

Committee on Trade and Environment

ITEM 4: 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

Note by the Secretariat

1. At the meeting of the Committee on 14 December 1995, several delegations requested the Secretariat to update WT/CTE/W/5 and provide additional information on its Annex -- "Potential Identified Gaps in Existing Transparency Provisions" -- to assist the Committee in considering the adequacy of WTO provisions in ensuring the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects.
2. The list annexed to WT/CTE/W/5 (see Annex) was compiled from statements made during the EMIT Group's discussions as well as in the WTO PrepCom in which some delegations suggested that certain measures may not fall under any existing WTO transparency provision and may therefore represent an absolute gap in those provisions which the Committee should consider closing. During discussions on Item 4 in the Committee (W/CTE/M/2 and M/6) several delegations suggested that the comprehensive nature of WTO and GATT 1994 transparency provisions make it unlikely that any absolute gaps exist.
3. However, several Members felt that the Committee should further examine particular environmental measures including environmental packaging, eco-labelling schemes, waste handling and recycling schemes, taxes and charges, and measures taken at the local or sub-federal level to determine the sufficiency of WTO and GATT 1994 transparency provisions. They expressed doubts that, for example, GATT Article X extended to cover voluntary measures administered by the private sector (such as certain eco-labelling schemes) or that the 1979 Understanding Regarding Notification Consultation, Dispute Settlement and Surveillance covered measures which are not trade measures in the traditional sense of the term (such as domestic taxes and charges).
4. It was noted that there may be differences among WTO Members in how they individually interpret or comply with their transparency obligations. Several delegations stated that the issues of interpretation or compliance are not matters that should be taken up by the Committee on Trade and Environment and that these are being discussed in other Committees and Working Groups, particularly the Working Group on Notification Obligations and Requirements.¹ It is worth noting that in its first Report in November 1995 (G/L/30), the Working Group identified a need for

¹The Ministerial Decision on Notification Procedures, which was adopted by the General Council on 31 January 1995, provided that the Council for Trade in Goods undertake a review of notification obligations and procedures in the Agreements in Annex 1A of the WTO Agreement. For this purpose, the Working Group on Notification Obligations and Procedures was established in February 1995.

further examination of, *inter alia*, assistance to some developing countries in meeting their notification obligations.

5. An additional factor mentioned in the Committee on Trade and Environment was that there may be a need to review the adequacy of the level of transparency to which specific measures under consideration are subject. Various levels of transparency are called for under WTO provisions, ranging from an obligation to publish (e.g. GATT Article X), an obligation to notify *ex post* (e.g. the 1979 Understanding); an obligation to notify *ex ante* (e.g., the TBT Agreement), and an obligation to establish enquiry points (e.g., the TBT Agreement).

6. In order to help identify and monitor environmental measures which might have an impact on market access, particularly for developing countries, one Member suggested during the Sub-Committee on Trade and Environment that the Committee consider the establishment of a "database on environmental measures with an effect on trade", and that consideration include "what was necessary and feasible in terms of monitoring and data collection in this area under the WTO, taking due account of work done by other organizations in order to avoid duplication of efforts". Subsequent proposals in the Committee by several Members have called for the establishment of environmental enquiry points to help ensure adequate transparency of environmental measures (PC/SCTE/M/5; WT/CTE/M/2 and WT/CTE/M/6).

7. This Note focuses on the extent to which it can be deduced from the scope of existing WTO transparency provisions and the notifications which have been made whether any of the measures listed in the Annex to WT/CTE/W/5 escape entirely all forms of WTO transparency requirements. It should be noted that the examples cited are intended to be illustrative only.

SUMMARY

8. WT/CTE/W/5 contained a summary of the main WTO transparency provisions relating to the measures contained in the annexed list of "potential gaps". Since then, the Working Group on Notification Obligations and Procedures has identified some 215 different WTO notification requirements, some of which also have a bearing on these measures.

9. A broad range of trade-related environmental measures have been notified under GATT and WTO provisions. They include measures related to energy conservation programmes, soil and forestry conservation, environmental labelling, environmental packaging, waste reduction schemes, recycling and disposal measures, deposit-refund and take-back requirements and producer responsibility for waste handling, environmental impact assessment procedures, pollution regulations, subsidies, including tax concessions, preferential measures for environmentally-related investment funds, and environmental measures related to tradeable services.

