Canada said this Item addressed concrete market access problems faced by many Members and an analysis of the current trade disciplines on eco-labelling programmes would serve to provide some guidance to the related issues of packaging, technical regulations, standards, and recycling requirements. Discussions would be guided by document WT/CTE/W/10 on the negotiating history of the TBT Agreement and discussions in the TBT Committee. Eco-labelling should be considered under four aspects: transparency, government participation, life-cycle analysis, and work in other fora. Transparency was basic to

understanding the scope of any issue. As noted here and in the TBT Committee, the application of the TBT transparency provisions to eco-labelling programmes could help to address some of the substantive concerns regarding these initiatives. Notification with a prior comment period was fundamental. In this regard, document WT/CTE/W/10 was clear that, according to the Tokyo Round Decisions and the TBT Committee, mandatory labelling requirements were subject to notification provisions regardless of the kind of information that was provided on the label. Furthermore, by implication, voluntary labelling standards were subject to the notification provisions of Article 4 and Annex 3. Thus, it appeared that eco-labelling programmes were well within the scope of the normal TBT notification procedures. Notification under the TBT Agreement would ensure that governments and industry would be provided with both the needed information and an opportunity for prior comment. The Committee might need to consider whether further transparency provisions were required for voluntary labelling standards, but it should ensure that the TBT notification disciplines formed the basis for such transparency. His delegation was prepared to notify formally current and future eco-labelling schemes and hoped that other Members would also consider notification of theirs.

69. Document WT/CTE/W/10 clarified that the TBT Agreement was intended to cover both mandatory and voluntary eco-labelling programmes. For voluntary programmes, Article 4.1 established a strong obligation on Members to take such reasonable measures as were available to them to ensure that local governments and non-governmental standardizing bodies within their territories accepted and complied with the provisions of the TBT Code of Good Practice. As noted in document WT/CTE/W/10, this wording was drafted to be consistent with GATT Article XXIV:12. Furthermore, a survey of existing eco-labelling programmes indicated that most had been developed and implemented with some degree of government involvement. Government involvement might not necessarily guarantee greater credibility nor greater market impact but it was relevant to the ability to ensure that eco-labelling programmes conformed to internationally-agreed norms or disciplines. Widespread government involvement in these programmes provided the necessary lever to ensure such conformity and the differences between first and second levels of obligations were in most cases academic. His delegation considered that eco-labelling programmes were covered by the TBT Agreement in terms of the basic discipline of transparency and its related obligations. This should form the basis for discussion regarding the possible need for further trade disciplines. The issue of coverage was within the TBT Agreement's mandate, given the labelling decision and the effective degree of government involvement in such programmes. The issue of the possible need for further disciplines on other issues relating to eco-labelling was a shared mandate between this Committee and the TBT Committee.

70. Eco-labelling programmes, in contrast to other labelling programmes, were based to a significant extent on non-product related PPMs given their extensive use of life-cycle analysis (LCA). Document WT/CTE/W/10 clarified how complex the PPM issue had been for the TBT Agreement. His delegation supported the statement in document WT/CTE/W/10 that the "negotiating history suggests that many participants were of the view that standards based *inter alia* on PPMs unrelated to a product's characteristics should not be considered eligible for being treated as being in conformity with the TBT Agreement". His delegation's understanding, based upon discussions with the negotiators at the time, was that there was no intent to provide scope for non-product related PPMs. The Committee was faced with the apparent paradox of TBT coverage of eco-labelling programmes, without any scope for the central element of LCA, i.e. non-product related PPMs. This aspect of eco-labelling programmes could not be ignored. He considered that it would be beneficial to consider the merits and the feasibility of extending WTO and TBT disciplines to non-product related PPMs. Given that the TBT Agreement encouraged Members to participate in and adhere to international standards, this would provide some means to bring some non-product related PPMs, for which there was international consensus, under TBT disciplines.

The Committee should examine whether such international standards and criteria would provide the means to bring non-product related PPMs based environmental standards within TBT disciplines. In a number of other fora, including the ISO, UNEP and UNCTAD, work was underway to advance international cooperation in the development and implementation of environmental programmes like eco-labelling. Consideration should also be given to Mutual Recognition Agreements whereby the objectives, requirements and conformity assessment procedures of a programme could be acknowledged as being equivalent to those of another programme, while not necessarily identical. His delegation emphasized the advantages of multilaterally-agreed criteria given the concern over unilateral measures. This concern was particularly pertinent to non-product related PPMs, given that these would reflect unique national or regional characteristics or technologies. One factor that must be taken into account in a review of other fora's activities was the degree to which their work had broad international support and participation.

71. Discussion of all issues under Item 3(b) should keep in mind the basic WTO and TBT disciplines of non-discrimination, national treatment and minimal trade distortion. Given that elements of this Item were possible barriers to developing country exports, increased trade disciplines on such measures might not be sufficient. His delegation considered that the need for technical assistance should be acknowledged and that the International Trade Centre should continue to provide developing countries with expertise and advice in meeting these requirements. Also, an informal joint meeting of the Committee and the TBT Committee should be held in the near future. He reiterated his delegation's offer to the TBT Committee to present Canada's Environmental Choice Programme to assist in an understanding of the practical aspects of eco-labelling.

72. The representative of the European Communities focused on voluntary eco-labelling schemes based on LCA which were increasingly recognized as an important instrument of environmental policy. For example, Agenda 21 recognized that the recent emergence in many countries of a more environmentally conscious consumer public should be encouraged. To this end, governments had been requested to: (i) develop criteria and methodologies for the assessment of environmental impacts and resource requirements throughout the full life-cycle of products; and (ii) encourage expansion of environmental labelling to assist consumers in making informed choices. LCA was based on the definition of relevant product groups and related environmental criteria, which covered the entire *cradle-to-grave* product life-cycle, including the raw materials used, PPMs, distribution, end use and final disposal. Ecolabelling schemes based on LCA had only a limited impact on trade. As long as they were of a voluntary nature, as was the case of the EC scheme, they did not result in the establishment of trade restrictions for unlabelled products. Therefore, on purely trade grounds, they were preferable to other conventional instruments of environmental policy. However, discussions in the Committee illustrated that the LCA approach and, in particular, the application of PPM-related criteria to imported products raised specific concerns. The EC eco-labelling scheme in particular had been cited in this respect, despite the fact that there were many voluntary eco-labelling schemes based on LCA worldwide, not only in OECD countries, and that some of them were less transparent and more developed. In fact, the EC had made a significant effort to promote dialogue and consultations with third countries and foreign suppliers in the initial stages of developing its ecolabelling scheme.

