RESTRICTED

WT/CTE/W/40

12 November 1996

(96-4805)

WORLD TRADE ORGANIZATION

Committee on Trade and Environment

REPORT (1996) OF THE COMMITTEE ON TRADE AND ENVIRONMENT

I. INTRODUCTION

1. The Committee on Trade and Environment (CTE) was established by the WTO General Council in January 1995. The CTE's mandate and terms of reference are contained in the Marrakesh Ministerial Decision on Trade and Environment of 15 April 1994 (Annex I). This Decision mandates the CTE to report to the first biennial meeting of the Ministerial Conference when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the CTE.

2. The CTE has structured its work around the ten Items listed in the Decision on Trade and Environment. For several of the Items, the CTE was able to build on discussions that had taken place in 1992-93 in the GATT Group on Environmental Measures and International Trade (EMIT) and on discussions in 1994 in a Sub-Committee on Trade and Environment of the WTO Preparatory Committee.[1]

3. The CTE met formally six times in 1995 and seven times in 1996 under the chairmanship of Ambassador Sánchez Arnau of Argentina.[2] Membership of the CTE is open to all WTO Members; observer governments and observers from inter-governmental organizations were invited to participate.[3] Informal meetings were also held, including a joint informal meeting with the Committee on Technical Barriers to Trade on the issue of eco-labelling.

4. The CTE held two stocktaking exercises, on 26-27 October 1995 and 28-29 May 1996. During the October stocktaking exercise, specific issues on the Items of the work programme were identified.[4] At the May stocktaking exercise, the schedule of meetings through to Singapore

[1]Report by Ambassador H. Ukawa (Japan), Chairman of the Group on Environmental Measures and International Trade, to the 49th Session of the CONTRACTING PARTIES, L/7402, 2 February 1994. Minutes of the meetings of the Sub-Committee on Trade and Environment of the WTO Preparatory Committee and its background documents are contained in document series PC/SCTE/M/- and PC/SCTE/W/-.

[2]Minutes of the meetings of the WTO CTE are contained in document series WT/CTE/M/-.

[3]See Item 10 of this Report.

[4]See the Summary of Activities of the CTE (1995) presented by the Chairman of the CTE (WT/CTE/W/17), contained in Annex II to this Report, for a list of the specific issues identified for Items on the work programme.

and the format of the Report were adopted.[5] The CTE was assisted by background documents prepared by the Secretariat and
documents, proposals and non-papers submitted by Members which, along with the many statements made in the CTE meetings, provided the basis for drawing up this Report.[6]

II. BACKGROUND, ANALYSIS, DISCUSSIONS AND PROPOSALS

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

5. Under this Item, the issue of trade measures applied unilaterally by a WTO Member to address environmental problems that lie outside its national jurisdiction has been discussed. The CTE has examined whether there is a need to clarify the scope that exists under WTO provisions to use trade measures pursuant to multilateral environmental agreements (MEAs). It has also examined whether there is any need to enlarge that scope, and if so in what circumstances, with what objectives and through what means.

6. It was stated during the course of discussions under this Item that there is already scope under the WTO provisions to use trade measures for environmental purposes. These provisions aim to ensure that WTO Members may adopt or enforce measures in pursuit of important public policy objectives for the protection of their environmental resources, while safeguarding Members' WTO rights against arbitrary or unjustifiable discrimination and disguised restrictions on trade.

7. Most of the delegations which intervened in the debate on this issue stated that they consider that the provisions of GATT Article XX do not permit a Member to impose unilateral trade restrictions that are otherwise inconsistent with its WTO obligations for the purpose of protecting environmental resources that lie outside its jurisdiction. For them, a renewed commitment needs to be taken by WTO Members to avoid using trade measures unilaterally for that purpose, and numerous proposals have been made in the CTE to that effect. Another view is that there is nothing in the text of Article XX which indicates that it only applies to policies to protect animal or plant resources or conserve natural resources within the territory of the country invoking the provision. A number of Members noted that there were differing views as to what constituted "unilateralism".