10. A significant majority of these measures has been notified in the form of technical regulations under the TBT Agreement. From the list contained in WT/CTE/W/5, measures notified under the TBT Agreement include handling requirements, packaging regulations, including take-back and deposit-refund schemes, labelling and eco-labelling schemes, internal taxes and other internal charges, measures taken pursuant to the implementation of MEAs, and regulations based substantially on international standards.

11. The following table updates TBT/W/156 and provides a summary of TBT notifications since 1980, indicating those for which the objective and rationale of the technical regulation was given in the notification as the protection of the environment.

<u>Year</u>	<u>Number of environment notifications</u>	<u>Total number of notifications</u>	<u>% of environment notifications</u>
1980-90	211	2687	7.8 %
1991	35	358	9.7 %
1992	36	394	9.1 %
1993	42	487	8.6 %
1994	35	508	6.9%
1995 (Tokyo Round)	-	27	-
1995 (WTO TBT)	41	365	11.2%
1980-1995	400	4,826	8.3%

12. Notifications of environment-related measures have also been provided by Members under the Agreements on Subsidies and Countervailing Measures, Agriculture, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Textiles, Services and State Trading. General information related to environmental measures has also been contained in some Trade Policy Reviews.

13. Environmental characteristics are sometimes neither the sole nor predominant feature of the notified measures. For example, information on soil conservation measures (G/SCM/N/3/Can) and on the conservation of endangered natural breeds (G/AG/N/CHE/1) has been provided in the context of notifications of agricultural support programmes. One subsidy notification included information on public assistance programmes to support the development and diffusion of cleaner technologies or grants for waste reduction and recycling (G/SCM/N/3/Nor). Some notifications under the GATS contained information regarding public financial assistance programmes for companies developing or using environmental technology (GATS/EL/31; GATS/EL/33).

14. The following observations appear relevant for the Committee's further work on this Item:

- (a) Notifications have been received from at least one Member under most of the fifteen categories of measures contained in the Annex to WT/CTE/W/5.
- (b) The number of notifications of any particular measure made may not reflect accurately the number of Members actually applying that measure. In some cases, it would appear that only a small number of Members has opted to make notifications. For example, although there have been numerous notifications of trade measures taken in the context of MEAs, these have been submitted by only a small proportion of WTO Members which are Parties to the MEAs. In other cases, very few notifications have been made by Members. For example, only three notifications covered internal environmental taxes and charges; one covered environmentally-related processes and production methods (PPMs); two notifications covered technical regulations or standards based substantially on international standards; and one covered environmentally-related measures taken at the sub-federal level.

- (c) The fact that notifications of trade-related environmental measures are scattered under the many WTO notification provisions that now exist may make it difficult for Members to benefit fully from the transparency which these provisions have been designed to provide. In that regard, it might be felt useful for the Secretariat on a regular basis to collate all notifications of trade-related environmental measures for the ease of reference of Members. It will be recalled that one Member proposed at the December 1995 Committee meeting the development of an "open-ended inventory system" including information on the type of measure, its purpose and product coverage, a description of how the measure works, comments on its trade effects, and the relevant WTO provisions to which it is related, with the aim of increasing multilateral transparency (WT/CTE/M/6). It will be recalled that some Members of the Committee have noted that there is a GATT/WTO tradition of focusing on the nature or characteristics of a measure, and not its policy purpose.

REVIEW OF MEASURES CONTAINED IN THE LIST OF "POTENTIAL IDENTIFIED GAPS IN EXISTING TRANSPARENCY PROVISIONS" (WT/CTE/W/5,ANNEX)

(i) Handling Requirements

15. In 1995, 12 TBT notifications related to handling requirements and regulations. Examples include notifications of charges for handling controlled substances identified in the Montreal Protocol (G/TBT/Notif.95.94); handling requirements related to pesticides (G/TBT/Notif.95.216); halogenated hydrocarbons (G/TBT/Notif.95.94); wastes, including handling requirements and other measures for radioactive wastes (G/TBT/Notif.95.185)²; and flammable liquids (G/TBT/Notif.95.21). Previous examples include a notification of handling requirements related to pesticides and chemicals (TBT/Notif.93.180). In 1996, one TBT notification related to handling requirements for agricultural and horticultural sheeting (G/TBT/Notif.96.4).

16. Although the majority of notifications related to handling requirements fell under the TBT Agreement, several notifications related to waste and waste handling have been provided by Members under the Agreement on Import Licensing Procedures. Examples include import and/or export restrictions related to radioactive wastes (G/LIC/N/3/USA/1); and dangerous chemicals; (G/LIC/N/3/MUS/1).