73. His delegation's position on ecolabelling was articulated around five fundamental principles: (i) Increased WTO transparency in the operation of ecolabelling schemes was desirable. Even if it could be argued that voluntary eco-labels were "soft" instruments compared to traditional instruments of environmental policy and had a limited trade impact, the perception of

potential trade impacts revealed the need to enhance transparency. A WTO transparency regime would also prevent possible disputes by ensuring that all countries with significant trade interests could have their views heard throughout the entire process, including the definition of product groups, the elaboration of ecolabelling criteria and the award of the labels. At the same time, a WTO transparency regime could be designed in such a way as to enable industry, consumers and environmental NGOs in third countries to submit their comments and suggestions. (ii) The outcome of the Committee's discussions should be balanced and comprehensive. While the main objective should be to increase transparency, it would also be necessary to ensure respect for some substantive principles, in particular to avoid possible trade distortions and discrimination between domestically produced and imported goods. A fundamental requirement was that both governmental and non-governmental schemes should be subject to the same requirements. No differential treatment based on their predominantly governmental or non-governmental nature would be justified. Since governmental involvement or sponsorship did not necessarily make a voluntary eco-labelling scheme more successful, non-governmental schemes could have the same or greater trade effects than governmental ones. It was, therefore, essential to devise effective and enforceable mechanisms to ensure that non-governmental schemes were transparent and non-discriminatory. (iii) The integrity of the LCA ("cradle-to-grave") approach should be preserved. All ecolabelling criteria established for each category of products, including PPM-related criteria, should be taken into account when awarding the labels to both domestically produced and imported goods. Similarly, it should be considered whether there might be some kind of inconsistency between the LCA approach and WTO provisions and, if necessary, appropriate solutions should be devised. (iv) The Committee's deliberations should initially focus on the transparency issue. International harmonization of eco-labelling procedures and mutual recognition of labels might offer an effective solution to address potential trade impacts in the operation of eco-labelling schemes. However, in view of the difficulties involved, it did not seem possible to achieve immediate results in this area. It would be preferable to follow a step-by-step approach in order to be able to deliver concrete results as soon as possible. Discussions should focus initially on the transparency issue, taking into account that improved mechanisms for consultation were an important instrument for avoiding potential conflicts. Nevertheless, international harmonization and mutual recognition remained important policy objectives. His delegation was willing to participate in the work underway in several international fora, such as ISO, UNCTAD, and OECD, and considered that all international activities relevant to the international harmonization of ecolabelling schemes should be encouraged. (v) The specific needs and requirements of developing countries should be fully taken into account in the establishment and operation of eco-labelling schemes. It was essential to avoid possible negative impacts on developing country exports, whose special development, financial and trade needs should be taken into account in the design and implementation of eco-labelling schemes. Developing countries should be given advice and technical assistance regarding the establishment of ecolabelling schemes to help them achieve their own environmental objectives and to promote exports of environmentally-friendly goods to countries with a high level of consumer environmental awareness.

74. His delegation considered that the first task was to clarify the scope of the TBT Agreement to determine whether it applied to voluntary eco-labelling schemes based on LCA, specifically whether such programmes fell within the definition of a *standard* in Annex 1. His delegation was aware that the Committee did not have the competence to interpret the TBT Agreement. The analysis in document WT/CTE/W/10 illustrated that the intention of the TBT negotiators had been to exclude from its coverage PPM-based specifications which did not affect products as such. Therefore, ecolabelling schemes based on LCA, which by definition included product and non-product-related PPM criteria, would not be entirely covered by the TBT Agreement. A partial coverage could in theory be possible, if each of the criteria established for

a category of products were considered as a separate rule, guideline of characteristic. However, in practice, a partial coverage of eco-labelling schemes under the TBT Agreement, excluding non-product-related PPM criteria, would not be an appropriate solution, even though it would be a first step in the direction of enhancing transparency.

75. In the operation of many of these schemes, including that of the EC, all criteria established for a specific category of products, whether related to the product or to the PPMs used, had to be jointly considered when awarding the labels. A partial coverage of eco-labelling schemes by the TBT Agreement would not meet the concerns expressed in the Committee's discussions which had focused on the application of PPM-related criteria to imported products. It had been argued that, in accordance with a decision adopted by the TBT Committee, mandatory labelling requirements were subject to TBT provisions regardless of the kind of information that was provided on the label and that, by implication, voluntary labelling standards should also be subject to all relevant TBT provisions. However, this argument was not entirely convincing. First, it might be inappropriate to apply a decision which only referred to mandatory labelling requirements to voluntary labelling schemes. Second, in most eco-labelling schemes based on LCA, the label consisted of a symbol and contained little or no information at all. The most important element was not the information contained on the label but the criteria products had to meet in order to be awarded the label.

76. In view of the remaining legal uncertainties concerning the scope of the TBT Agreement, his delegation considered that the Committee, in cooperation with the TBT Committee, should consider two possible options: (i) seeking full coverage by the TBT Agreement of voluntary ecolabelling schemes based on LCA; or (ii) negotiation of an *ad hoc* code of conduct. The first option might offer some practical advantages in view of the fact that the mechanisms and procedures established in the TBT Agreement were already in place and well known. However, it would be necessary to assess the legal, practical and institutional implications of the TBT rules on the operation of voluntary eco-labelling schemes based on LCA which had only a limited trade impact. This option would require an agreement of WTO Members, for example in the form of an understanding. When negotiating such an understanding, the implications of some of the TBT rules for the integrity of LCA should be considered and, if necessary, specific safeguards should be established. The main advantage of the elaboration of an *ad hoc* code of conduct was that it could be tailored to meet specific transparency requirements in the operation of eco-labelling schemes without introducing unnecessary procedural constraints. Also, it could include some substantive provisions in particular to avoid discrimination in the definition of product groups and criteria and in the award of the labels. It would also be possible to combine both options. For example, the provisions of a possible code of conduct could, in substance, reflect the consensus of WTO Members to apply TBT procedures to the operation of voluntary eco-labelling schemes based on LCA. It was important to note that it would be necessary to ensure, under both options, that equivalent treatment was given to governmental and non-governmental eco-labelling schemes. His delegation considered that transparency should be the first priority and that the outcome of the Committee's work should be comprehensive and balanced and preserve the integrity of LCA, while maintaining the open, equitable and non-discriminatory nature of the trading system and taking into account the needs of developing countries.