8. MEAs based on international consensus are viewed by the international community as the best way of coordinating policy action to tackle global and transboundary environmental problems cooperatively[7]. The WTO has no competence in the area of environmental matters *per se*, but it is concerned with trade measures applied pursuant to MEAs which can affect WTO Members' rights and obligations. Of the many MEAs currently in effect, only about 20 contain trade provisions.[8] There are considerable differences between the trade provisions of different MEAs, in particular the kinds of trade measures that MEA Parties are authorized or required to apply and

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[5]See the Results of the Stocktaking Exercise (WT/CTE/W/33), contained in Annex III of this Report.

[6]A complete list of documents and non-papers is contained in Annex IV to this Report.

[7]See *Agenda 21*.

[8]PC/SCTE/W/3, 13 October 1994.

the conditions pursuant to which the measures are taken. No GATT or WTO trade dispute has arisen so far over the use of trade measures applied pursuant to an MEA. Nevertheless, doubts have been expressed by some WTO Members about the WTO consistency of certain trade measures applied pursuant to some MEAs, in particular discriminatory trade restrictions applied by MEA Parties against non-parties that involve extra-jurisdictional action. For some, the uncertainty these doubts create for WTO Members and for the negotiators of MEAs makes clarification of the relationship between WTO provisions and these trade measures desirable. For some others, trade measures applied pursuant to an MEA by WTO Members should be consistent with WTO rules and disciplines.

9. Coordination between trade and environment officials in national capitals and during the negotiation of MEAs and new trade rules has been recognized by many in the CTE to be an important means of ensuring coherence between MEAs and the WTO. Some consider it can be enhanced through closer cooperation between the WTO and MEAs. Several suggestions have been put forward to improve the flow of information between the WTO and MEAs. One proposal[9] is for the CTE to invite representatives of MEAs to brief it on the use of trade measures applied pursuant to the MEAs, and for the CTE to have an opportunity to express its view to MEA authorities on trade measures which are contemplated in an MEA. It has also been suggested that consultation and cooperation between the Secretariats of the WTO and MEAs should be encouraged, especially during initial negotiations and amendments of MEAs. Another proposal[10] is to enhance transparency, dialogue and cooperation between MEAs, relevant international organizations and the WTO from the initial stage of negotiation of an MEA to its implementation. This cooperation may include exchange of information, mutual participation in meetings, mutual access to documents and databases, and briefing sessions, as necessary. Another proposal[11] is that a factual reference guide containing WTO principles should be compiled by the WTO Secretariat which, after being agreed by the CTE, could be used by MEA negotiators in their consideration of proposed trade measures. A proposal[12] has been made to conclude cooperation agreements between the WTO and competent MEA institutions, providing: (i) for the WTO Secretariat to respond to requests for factual information about relevant WTO provisions; and (ii) for MEAs to inform the WTO of all envisaged trade provisions, which would be examined by the CTE and the report of the meeting would be communicated back to the MEA authorities. While acknowledging the importance of contacts between the WTO and MEA Secretariats, some are of the view that policy dialogue must take place in national capitals, that the WTO and MEAs must respect their specific areas of competence, and that the WTO Secretariat has already the authority to provide factual information about the multilateral trading system.

10. When account is taken of the limited number of MEAs that contain trade provisions, and the fact that no trade dispute has arisen over the use of those measures to date, some feel that there is no evidence of a real conflict between the WTO and MEAs; existing WTO rules already provide sufficient scope to allow trade measures to be applied pursuant to MEAs, and it is neither necessary nor desirable to exceed that scope. According to this view, the proper course of action to resolve any underlying conflict which may be felt to exist in this area is for WTO Members to avoid using trade measures in MEAs which are inconsistent with their WTO obligations. Any

[9]Proposal by Japan, WT/CTE/W/31, 30 May 1996.

[10]Non-paper by the Republic of Korea, 12 June 1996.

[11]Non-paper by Hong Kong, 22 July 1996.

[12]Non-paper by Switzerland, 20 May 1996.

clarification in that respect can be provided, as necessary, *ex post* through the WTO dispute settlement mechanism.