(ii) Other packaging requirements including bans, technical regulations that may require compliance with certain characteristics in order for packaging to be put on the market or allowed into the country, and take back requirements

17. TBT notifications under this category include packaging requirements related to the unhealthy or hazardous contents or waste, including required information disclosure intended to increase environmentally sound packaging (G/TBT/Notif.95.206); producer responsibility for newsprint, including take-back requirements covering newspaper and magazine paper, telephone books and mail-order books (G/TBT/Notif.95.244). Select Trade Policy Reviews provide information on packaging and related requirements. For example, the TPR for the European Union (WT/TPR/S/3) provided general information on packaging regulations, including information on a recent a European Parliament and Council Directive on packaging.

²In the Trade Policy Review for the Czech Republic (WT/TPR/G/12), general information is provided with regards quantitative restrictions on specific waste imports. These restrictions relate to "waste and scrap or paperboard and ferrous waste and scrap".

(iii) Labelling And Eco-labelling Schemes, Including The Criteria To Be Satisfied In Order To Be Granted a Label

18. In 1995, over 50 TBT notifications contained information on general labelling schemes, of which several notifications were related to environmental labelling schemes. A significant proportion of TBT notifications in this category relate to measures taken pursuant to MEAs (see Category XII). Some notifications covered general labelling schemes which involved environmental protection as part of their policy objectives. Two TBT notifications covered (a) a proposed (unadopted) voluntary eco-labelling scheme related to timber and timber products (TBT/Notif.93.123) and (b) a voluntary label for energy efficiency standards (G/TBT/Notif.95.120).

19. TBT notifications of mandatory eco-labelling schemes included: chemical products (TBT/Notif.91.25; TBT/Notif.92.366; TBT/Notif.93.180); equipment - emitting noise (TBT/Notif.91.26); substances and preparations dangerous to the environment (TBT/Notif.92.136); batteries and accumulators containing certain hazardous substances (TBT/Notif.92.285); ozone-depleting substances (TBT/Notif.93.181; TBT/Notif.94.6; TBT/Notif.94.152); asbestos brake and clutch linings (G/TBT/Notif.95.142); engine vehicle requirements (G/TBT/Notif.95.242); harmonized energy efficiency standards for select consumer goods (G/TBT/Notif.95.320); electrical and hydrocarbon efficiency standards (G/TBT/Notif.95.51); and paints containing lead compounds (G/TBT/Notif.95.84).

20. Information on eco-labelling schemes are also contained in the Trade Policy Review. For example, the TPR of the European Union (WT/TPR/S/3) provided general information on an EC Decision which specified eco-labelling criteria for washing machines and dishwashers (in June 1993), kitchen rolls, toilet paper and soil improvement substances (November 1994).

(iv) Processes And Production Methods, Including Those Emanating From Product Life-Cycle Analysis

21. Although several notifications of PPM-based measures have been covered under the TBT Agreement, few relate to environmental measures. One example covered measures taken pursuant to an MEA: TBT/Notif.91.259 covered articles containing or produced by using HCFCs, and included a ban on the importation of certain packing and insulating materials and certain furniture or parts containing soft or rigid foam manufactured with HCFC. Other examples include food processing criteria (G/TBT/Notif.95.266); animal feeds (G/TBT/Notif.96.10); allowable additives in wine (G/TBT/Notif.95.293); and certain life-saving products (G/TBT/Notif.96.16). One eco-labelling scheme notified under the TBT Agreement contained a reference to PPMs based on life-cycle reviews (G/TBT/Notif.95/43).

(v) Packaging, Labelling And Other General Environmental Measures Taken By Governments At The Sub-Federal Level

22. There has been one notification of environmental measures taken at the sub-federal level in accordance with TBT Article 3 "Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and non-Governmental Bodies" related to energy efficiency requirements at the sub-federal level for electrical and hydro-electrical appliances (G/TBT/Notif.95.50). A notification by the same Member covered labelling requirements of sub-federal alcohol retail distribution authorities (G/TBT/Notif.95.51).

(vi) Economic Instruments And Regulations

23. Eco-labelling, packaging and deposit-refund systems are often considered to be one component of economic instruments, and are covered elsewhere in the List. Three TBT notifications covered internal fiscal measures intended to encourage consumer use of unleaded fuels (TBT/Notif. 80.6.1; TBT/Notif.85.174; TBT/Notif. 87.90). General information is also provided in select TPRs regarding some aspects of environmental taxes and regulations.