77. The representative of Chile referred to the interests of many developing countries in increasing WTO transparency of eco-labelling since there was concern that its negative effects could affect their trade. He said that it would be necessary to consider new provisions to improve the notification processes contained in WTO Agreements. It would be useful to consider the transparency of standards in the TBT Agreement, in particular those contained in the Code of Good Conduct. Concerning improved access to information on eco-labelling, governments should

ensure that national, private and public bodies involved in the development of eco-labelling should give the necessary information so that it was possible to comply with the Code of Conducts' minimum provisions, i.e. publish standards under preparation and those adopted at least every six months and allow at least 60 days for interested parties to submit comments. It was premature to consider whether the application of these notification provisions would be sufficient to satisfy requests for information on eco-labelling, but they would provide for greater transparency.

78. The representative of Malaysia, on behalf of ASEAN, said document WT/CTE/W/10 underlined one of the problems in the area of labelling was that regulations were often too detailed or unnecessarily stringent and could constitute trade obstacles. This situation could not continue. In principle, labelling requirements to advance sustainable development were appreciated. However, schemes were being promoted in the name of sustainability which were coloured by political and economic expediency. There was a need for a globalization of the sustainability issue. Labelling requirements should be based on the genuine need to ensure sustainability, for example with respect to the need to ensure the sustainability of the world's forests. Therefore the coverage of labelling schemes should include both temperate and tropical timber. The idea of necessity or effectiveness was relevant. Studies had shown that trade in timber had not contributed significantly to environmental degradation and that consideration had also to be given to the underlying causes of degradation brought about by poverty and indebtedness. As a product, timber competed to a certain extent with substitute materials in the market place, such as plastic, aluminium and steel, and these products should be covered by similar measures regarding sustainability. Another relevant aspect specifically in the timber case was the proliferation of unilateral initiatives in consuming countries. There was already a global initiative underway and it should be supported by all relevant parties, including governments and international organizations, from both producing and consuming countries. A credible timber labelling scheme required a realistic and suitable implementation timeframe which had to be based on and should not be earlier than the agreed timetable by which all forests were brought under sustainable management. ITTO's objective of the year 2000 had gained increasing acceptance as the year by which sustainability should be achieved. There should not be any initiative that could cause confusion such as trying to bring that date forward. He said that his delegation was not against labelling, but that it should be fair, equitably implemented and non-discriminatory. As pointed out in document WT/CTE/W/10, applicable WTO provisions, specifically GATT Article III, needed to be respected.

79. The representative of Switzerland said his delegation viewed eco-labelling from a horizontal perspective as voluntary eco-labelling programmes were increasingly used as an instrument to promote different environmental objectives. Voluntary eco-labelling was a challenge for the WTO. Such market-based instruments would play an increasing role in the area of market access. Negotiators had wanted to integrate these standards into the TBT agreement as it had been recognized that despite the fact that they were voluntary they could have an indirect influence on access to specific markets. This issue needed to be addressed in order to clarify the implementation of the TBT Agreement. Work should concentrate on transparency and government participation in eco-labelling programmes. Current TBT provisions allowed a certain degree of transparency for eco-labelling programmes in the Code of Good Practice and his delegation insisted on the need to reach a consensus on their notification. Concerning government participation, Article 4, which covered different levels of government participation, could be examined based on whether these were standard-setting bodies. Governments intervened in diverse ways in eco-labelling programmes. The issue of PPMs unrelated to the characteristics of a product, which was raised in the context of voluntary eco-labelling programmes that were based on LCA, was so complex that it was difficult to view it solely from the eco-labelling perspective.

80. The representative of Korea said most eco-labelling schemes were based on LCA and were voluntary in nature. Even though they were applied in the same way to both domestic and foreign suppliers, they could have *de facto* discriminatory trade effects resulting from the selection of products, categories and criteria, or from the threshold levels for the award of the label which effectively tended to raise the adjustment costs and limit market access for foreign suppliers. Eco-labelling schemes could cause discriminatory effects on market access when they included criteria on non-product-related PPMs. The TBT Code of Good Practice was a starting point for addressing these discriminatory effects. Document WT/CTE/W/10 clarified that it was the intent of the negotiators to exclude technical regulations and standards based on PPMs requirements which did not have any impact on product characteristics. His delegation's view was that the intent of the negotiators had to be respected and that the Committee should be cautious regarding any interpretation or extension of the coverage of the TBT Agreement which might be considered to be necessary to address the discriminatory trade effects of eco-labelling schemes. An attempt to regulate the trade effects of eco-labelling schemes through TBT disciplines would open the way for incorporating non-product-related PPMs in the WTO, whether it was intended or not. Thus, the Committee would need to look for other means to address the problem, taking advantage of progress which had been achieved in the other fora.

81. Eco-labelling schemes based on non-product-related PPMs criteria which did not have any environmental impact on the importing country, even though they were voluntary, had the effect of forcing the exporting country to adopt the importing country's environmental standards and priorities. Each country had a right to have its own environmental policy priorities, and the environmental capacities and developmental needs of each country should be considered whenever environmental policy measures, mandatory or voluntary, were likely to have extra-jurisdictional effects. In this regard, his delegation attached importance to the development of the concept of "equivalence" or "mutual recognition" and to their potential role in avoiding the discriminatory trade effects of eco-labelling schemes. The TBT Code of Good Practice did not contain any provision on equivalence or mutual recognition and, as such, work in relevant international fora, such as UNCTAD, UNEP and possibly ISO should be followed.

82. The representative of India said it was a fact that labelling requirements were more onerous for products from developing countries and they placed a disproportionate burden on their trade. His delegation had often referred to the critical role that technical assistance programmes played in this context. He hoped that such programmes would be developed in manner which would benefit developing country exports. His delegation was in favour of labelling requirements which were based on international standards and considered that such standards, once adopted at the national or local level, must be notified through a responsible national body so that information and transparency needs were met. It was not his intention to go into the complex issue of PPMs, on which the position of his delegation was well known. The concept of PPMs, which involved the concept of extra-territoriality, was unacceptable as it sought to impose the standards adopted by one country on another.