11. One proposal[13] is thus to confirm that the existing provisions of GATT 1994 are adequate to deal with trade measures taken pursuant to legitimate environmental objectives contained in existing MEAs, and that trade measures pursuant to future MEAs should be formulated keeping in mind the provisions of the multilateral trading system. The proposal stated that trade measures which are restrictive in nature in MEAs, even if taken for enhancing environmental protection, must respect the rule-based nature of the multilateral trading system and their costs in terms of trade restriction must be fully taken into account. In addition, any trade measures taken for achieving environmental objectives should be appropriately dealt with within the scope of Article XX of GATT 1994; that is the only way to ensure non-discrimination which is the foundation of the multilateral trading system.

12. Some feel scope for the use of trade measures applied pursuant to MEAs can be provided, if necessary, through recourse to the existing waiver provisions of Article IX of the WTO. These provide the opportunity for Members to seek, in exceptional circumstances, a waiver to a WTO obligation, subject to approval at a minimum by three-quarters of the WTO membership. A waived obligation is time-limited, and must be renewed periodically; and a trade measure applied pursuant to a waiver could still be challenged in WTO dispute settlement on the grounds of non-violation, nullification and impairment of WTO rights. The strictness of these conditions is considered by some to be appropriate for protecting the rights of WTO Members in circumstances in which, for example, MEA Parties apply WTO-inconsistent discriminatory trade measures against non-parties. This approach, they feel, could provide a measured, case-by-case response to any problems which might arise in the future. Evidence of a multilateral consensus, avoiding the need for a separate definition in the WTO of an MEA, would be established on the merits of each case since it could be presumed that an MEA which could genuinely claim broad support from the international community would find equally broad support among WTO Members.

13. To the extent that concerns exist about the time-limited nature of WTO waivers, it has been suggested that, subject to certain conditions, a special "multi-year" waiver could be provided for trade measures applied pursuant to MEAs. One such proposal[14] suggests that all measures taken under MEAs would be eligible for a waiver, provided they meet specified criteria[15], and a "negative vetting" approach could be adopted whereby the waiver would be automatically renewed if no new developments affect the exceptional circumstances which justified its granting in the first instance. Another proposal[16] suggests that specific trade measures contained in existing and future MEAs, whether among Parties or against non-parties, may be granted a waiver on a case-by-case

[13]Non-paper by India, 23 July 1996.

[14]Non-paper by Hong Kong, 22 July 1996.

[15]The criteria would be, for instance: (i) the negotiation of and participation in the MEA reflect a genuine international consensus; (ii) the MEA meets the criteria set out in the headnote to GATT Article XX; (iii) the grant of the waiver does not prejudice WTO Members' rights and obligations under the DSU, irrespective of whether they are Parties to the MEA in question. Additional criteria, such as necessity, least trade-restrictiveness, effectiveness and proportionality, would apply for non-specific trade measures. Furthermore, the criterion of "least-inconsistent with WTO provisions" should apply to specific trade measures.

[16]Proposal from ASEAN, WT/CTE/W/39, 24 July 1996.

basis subject to non-binding guidelines.[17] The waiver would be extended annually until its termination as long as the requirements contained in Article IX are met, and the "exceptional circumstances" referred to in that provision would cover specific trade measures included in MEAs. WTO Members would retain their rights to resort to non-violation dispute settlement procedures in the WTO.

14. Some others do not consider the WTO waiver provisions offer a useful approach to the use of trade measures in MEAs because waivers are designed to deal only with temporary measures involving exceptional circumstances. Recourse to an uncertain test of voting on a waiver in the WTO could fail to provide MEA negotiators with a necessary degree of security or predictability in their negotiations and it might involve the WTO passing judgement over other international legal instruments. This, they feel, could give rise to an untenable situation for WTO Members that have accepted obligations under both the WTO and an MEA.