(vii) Deposit Refund Schemes

24. Three notifications related to environmental deposit-refund systems have been provided by the same Member. They cover non-returnable bottles for soft drinks and mineral waters (TBT/Notif.93.313); a take-back scheme for batteries (TBT/Notif.94.269); and a take-back scheme for wheeled containers (G/TBT/Notif.95.43).

(viii) Domestic Taxes

25. GATT Article X provides explicitly for the publication of "Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments thereof, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use..." Several Members have noted that the transparency provisions in Article X are sufficiently comprehensive to cover a broad range of environmental measures, including taxes and charges and other measures.

26. Information on tax rebate policies is contained in select notifications under the Agreement on Subsidies and Countervailing Measures. Among these were notifications of tax-related measures intended to promote investment in the environmental sector. One notification (G/SCM/N/3/Nor) provided information on a domestic tax concession scheme for the minerals, oil and coal sectors, intended to help offset certain industry-level costs of carbon dioxide taxes. Another SCM notification provided information on investment-related tax concessions to promote the manufacturing of up-to-date and environmentally-friendly products (G/SCM/N/9/Hun).

(ix) Measures Related To Subsidies

27. One Member provided notification of domestic subsidies related to environmental objectives including assistance in waste management and recycling; grants or concessional loans to increase energy efficiency; measures to help reduce carbon dioxide emissions(G/SCM/N/3/Nor). Another notified measures to improve the conservation of fisheries, sustainable management of forestry, and soil conservation (G/SCM/N/3/Can).

(x) Measures Under Article XX

28. As noted in L/6896, between 1980 and 1991, the Inventory of Quantitative Restrictions contained 54 notifications of restrictions justified under Article XX(b); 12 restrictions justified under Article XX(g); and 14 restrictions justified under Article XX(h). More recently, one Member provided a notification pursuant to the Decision on Notification Procedures for Quantitative Restrictions related to restrictions in the trade of controlled products/substances identified under the Montreal Protocol and the Basel Convention with justification under Article XX(b), (g) and (j) (G/MA/NTM/QR/1); and a notification to the Textiles Monitoring

Body of an import prohibition on certain types of fishing nets and nets used for catching game (G/TMB/N/146). An additional source of transparency related to measures taken under Article XX is the "Replies to Questionnaire on Import Licensing Procedures" under the Committee on Import Licensing. In 1996, one Members provided notification of products subject to import controls through licensing under Article XX(b) and other provisions: examples of products listed include organic chemicals, pharmaceutical products, surface-active preparation and waste materials (G/LIC/N/3/CYP/1).

(xi) General Measures Taken For Environmental Protection

29. This category from the List in W/CTE/W/5 is understood to comprise all other measures not listed more explicitly under other categories. This includes TBT notifications which covered a ban on the export and professional transport of mercury (G/TBT/Notif.95.300); and a proposed regulation that would ban the registration of new vehicles of permitted gross vehicle weight not more than four tonnes which are powered by diesel compression ignition engines (G/TBT/Notif.95.339).

30. Under a Notification Pursuant to Article XVII:4(a) of the GATT 1994 and Paragraph 1 of the Understanding of the Interpretation of Article XVII (State Trading), one Member provided information on the marketing of fuels, with a partial justification of state enterprise arrangements related to increasing environmental sensitivity in the hydrocarbons sector (G/STR/N/1/CRI). Notifications under the Agreement on Agriculture included information on measures for the conservation of endangered natural breeds (G/AG/N/CHE/1); and information on agriculturally-related "Environmental Programmes" related to soil erosion and soil conservation (G/AG/N/NZL/2).

31. Certain Trade Policy Reviews covered some general measures for environmental protection. For example, the TPRs for Mauritius and Venezuela contain information on national requirements related to Environment Impact Assessment certificates, as well as general information on domestic environmental regulations and other measures.