83. The representative of Egypt said that the issue of eco-labelling was complex. It raised questions which did not have adequate answers, and cut across other items, such as transparency, competitiveness, market access and the relationship between environmental policies with significant trade effects and WTO provisions. He enquired whether eco-labelling schemes passed the necessity and least trade restrictive tests; how eco-labelling schemes, involving judgements about environmental friendliness or preferability could be designed in a way to effectively communicate the possible trade-offs among different environmental impacts; whether there was a possibility that eco-labelling schemes might be based on false or misleading information about the environmental attributes of the traded goods which would in turn lead to inefficient resource

allocation and welfare loss; whether market outcomes based on decisions made with key information deficiencies might be less than optimal; the effect those schemes might have on the environment itself; and, if the environmental effect was positive, would it be so in all circumstances?

84. Eco-labelling which aimed to achieve a certain environmental goal through encouraging demand for environmentally friendly products could lead to precisely opposite results. The reason was that if environmentally motivated consumers were willing to pay even a slightly higher price for the labelled product, aggregate demand in the post labelling situation was likely to be higher than in the pre-labelling situation. Hence, the final equilibrium price of all products labelled and unlabelled would be higher than the price before labelling had been introduced. This implied that the production of both the labelled and unlabelled products would be likely to increase. Unless policy makers were informed about the conditions of supply and demand, the consequences of indirect environmental measures like labelling were not always predictable. If the environmental benefits of eco-labelling schemes as they were applied now were doubtful, was it possible to say that eco-labelling passed the necessity and least-trade-restrictive tests?

85. Setting criteria for awarding eco-labels required judgements on the whole life cycle of a product. There were some models for internal LCA, but there was no international consensus on an acceptable model as a reference for comparisons between producers, processes or products, nor were there agreement on the role of LCA as a public policy tool. There was still a long way to go before reaching the stage where LCA was based on validated scientific methods to avoid arbitrary hierarchies, evaluate trade-offs and complexities among various environmental parameters, and deal adequately with difficult questions of environmental cost valuation. Outstanding questions about the economic and environmental rationale of eco-labelling had to be answered in order to be able to address the issue of "necessity" and "least-trade-restrictiveness" and find out if there were more reasonable and realistic alternatives.

86. His delegation considered that the trade issues related to eco-labelling, including the relationship between eco-labelling and the disciplines of the TBT Agreement, raised many questions, such as: If eco-labelling was designed to allow consumers to discriminate between like products in making purchasing decisions, how could discrimination between locally produced and imported products be avoided? While the label did not in itself prevent the import and sale of foreign products not carrying the label, it could surely have a significant trade impact, might lead to a negative demand shock for foreign producers, and would undoubtedly create a barrier to entry into the market for their products. Even if the same standard was set for both domestic and foreign producers, there might be *de facto* discrimination because of unequal access to environment friendly technology. Production standards could also be set in such a fashion that it was easy for home producers to meet, but not for foreigners. It was in fact not difficult to see how the system could be used deliberately or allowed unwillingly to become a barrier to entry for foreign products. Access to the labelled segment of the market might involve increased costs for all firms, but if domestic firms were initially closer to the required standard there would be a greater increase in costs for their foreign competitors. Relatively high cost firms were likely to have the greatest incentive to acquire the label when standards implied an increase in marginal costs to a certain level. The criteria of environmental friendliness might then conflict with comparative advantage.

87. His delegation considered that further clarification of the relationship between eco-labelling and the provisions of the TBT Agreement was needed. To what extent did eco-labelling raise legal and policy questions about the distinction between "voluntary" and "mandatory" eco-labelling programmes? Did the degree of government involvement in the development or

implementation of an eco-labelling scheme affect this voluntary-mandatory distinction? To what extent did the trade implications of eco-labelling schemes that involved seal of approval labels or overall life cycle assessments and judgements about "environmentally preferable" products differ from those aimed at information disclosure only? Some seemed to question the applicability of the TBT Agreement to eco-labelling for fear of legitimizing trade distinctions among products based on PPMs unrelated to the product, in the TBT Agreement as well as more broadly in the GATT. Specifically, national treatment might mean that the application to imports of PPMs unrelated to the product would be allowed as long as domestic production was also subject to the same PPM requirements. He stressed that there was, nevertheless, a general recognition that GATT rules applied to products and guaranteed market access to products, independent of their production conditions, and his delegation remained of the view that this was an essential characteristic of the multilateral trading system.

88. The representative of Egypt considered that, to the extent that eco-labelling schemes created voluntary standards or mandatory technical regulations stipulating product characteristics, they were subject to the disciplines of the TBT Agreement. More worrisome was the fact that some seemed to question the applicability of the TBT Agreement to eco-labels simply to avoid any discipline on their use. It could not be denied that the Agreement was not designed with eco-labelling schemes in mind. The new TBT Agreement was in practice completed by 1990, before the start of formal discussions on trade and environment in GATT. Discussion was therefore far from closed, especially on the consequences of the fact that LCA was based significantly on process standards. The CTE should continue to explore the possibility of complementing the TBT Agreement in the eco-labelling area. Meanwhile, governments should ensure that the present disciplines, even if not sufficient, were strictly observed.

89. International cooperation was also vital in the design and implementation of eco-labelling programmes to avoid discrimination and to ensure that criteria and thresholds were not set in a manner to disadvantage imported "like products". The elaboration of such criteria through multilateral negotiations, as well as the mutual recognition of eco-labelling schemes of other countries, would be consistent with both the spirit and objectives of the TBT Agreement. Furthermore, it would have a positive effect not only on trade but also on the environment. Without multilaterally agreed criteria and mutual recognition, the proliferation of eco-labelling schemes would harm their credibility and thus their effectiveness. It would also lead to market segmentation and diseconomies of scale. Mutual recognition would result in an integration of markets and the establishment of a lower equilibrium price for the labelled product. This would encourage environmentally motivated consumers to switch from unlabelled to labelled goods and generate a positive income effect in developing countries, thus increasing their capability to improve the environment. His delegation encouraged the Committee to take into account the analytical work being done in UNCTAD with regard to those issues.