15. Some others have suggested the issue of the use of trade measures in MEAs needs to be addressed more from an *ex ante* point of view and not only through the *ex post* means available under the WTO dispute settlement or waiver provisions. For them, international co-operation is the most environmentally effective means of tackling transboundary and global problems, because the joint efforts of all countries concerned are required: this is reflected in the increasing agenda of MEA negotiations. Although no conflict has so far arisen as regards trade measures pursuant to MEAs and WTO rules, these Members feel that it is important to adopt a preventive attitude and provide greater certainty. This would be beneficial both for environment and trade policy makers. For those Members, the key point is that MEAs and the WTO both represent different bodies of international law. Various proposals have been put forward, with a view to establishing a framework for the relationship between MEAs and WTO. Although these proposals differ in nature, scope and level of ambition, they are all based on the view that the WTO should be supportive of action at the multilateral level for the protection of the environment. They develop the view that, subject to specific conditions being met, certain trade measures taken pursuant to MEAs should benefit from special treatment under WTO provisions; this approach has been described as creating an "environmental window" in the WTO. They have a number of common features.

16. One is that although it may be desirable to clarify the treatment under WTO provisions of trade measures applied pursuant to MEAs, no additional scope than that which exists already is to be made available under GATT Article XX for the use of unilateral measures for environmental purposes. A second is that importance is attached to enhancing the transparency of trade measures applied pursuant to MEAs. Several proposals make notification of the measures to the WTO a pre-condition for them benefitting from any additional accommodation that the proposals suggest the measures might be granted under WTO provisions. A third common feature is the role which WTO dispute settlement would play in the case of a conflict arising over the use of trade measures applied pursuant to MEAs; discussions on this issue are described in more detail under Item 5 of the work programme.

17. One proposal[18] elaborates two options. The first is to include measures taken pursuant to specific provisions of MEAs in GATT Article XX. The second is to introduce a reference not only to these measures but, also in more general terms, to measures necessary to protect the "environment"; and to improve the consistency of the rules of the multilateral trading system

[17]The non-binding guidelines would include criteria such as necessity, least trade-restrictiveness, effectiveness, proportionality and the degree of scientific evidence.

[18]Non-paper by the European Community, 19 February 1996.

taking into account both the commitment expressed in the first preambular paragraph of the Agreement establishing the WTO and the fact that the environment is already mentioned in several WTO Agreements. Both options suggest the development of an Understanding under the provisions of GATT Article XX that in the event a trade measure applied pursuant to an MEA is challenged in the WTO, subject to certain procedural criteria being met[19] the dispute settlement panel would examine only whether the measure has been applied in conformity with the requirements in the headnote language of Article XX and would not consider its necessity. The aim is to send a political signal of the WTO's support for multilateral measures as a means of discouraging the use of more trade-disruptive and less-environmentally efficient unilateral ones, and so to strengthen the multilateral trading system by establishing a framework to deal with problems that arise. The WTO would not judge the legitimacy of the environmental objectives or the necessity of the measures taken to achieve these objectives because the multilateral character of the trade measures would be the best guarantee against abuse. At the same time, the WTO would retain its power to counter protectionist implementation of a multilaterally-agreed measure through the headnote language in Article XX.

18. A second proposal[20] is to develop an Understanding, applicable across all WTO Annex 1 Agreements, on differentiated treatment for trade measures applied pursuant to MEAs, depending on whether they apply between Parties or against non-parties and whether they are specifically mandated in an MEA. Specific and jointly notified trade measures applied among MEA Parties would prevail over their WTO obligations to the extent of the mandated inconsistency, and WTO dispute settlement would not be available to them for trade action within the terms of the notified measures. Non-consensual measures (those applied among Parties but not specifically mandated in an MEA, and those applied against non-parties which are specifically mandated in an MEA) could be tested through WTO dispute settlement against procedural and substantive criteria which would be set out in the Understanding. The Understanding would not apply to trade measures taken against non-parties to an MEA that were not specifically mandated in the MEA; nor would it apply to unilateral measures. These would continue to be subject to existing WTO provisions. The proposed procedural criteria aim at ensuring that an MEA reflects a genuine "multilateral" consensus through requiring: (i) negotiation of and participation in an MEA to be open on equitable terms to all interested countries; (ii) broad participation of interested countries in both geographical terms and representing varying levels of development; and (iii) adequate representation of consumer and producer nations of the products covered by the MEA. The proposed substantive criteria aim at ensuring that the trade measure is necessary to achieve the environmental objective of the MEA, including through consideration of: (i) the effectiveness of the trade measure in achieving the environmental objective; (ii) whether the measure is the least trade-restrictive or distorting; and (iii) the proportionality of the measure to the need for trade restriction to achieve the environmental objective.