(xii) Article III Measures

32. Environmental measures related to GATT Article III are covered in categories (vi),(viii) and (xi) above.

(xiii) Trade Measures Taken For The Implementation of Multilateral Environmental Agreements

33. The most extensive notifications in this category related to the implementation of the Montreal Protocol. Since 1990, there have been some 40 TBT notifications in this category which contain either explicit reference to the Montreal Protocol, or which identify measures for substances explicitly controlled under the Protocol.³ These TBT notifications related to the

³Notifications under the TBT related to the Montreal Protocol include the following: (TBT/Notif.90.59); (TBT/Notif.90.206); (TBT/Notif.90.271); (TBT/Notif.90.144); (TBT/Notif.90.235); (TBT/Notif.90.236); (TBT/Notif.91.25); (TBT/Notif.92.92); (TBT/Notif.90.300); (TBT/Notif.90.309); (TBT/Notif.90.310); (TBT/Notif.91.87); (TBT/Notif.91.88); (TBT/Notif.91.219); (TBT/Notif.91.253); (TBT/Notif.91.255); (TBT/Notif.91.328); (TBT/Notif.92.130); (TBT/Notif.92.2); (TBT/Notif.92.136); (TBT/Notif.92.157); (TBT/Notif.93.136); (TBT/Notif.93.157); (TBT/Notif.93.357); (TBT/Notif.93.377); (TBT/Notif.93.1); (TBT/Notif.93.181); (TBT/Notif.94.107); (TBT/Notif.94.214); (TBT/Notif.94.334); (TBT/Notif.94.339); (TBT/Notif.94.6); (TBT/Notif.94.77); (G/TBT/Notif.95.94); (TBT/Notif.94.418); (G/TBT/Notif.95.273); (G/TBT/Notif.95.82); (G/TBT/Notif.95.83); (G/TBT/Notif.95.114); (G/TBT/Notif.95.143); (G/TBT/Notif.95.295).

Montreal Protocol have been submitted by a comparatively limited number of Members in relation to the number of Members which are also party to the Montreal Protocol. In 1996, in "Replies to the Questionnaire on Import Licensing Procedures" one Member provided information on measures related to mandatory import licensing for ozone-depleting substances (G/LIC/N/3/HKG/1).

34. Notifications of measures taken in relation to the implementation of CITES or with reference to trade measures used in relation to the protection of endangered species are contained at least two notifications under the Agreement on Import Licensing (L/5640/Add.36/Rev.6); (L/5640/Add.40/Rev.3). In addition, some Members provided information related to endangered species measures in the "Replies to Questionnaire on Import Licensing Procedures" submitted to the Committee on Import Licensing (G/LIC/N/3/Arg/1; G/LIC/N/3/CAN/1; G/LIC/N/3/HKG/1; G/LIC/N/3/USA/1).

35. One TBT notification covered implementation of the Basel Convention (TBT/Notif.92.171) and another covered measures taken in the context of the provisions of the Basel Convention. (TBT/Notif.92.172). One TBT notification covered measures taken in relation to the implementation of the voluntary London Guidelines (TBT/Notif.93.180).

(xiv) Regulations or Standards Based Substantially on International Standards

36. The TBT Agreement (Article 2 and 5) would not appear to require notification of technical regulations or standards based in whole or in part on international standards. However one TBT notification covered fuel-efficiency standards based on UN ECE Regulation No. 15.04 (TBT/Not.86.83); and another covered requirements for a voluntary energy efficiency labelling schemes for household refrigerant and appliances based on ISO 8187 standards (G/TBT/Notif.95.120).

(xv) Environmental Measures in the Area of Services:

37. Notifications under the General Agreement on Trade in Services related to the environment included regulations related to internal waterways passenger freight and transportation provisions which include environmental protection objectives (GATS/EL/26); and to measures taken in relation to supporting the use of environmental technologies (GATS/EL/31) (GATS/EL/33).

ANNEX

(From WT/CTE/W/5 and
TRE/W/7)

Potential Identified Gaps in Existing Transparency Provisions
(February 1993)

1. Handling Requirements
2. Other packaging requirements including bans, technical regulations that may require compliance with certain characteristics in order for packaging to be put on the market or allowed into the country, and take-back requirements.
3. Labelling and eco-labelling schemes including the criteria to be satisfied in order to be granted a label
4. Processes and production methods, including those emanating from product life-cycle analysis
5. Packaging, labelling and other general environmental measures taken by governments at the sub-federal level
6. Economic instruments or regulations
7. Deposit refund schemes
8. Domestic taxes
9. Measures related to subsidies
10. Measures under Article XX
11. General measures taken for environmental protection
12. Article III measures
13. Trade measures taken for the implementation of multilateral environmental agreements
14. Regulations or standards based substantially on international standards
15. Environmental measures in the area of services