90. The representative of New Zealand noted from document WT/CTE/W/10 that both voluntary and mandatory labelling standards were subject to notification requirements in the TBT Agreement. This was particularly pertinent to eco-labelling programmes, which were typically voluntary standards administered partly by private sector or non-government bodies but with important government involvement. The document added a useful summary of the obligations under the Code of Good Practice for standards such as eco-labelling programmes. Canada had usefully described the relevance of government participation in such schemes to the level of obligations under the TBT Agreement. Even with no government participation, the Agreement imposed a strong obligation upon WTO Members with respect to local government and non-government standardising bodies. The Secretariat history of the TBT negotiations noted that the "reasonable measures" obligation was expressly aligned with GATT Article XXIV:12 language.

This had been interpreted in GATT as comparable to a first level obligation, unless for example there were fundamental constitutional reasons preventing a government from ensuring compliance with the international obligation.

91. Turning to standards such as eco-labelling programmes based on unincorporated PPMs, his delegation agreed with the Secretariat summary that many participants in the Uruguay Round negotiations on TBT considered that such standards should not be considered eligible for being treated as being in conformity with the TBT Agreement. Moreover, his delegation noted that the 1995 OECD Joint Expert Group report to Ministers made clear that "multilateral trade rules and disciplines make no provision for, and have been interpreted not to allow for, import restrictions based on characteristics which are not physically embodied in the imported products" (para. 56). In the last TBT Committee meeting, Canada had raised an important point with respect to the potential costs implied for industry by non-product related PPMs, such as management standards. An examination of these standards could also be very relevant to continuing analytical work on the potential trade effects of new measures to achieve environmental goals.

92. In sketching possible ways to address the potential trade effects of measures such as eco-labelling, it was common to refer to increased transparency and to possible international harmonization of criteria. Transparency was likely to be helpful, but New Zealand was not convinced at this stage that it was a sufficient response. His delegation retained a strong interest in mutual recognition and equivalence. Harmonization had the potential to promote criteria which might be inappropriate to the environmental circumstances of individual countries. An approach based on mutual recognition and equivalence was likely to lessen this risk, and fitted well with the preference for performance based standards already embodied in the TBT Agreement. It was also consistent with the trend in other areas, such as SPS work, towards "outcome" based approaches. Many of these considerations also applied to packaging and other requirements covered by this agenda Item, for example the provisions on non-discrimination, avoidance of unnecessary obstacles to trade, notification and taking comments into account.

93. The representative of Hong Kong welcomed the focused discussion on eco-labelling and supported the Canadian statement except for the suggestion that TBT and GATT disciplines should extend to cover non-product-related PPMs. A number of delegations, notably India, had underscored the crucial concern of extra-territorial application. Environmental arguments aside, Hong Kong failed to see how PPMs unrelated to a product's characteristics could be reconciled with the like-product concept, which was essential to GATT Articles I and III. His delegation looked forward to Canada putting forward all other elements of its proposal.

94. Of the matters which had been raised, Hong Kong's main concern was whether stricter disciplines should be applied to non-governmental eco-labelling schemes. Many of these were run by government sponsor agencies with government involvement ranging from financial support to technical assistance, and might include approval of assessment criteria. These schemes were proliferating and covered products of significant interest to trade, often for developing economies. The lack of clear rules in the TBT Agreement created problems which needed to be addressed. For instance, the problem that different eco-labelling programmes might exist for the same product and be based on widely different criteria and procedures for the available labels. The schemes could be abused for protectionist purposes, especially if and when influenced by local industries. The lack of international standards and assessment criteria had also made it difficult to determine whether they represented obstacles to trade. Hong Kong agreed with the speakers who had nominated transparency to be the first objective in the present exercise. In the next step, the CTE might be guided by the ideas of neutral product selection, neutral assessment criteria, and true equity for both domestic and foreign suppliers.

95. The representative of Australia said document WT/CTE/W/10 described a range of issues that deserved careful reflection and which would be important not only in the deliberations on eco-labelling but also in relation to other environmental measures included in Item 3. Issues that needed to be addressed in relation to eco-labelling schemes included transparency, the distinction between mandatory and voluntary schemes, how to ensure that schemes were non-discriminatory in relation to both MFN and national treatment, problems associated with the use of LCA and the use of standards based on PPMs and the role for international standards. There was considerable interest in the role of transparency in helping to ensure that eco-labelling schemes were effective in promoting environmental goals and sustainable development, and in addressing concerns about the effects of such schemes on other countries. Work was underway in a number of international fora examining transparency and other issues relevant to the operation of eco-labelling schemes. Greater understanding of the contribution which the TBT Agreement could play in addressing concerns about eco-labelling schemes could help to promote greater international cooperation on the issues raised by these schemes. It was important that any eco-labelling scheme be adequately transparent, with facilities for participation and input by interested parties, including foreign producers and importers, in the determination of eco-labelling criteria. A major aspect of the Committee's examination would be the contribution which the TBT Agreement could make to encouraging positive interaction, including through its provisions in relation to transparency.

96. The potential to use life-cycle analysis was attracting attention and might emerge as a valuable tool for governments, industry and consumers in understanding the complex environmental effects of products from "cradle to grave", and in reducing environmental burdens caused by products during their life cycle. There were, however, at present some major questions associated with the use of life-cycled analysis, such as the lack of an internationally-agreed methodology for their use. It was clear from the Secretariat paper that PPMs were the subject of much discussion during the negotiations of the TBT Agreement. There were some major issues raised by the use of unincorporated PPMs in eco-labelling schemes. For example, those based on environmental conditions and priorities in an importing country might not be effective and relevant in terms of environmental protection in an exporting country, and might even involve inappropriate criteria that foreign producers could not reasonably satisfy. Competitive opportunities for foreign producers could be adversely affected and consumers misled into rejecting a product which might be environmentally equal or superior to the domestic product.