19. A third proposal[21] is to introduce "a coherence clause". It would provide that in case of a WTO dispute over a trade measure mandated under an MEA, the dispute panel would examine whether the measure was applied in a manner that constitutes arbitrary discrimination between countries where the same conditions prevail or with a view to achieving trade advantages, but it would not examine the legitimacy of the environmental objective nor the measure's necessity. A

[19]Those terms would be whether the MEA was open to participation by all parties concerned with the environmental objectives of the MEA, and reflected, through adequate participation, their interests, including significant trade and economic interests.

[20]Submission by New Zealand, WT/CTE/W/20, 15 February 1996.

[21]Non-paper by Switzerland, 20 May 1996.

list of MEAs benefiting from the coherence clause would be established. Two possible approaches were identified to establish the list: either the General Council could make a decision concerning the inclusion of each MEA on the list, or each MEA could be notified to the WTO Director-General by its depositary in which case the General Council would be asked to reach a decision only if a WTO Member objected to a proposed listing.

20. Another approach[22] proposes the "possibility of setting differentiated WTO disciplines" for trade measures applied pursuant to MEAs based on whether the trade measures are specifically mandated by an MEA and whether they are applied among Parties or against non-parties. The skeleton of this approach is illustrated in a matrix in Annex V. Trade measures taken among Parties would be eligible for qualified codification on a lapse of time basis, subject to them meeting appropriate conditions which would be less strict for measures specifically mandated in an MEA than for those simply authorized by the MEA. Under this proposal it would be premature to consider the accommodation of any other type of trade measures taken pursuant to an MEA (for example, against a non-party) that goes beyond the scope of existing WTO disciplines.

21. A different approach suggested by some Members is to develop guidelines to provide more predictability than exists at present over the treatment of certain trade measures applied pursuant to MEAs and allow for the development of mutually supportive trade and environment policies, as envisaged in *Agenda 21*. One proposal[23] made in this regard is to draw up non-binding interpretative guidelines, with the possibility of making them legally-binding with appropriate modifications as necessary. Guidelines could be used by MEA negotiators to provide them with an authoritative point of reference on the application of WTO provisions when they are considering the use of trade measures pursuant to MEAs, they could be used by WTO dispute panels when examining the compatibility with WTO rules of trade measures applied pursuant to MEAs, or they could serve as a basis on which the WTO Secretariat would provide technical advice on WTO provisions to MEA Secretariats and environmental negotiators. The proposed guidelines are not intended to be used directly in a panel examination, although they could have a certain impact on the scrutiny of panels. Formal decisions concerning substantive criteria made by the relevant MEA authority should be taken into sufficient account on the condition that the MEA meets procedural criteria that would reflect its consensual basis.[24] These substantive criteria could incorporate characteristics of MEA trade measures such as their necessity, effectiveness and proportionality.[25]

22. One proposal[26] suggested that the Committee develop an agreed framework for endorsement by the Singapore Ministerial Conference that would include, inter alia, the following

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[22]Non-paper by the Republic of Korea, 12 June 1996.

[23]Proposal by Japan, WT/CTE/W/31, 30 May 1996.

[24]Examples of procedural criteria are: (i) negotiation of the MEA is open to all countries, and takes place preferably under the UN aegis; (ii) countries from different geographical regions and at different stages of economic and social development which are Parties to the MEA have participated in the negotiations and must be reflected in the membership of the agreement; and (iii) the MEA deals with environmental protection of a transboundary or global nature.

[25]Substantive criteria are, for example: (i) trade measures are chosen only when effective and when alternative measures are ineffective in achieving the environmental objective, or when other measures are inefficient without trade measures as part of the MEA; (ii) trade measures are not more trade-restrictive than required to achieve the environmental objective; (iii) trade measures do not constitute arbitrary or unjustifiable discrimination; (iv) trade with non-parties is permitted on the same basis as with Parties if non-parties provide equivalent environmental protection; and (v) trade measures and the circumstances under which they can be taken are clearly defined.

[26]Non-paper by the United States, 11 September 1996.

points: the strong appreciation among WTO Members of the importance of MEAs; that WTO rules should not hamper the ability of MEAs to achieve their environmental objectives; that trade measures have been and will continue to be an important tool for achieving important environmental objectives; that trade measures will not always be needed, and should be used prudently but should be available when needed, and MEA negotiators are in the best position to determine when this is so; that the WTO should recognize and respect the technical and environmental expertise of MEA negotiators; and that panels can, and should, seek input from relevant MEA bodies in any dispute involving questions relating to an MEA.

23. There have been many reactions to these proposals and suggestions.

24. One set of reactions has been expressed to proposals that would increase the scope under the WTO for applying pursuant to MEAs trade measures that are considered to be inconsistent at present with its provisions, or that would limit the recourse of WTO Members to dispute settlement. Some are concerned that this could undermine the existing balance of WTO rights and obligations and create a loophole for trade protectionism. These Members believe that it could lead also to the legitimization of unilateral measures and their extrajurisdictional application, as well as the use of trade measures based on non-product-related processes and production methods (PPMs), for which in the view of these delegations no basis exists in WTO rules. Singling out trade measures pursuant to MEAs would require determining whether those trade measures are necessary or effective. This would require holistic consideration of all other measures, including positive measures, taken within the framework of an MEA, which is clearly outside the WTO's scope. Some feel also that there is a risk of introducing a direct link between "necessity" and "environment" in the WTO at a time when a clear and complete definition of "environmental necessity" is still evolving in other intergovernmental fora.

25. Concerns by some have been expressed in particular over proposals that would enlarge the scope under the WTO for the use of discriminatory trade measures against non-parties to an MEA. There is concern about who is entitled to judge the merit of a country's decision not to join an MEA, and that account be taken of the reasons why a country would take that decision (it may find the scientific evidence unpersuasive, it may not be able to afford to join or have access to necessary technology on favourable terms, it may not agree with a given environmental objective or with the means to achieve the objective, or it may consider there are more pressing national policy problems which deserve higher priority). In this regard, mention has been made of Principle 7 of the *Rio Declaration*, which states that there is a "common but differentiated responsibility" of States in resolving environmental problems of a global nature. Some feel that trade measures, and in particular discriminatory trade measures against non-parties to MEAs, are not an appropriate way to pursue international environmental objectives. They consider that discriminatory trade measures should not be used to coerce countries to become signatories to an MEA and that this is not the WTO's role, and trade measures are one of the alternatives in the package of instruments that can be used to achieve MEA objectives. They also believe that positive measures and incentives such as financial and technology transfers, increased market access and technical assistance are more efficient and effective. Therefore, changes in WTO rules to accommodate MEA trade measures which are inconsistent with WTO rules are an unbalanced and isolated approach as long as there is no parallel commitment to first use and enforce positive measures, as a means in particular to increase participation in MEAs.[27]

26. Concern was also expressed by some over any possible extension of or derogation from WTO rules for measures which are not specifically prescribed or authorized in MEAs, since this could permit justification for unilateral measures disguised as multilateralism and open the door for protectionist measures. It was emphasized that the accommodation of trade measures pursuant

[27]See in particular the Non-paper by India, 23 July 1996 and the Submission by ASEAN, WT/CTE/W/39, 24 July 1996.

to MEAs, or enlarging the scope for the use of discriminatory trade measures, could send the wrong signals to many countries, particularly developing countries which have committed themselves to trade liberalization. Other concerns include the lack of an operational definition of MEAs to differentiate them from regional and plurilateral environmental agreements, and uncertainty about the effectiveness of trade measures *vis-à-vis* other measures. For some, an operational definition of MEAs is a pre-condition for discussing the use of trade measures applied pursuant to MEAs, and the importance of further work on procedural criteria, such as those described above in paragraph 18, has been underlined in this respect.