97. The Committee could consider the contribution which the WTO, including the TBT Agreement, could make to efforts to ensure that eco-labelling schemes were established and operated to reduce trade frictions, be sensitive to the concerns of foreign producers, and be compatible with environmental objectives in both importing and exporting countries. These included a range of initiatives in relation to transparency, product coverage, and further work on procedures for the mutual recognition of eco-labelling schemes. For example, transparency could be furthered by the involvement of foreign producers in the determination of criteria, notification procedures might be developed which could come under the TBT Agreement or, in some cases, the SPS Agreement, and opportunities could be provided for groups with a substantive interest in eco-labelling schemes to be adequately represented when the schemes were established and criteria for new products developed. In examining the possible contribution of the TBT Agreement and other provisions of the multilateral trading system to international work on eco-labelling, the CTE should keep two considerations in mind. First, there was a need to ensure eco-labelling criteria were sensitive to differing environmental and developmental conditions in different countries and that such schemes did not lead countries to change their environmental priorities in inappropriate ways. Second, producers and consumers should have confidence that the criteria were soundly based, applied fairly, served environmental protection and promoted sustainable development.

98. The representative of Argentina described seven steps to bring the discussion down to a less theoretical level. First, eco-labels existed and were being disseminated, and it would be difficult to halt this. Second, eco-labels were based on a life-cycle analysis, and third life-cycle analysis took into consideration environmental externalities that took place throughout the life of the product, amongst them some which were not related to the product. Fourth, non-product-related PPMs were being legitimized through eco-labels. The fifth step was to recognize that, consequently, one was facing a problem. The sixth was to try to restrict it. The CTE's debate showed that delegations accepted that eco-labels could be valid instruments for environmental policy. However, there were doubts that they could also be efficient trade policy instruments. This aspect was of concern to virtually all delegations. In Argentina's view, the WTO was not competent to debate the utility of any particular instrument of environmental policy. This could be debated in other fora, such as UNEP and UNCTAD. His delegation considered that the WTO should concentrate on the promotion of trade disciplines, making it possible to minimize the trade effects of environmental instruments. Eco-labels might be used very efficiently as trade policy instruments and, through them, there could be a distinction between two like products on the basis of the way in which these products were prepared and not on the basis of what they were nor on the basis of product utility.

99. One of the main problems identified earlier by his delegation was a systemic one. The negotiating history did not allow for a conclusion that non-product related PPMs were excluded from the definition of technical regulation. Concretely, it did not indicate that, during the debate leading up to the approval of the TBT Agreement, there was a clear distinction in the treatment of PPMs for standards or for technical regulations. In his delegation's view, the problem could not be solved by applying the TBT disciplines exclusively. First, the issue of non-product-related PPMs should be isolated and restricted only to standards, in particular to environmental protection criteria, in order to avoid this type of bacteria spreading to the remainder of the universe of trade regulations and placing at serious risk the whole multilateral trading system. The main aim in this debate should be to identify the mechanism to isolate the systemic risk. Furthermore, there might be trade problems coming up as the result of the application of specific eco-labelling.

100. The CTE should continue to concentrate its work strictly on the trade effects. However, no concrete problems had yet been exposed, which explained why the debate had been so theoretical. Excessive speculation on the subject of eco-labelling should be avoided. It might be appropriate to focus on the mechanism seeming to have the greatest potential to neutralize trade conflicts. This mechanism was mutual recognition of environmental criteria, certification agencies, evaluation and auditing procedures. The problem was complex and went beyond the solutions that his delegation believed were within the reach of the Committee. For that reason, his delegation considered it would be appropriate to begin by circumscribing the problem. In the life-cycle analysis of a product, environmental externalities were assessed. These externalities were seen mainly in three parts of the life-cycle: production, consumption and disposal. The externalities that were manifest in the consumption and disposal stages were linked to the characteristics of the product. Therefore, one could begin by accepting mutual recognition of environmental criteria that had been established by each of the eco-labelling systems for these two stages, unless these criteria were discriminatory. This would be subject to a case-by-case evaluation. Furthermore, mutual recognition of environmental assessment criteria and environmental management was subject to two standardization processes within ISO. Mutual recognition of certification agencies was an important institutional aspect, but it went beyond the possibilities of this Committee. Trade problems would be restricted principally to the environmental externalities related to PPMs. Product-related PPMs could be left aside provisionally.

101. His delegation considered that in the first instance the Committee's work should focus on two elements. First, the systemic problem, i.e. the non-product related PPMs incorporated into environment standards. Second, promoting the mutual recognition of environmental criteria linked to PPMs that were not product-related. On this second element, it might be useful to explore the following elements. First, the need for environmental criteria to be transparent, since that was the only way to compare them and reach mutual recognition based on an equivalence of environmental criteria, thus excluding any trade objective which should not exist in eco-labelling. His delegation had in mind the policy objective behind eco-labelling, but did not exclude that in some cases the business community had a trade objective in mind. Second, the Committee should examine *ex ante* transparency, to make it possible for interested third parties, e.g. exporters that had a market share, to comment in due time. Third, the need to consider the specific environmental and social circumstances of each production market. Fourth, the need to give special consideration to exporters from developing countries to adapt to the criteria in the export market e.g. by providing for a phase-in period and technical assistance.

102. The representative of Mexico said delegations had flagged a lack of clarity over the applicability and sufficiency of the TBT Agreement and other WTO rules to eco-labelling and the possible need for greater disciplines and transparency to mitigate the trade problem which it created, due principally to the voluntary nature of eco-labels and their implementation by non-governmental standardizing bodies. Mexico considered that eco-labelling was adequately covered by present TBT disciplines. With regard to the need for more discipline, the Committee had to continue its analysis of the question. The proposal of Egypt to extend analysis in this area on the basis of studies already carried out by other organizations was interesting. As Argentina had stated, the WTO did not necessarily have the mandate to carry out a detailed analysis of eco-labelling, particularly its environmental impact, whereas UNCTAD, among others, had carried out studies on the subject which could be taken into consideration.

103. As to the applicability of the TBT disciplines to eco-labelling, many delegations had referred principally to transparency provisions. It was clear to her delegation that voluntary eco-labelling standards were subject to the provisions of the TBT Agreement (Article 4 and Annex 3) regardless of the type of information which was provided on the label. Equally, there was no doubt that voluntary labelling standards were also subject to other disciplines in the Agreement, for example, avoiding unnecessary obstacles to trade and non-discriminatory application. The latter obviously also included compliance with the principle of national treatment, as understood and interpreted to mean the guarantee of equal competitive opportunities. Like the EC and others, her delegation believed that respect for all these disciplines was essential. Mere compliance with the notification provisions, although helpful, did not guarantee avoiding trade distortion. Studies carried out in other fora suggested that the TBT provisions on transparency could be insufficient and that greater cooperation was required. This would imply the participation of foreign suppliers in the drawing up of such programmes, for example in the phases of product selection and the establishment of criteria and goals of enforcement. Her delegation believed that the question of whether or not additional provisions were required in the area of transparency, and the need for more disciplines in the area of eco-labelling, would have to be considered at the appropriate time. For the time being, it was sufficient to say that voluntary standards, including those relating to labels, were subject to notification provisions, disciplines requiring the avoidance of unnecessary obstacles to trade, and the requirement to provide equal competitive opportunities established in the TBT Agreement. Mexico hoped that this would serve as a starting point for future discussion on the question.

104. Another important point was the level of obligation to ensure that eco-labelling programmes did abide by these disciplines. On this point, her delegation agreed with what had

been summed up the Secretariat document, to the effect that whether or not a standardizing body did accept the Code of Good Practice, Article 4 of the TBT Agreement required WTO Members to take such reasonable measures as may be available to them to ensure that it complied with the provisions of the Code. In addition, Members must not take measures which had the effect of directly or indirectly requiring or encouraging the standardizing body to act in a manner inconsistent with the Code. It was clear that compliance with disciplines over voluntary eco-labelling programmes was the responsibility of Member governments. Paragraph 50 of the document made it clear that one of the main areas of focus in the Tokyo Round negotiations, which was maintained throughout the Uruguay Round, was to find a balance between the rights and obligations between countries where the standardizing activities largely belonged to private sector institutions drawing up voluntary standards and countries in which most of the standards were mandatory.

105. In the TBT Committee Mexico had proposed an analysis, in which this Committee could also usefully take part, of the degree of compliance which governments had shown so far with these obligations, as well as the extent to which a trade imbalance was evolving because of the fact that eco-labelling programmes existed in some countries and not in others. Her delegation also believed that certain Members, providing financial participation or support for eco-labelling standards, might be failing to comply with the obligations of Article 4 that they must not directly or indirectly encourage non-governmental standardizing bodies to act in a manner which was inconsistent with the Code of Good Practice. Insofar as the issue of compliance was explored further, it would become clear whether it was necessary or not to consider new disciplines. In sum, it was obvious to Mexico that there was a very strong obligation upon Members to ensure compliance with eco-labelling on the basis of the disciplines of the TBT Agreement, and the way in which such an obligation could be ensured and enforced effectively had to be considered.

106. Regarding the definition of standards, which Mexico considered to be the relevant issue for the Committee and not in any way the definition of a technical regulation, her delegation noted that the Secretariat document did not clear up some of the doubts voiced by certain delegations as regard to scope. It was clear to Mexico that the scope of the definition was the one set out in the text of the Agreement. With regard to mutual recognition, her delegation believed that the point made by Argentina was useful and went to the crux of the matter. The criteria which had been flagged by Argentina for the definition of mutual recognition could be further elaborated, and it might be useful for the Committee, together with the TBT Committee, to look into the studies and analysis carried out by other organizations, for example UNCTAD, UNEP and possibly ISO.

107. Eco-labelling was only one part of a whole body of measures and requirements (others included packaging requirements, refilling of different containers, recycling) which were emerging based on life-cycle analysis of a product . The unilateral imposition on imports of these measures might create new obstacles to trade. At the same time, there were many doubts as regards their effectiveness and efficiency. The analysis of eco-labelling might provide useful elements for the consideration of other specific issues.

108. The representative of the United States expressed interest in the issue of ecolabelling from both the trade and environmental perspectives and was supportive of the objectives of ecolabelling, believing such schemes could be an important environmental policy tool especially in the search for effective market-friendly approaches to environmental protection. At the same time, she recognized the potential for certain types of ecolabelling schemes to present trade and market access issues, depending on how they were designed and implemented. Ecolabelling was a broad term that included multiple approaches. One taken in the United States was the Federal Trade Commission's guidelines for the use of environmental marketing claims. She recalled from a

discussion in the EMIT Group that these guidelines were designed to ensure companies, labels and marketing claims were not misleading consumers. They laid out minimum criteria for a company's product to meet if the company chose to claim the product was "biodegradable", "recyclable", "non-ozone depleting", etc. They thus provided useful information to consumers, and both the FTC and competitors had a basis for monitoring such claims for truthfulness. The Committee had to take a balanced view of this issue, looking not only at the potential trade impact of ecolabelling schemes but also the role those programmes could play in achieving environmental goals and how the trading system accommodated those objectives.

109. Her delegation expressed caution about construing document WT/CTE/W/10 as a definitive history of the negotiations, and said the paper could not become part of the TBT Agreement's negotiating history. Such a document was inevitably incomplete and selective, since many of the discussions in the Uruguay Round went unrecorded and since the paper focused on only a select number of issues. It needed to be kept in mind that the paper did not attempt to provide a comprehensive review of all the disciplines which were potentially relevant to a discussion on TBT's coverage of ecolabelling. As regards the Secretariat's summarized "findings", she believed it worth emphasizing that the TBT Committee decisions with respect to coverage of labelling were drawn from the clear language in the Agreement's definitions for "standard' and technical regulation". She considered the finding on the coverage of voluntary standards to be misleading. All standards activity was covered by Article 4 and Annex 3 of the TBT Agreement -- whether developed or maintained by a central government, local government, or non-governmental body; and whether mandatory or voluntary. She considered confused the finding that standards based on PPMs related to the characteristics of a product were accepted under the TBT agreement, as well as how this related to the issue of scope on which the rest of the paper focused. She welcomed the offer of Canada to use its Environmental Choice ecolabelling programme as a way of making the discussion of these issues more concrete, and emphasized the importance of continuing to coordinate closely with the TBT Committee

110. It was agreed that the Chairman would consult informally on the possibility of holding a joint meeting of the Committee and the TBT Committee possibly around the time of the December or February meeting.

Item 6

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

111. The representative of the United States said that it had been noted that the reduction of agricultural subsidies would have beneficial environmental effects. Trade distorting policies, including subsidies, had adverse environmental impacts and their significant reduction or elimination could be a win-win situation for trade and environment.

112. The representative of Argentina highlighted the need to make progress in the discussions without any preconditions being set. Along with Item 1, this Item was central in the Committee's work and his delegation could not conceive of a balanced result unless it were included in the recommendations for Singapore. This was not to suggest that work should necessarily lead to an operative recommendation concerning the elimination of specific trade distortions, but it would not be consistent to defend free trade from the possible distortion which resulted from certain environmental policies if Members were not prepared to eliminate those environmental distortions

which were linked to trade. This Item was a proof of good intentions in the environmental area. If consideration were to be given to proposals to introduce flexibility in WTO rules in order to accommodate certain environmental objectives, then the Item was essential.

113. The representative of Australia supported the statements of the delegations of the United States and Argentina.

114. The representative of India recalled his delegation's detailed statement at the September meeting on this Item.

115. It was agreed that the Secretariat would prepare a study on the effect of environmental measures on market access.

Item 7

The issue of exports of domestically prohibited goods

116. The representative of Poland said his government had signed and ratified the most important MEAS which regulated DPGs. Poland recognized the possibility of complementing those MEAs in the WTO with respect to product coverage and in instances where better legal solutions could be found. In the Committee's discussions on this issue, the factual arguments should first be taken into consideration and the global dimension of the environmental problems involved should be explored.

117. The representative of India recalled his delegation's views on DPGs and reiterated its willingness to continue the dialogue on this subject in informal meetings.

118. The Chairman recalled that the December session will be devoted to discussing this issue in depth.

Annex I
Committee on Trade and Environment
Work Programme

The informal consultations made evident the following points:

1. That the stocktaking is more a process-related exercise than a substance-related analysis and, therefore, the result of this exercise has to be a detailed work programme to advance the CTE mandate, i.e. to produce a report:

(a) identifying the relationship between trade measures and environmental measures in order to promote sustainable development;

(b) making recommendations on whether any modifications to WTO provisions are required, compatible with the open, equitable and non-discriminatory nature of the system; and

(c) complying with the mandate of the Ministerial Decision on Trade in Services and Environment.

2. In order to establish a more focused but well balanced work programme, the Chairman submits the following proposals:

(a) to keep all items on our agenda, but to move, whenever possible, from the discussion of agenda items to the analysis of those issues identified during the debate as the core of each item and, to that end, to organize our future work programme on the basis of the proposal submitted below;

(b) to continue the process of analysis of these issues until May 1996, when a new review of the work programme will take place;

(c) the list of issues identified next to each item is not necessarily exhaustive. Once the discussion of the identified issues is carried out by the Committee, Members would be free to raise other related issues under each agenda item at the same meeting;

(d) As part of the work programme:

(i) joint informal meetings of the CTE and the CTBT are envisaged, subject to the agreement of the CTBT, to analyze the applicability of the TBT Agreement to eco-labelling and the possible need for further disciplines for eco-labelling;

(ii) all other issues identified in the table below and items in the agenda would be discussed in the Plenary but informal open-ended meetings, back to back to the Plenary, would be convened when a detailed analysis of a topic is necessary or a paper on a specific issue is submitted for discussion;

(iii) some studies to be prepared by the Secretariat have been suggested in addition to those already in course. The Secretariat is encouraged to continue to cooperate closely with, and to take full advantage of available and forthcoming studies in, UNCTAD, UNEP and other intergovernmental institutions.

Committee on Trade and Environment

Work Programme

Item on the Work Programme	*Issues*	*Studies*	*When to be discussed*
Item one: "The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements"	- ensuring the compatibility of trade measures taken pursuant to MEAs and the WTO - adequacy of WTO transparency mechanisms concerning trade measures included in relevant MEAs - see item 5		**26/27 October 95** early February 96 (7/8 February 96) **26/27 October 95** early February 96 (7/8 February 96)
Item three: "The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling"	- environmental taxes which could be adjusted at the border and their WTO-consistency - applicability of the TBT Agreement to eco-labelling - adequacy, from both the trade and environmental perspectives, of WTO rules regarding eco-labelling and possible need for further disciplines and transparency	- gather information on national environmental taxes for the study	**26/27 October 95** early February 96 (7/8 February 96) Joint Informal Meetings of the CTE + CTBT*

*Report to the CTE once work is completed.

Item on the Work Programme	*Issues*	*Studies*	*When to be discussed*
Item three (b) cont'd	- adequacy, from both the trade and environmental perspectives, of WTO rules regarding packaging, handling, and other environmental regulations, requirements and standards, including the possible need for further disciplines and transparency		**26/27 October 95** early February 96 (7/8 February 96)
Item four: "The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects"	- examination of the proposal that Members should establish environmental enquiry points - see items 1 and 3		**14/15 December 95** - item to be revisited in May 96, in order to determine whether and where further gaps in transparency existed
Item five: "The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements"	- see item 1 - environmental expertise in trade dispute settlement - trade expertise in environmental dispute settlement		early February 96 (7/8 February 95)
Item six: "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"	- the effect of environmental measures on market access - the environmental benefits of removing trade restrictions and distortions, including tariff escalation, subsidies, state trading, excessively high tariffs	- the effect of environmental measures on market access and setting up of a mechanism to survey environmental measures	mid March 96 (13/14 March 96) mid March 96 (13/14 March 96)

Item on the Work Programme	*Issues*	*Studies*	*When to be discussed*
Item seven: "The issue of exports of domestically prohibited goods"	- DPGs, and whether there is a need for a DPG Agreement		**14/15 December 95**
Item eight: "Trade-Related Aspects of Intellectual Property Rights and the environment"	- the relationship of the TRIPs Agreement to access to and transfer of technology and the development of environmentally-sound technology - the relationship between the TRIPS Agreement and MEAs which contain IPR-related obligations	- analytical paper on factors affecting transfer of environmentally-sound technology	end April 96 (17/18 April 96) end April 96 (17/18 April 96)
Item nine: "Services and the environment"	- sufficiency of Article XIV of GATS - possible points of contact between relevant MEAs and GATS		early February 96 (7/8 February 96) early February 96 (7/8 February 96)
Item two: "The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system"			May 96 (21/22 May 96)
Item ten: "Appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation"			in the CTE**

**Once a decision is adopted by the General Council.