27. Doubts have been expressed by some about the need for a "coherence clause" when only certain trade measures applied pursuant to MEAs are viewed as being potentially WTO-inconsistent, and about the appropriateness of the WTO being seen to pass judgement on individual MEAs. With regard to proposed guidelines for environmental negotiators, some feel these would appear to allow the WTO to second guess MEAs in areas outside its competence and would send a signal of mistrust to negotiators representing, in different fora, Members of the WTO. In this sense, some stated with concern that the condition that measures are not taken with a view to achieving trade advantages would imply shifting the burden of proof from the Member invoking the "coherence clause" to the Member that may decide to challenge the measure, thereby reversing GATT/WTO dispute settlement practice.

28. Doubts have been expressed by some delegations about the appropriateness and even the feasibility of formulating procedural and substantive criteria against which to evaluate the WTO-consistency of trade measures applied pursuant to MEAs. They have pointed out in this regard that the best policy package of an MEA is likely to vary according to the specific circumstances of a given environmental problem, so trade measures have been applied pursuant to MEAs for a variety of reasons and in a number of ways in the past, and there is no clear indication of how they will be used in the future. In light of this, and consistent with the view that the WTO does not have competence in environmental matters *per se*, they consider that the WTO should not formulate criteria which would limit the flexibility for environmental policy-makers to judge the legitimacy of environmental objectives and types of trade measures needed.

29. Specific concerns have been raised by some about the substantive criteria that have been proposed. With regard to "necessity", a concern has been voiced about applying in this context the interpretation that has been given by GATT dispute panels to the term "necessary" in Article XX(b) which, it has been stated, is not universally accepted. According to this view the criterion of "necessity" is not found in other provisions of Article XX, notably Article XX(g), and a recent Appellate Body Report has been cited in that regard.[28] However, it was also stated that the notion of necessity was particularly relevant in other GATT Article XX provisions that could be related to trade measures taken for environmental purposes. In addition, it has been stated that the concept of "effectiveness" cannot be found in WTO provisions or jurisprudence, and that "least trade-restrictive" and "proportionality" are not concepts that can be found in Article XX. The view of some is therefore that since such criteria would go beyond the existing conditions attached to the application of trade measures under GATT Article XX, they would make it more difficult to use trade measures for environmental purposes. This would send the wrong message with respect to the support of the international community for resolving global and transboundary environmental problems through multilateral action and could furthermore act as a disincentive to the use of multilateral action.

30. According to some others, these criteria of necessity, effectiveness, least trade restrictiveness and proportionality are implicitly included in WTO disciplines. The consideration of these criteria, in particular that of "necessity", is essential to any effort to better accommodate

[28] WT/DS2/AB/R, 22 April 1996.

trade measures pursuant to MEAs. The necessity of these measures should not be taken for granted, in particular, when their use depends more on political pressure than environmental necessity. Some stated that trade measures applied for environmental purposes are related to GATT Article XX provisions other than sub-paragraph (g) where the concept of necessity is particularly relevant. Some feel that the concept of necessity needs to be considered and redefined in the environmental context on the basis of UNCED principles, such as "common but differentiated responsibilities", equity and international cooperation. Some consider also that procedural criteria would be essential, especially in the absence of any accepted definition of an MEA.

31. A number of WTO Members remarked on the usefulness of the "differentiated approach" as a methodology for analysing issues related to this Item: the approach differentiated, on the one hand trade, measures applied among MEA Parties from those applied against non-parties to an MEA, and, on the other hand, trade measures specifically mandated or defined in MEAs from those that are not.

ITEM 5 The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

32. This Item has been discussed in conjunction with Item 1. One issue examined was what the competent forum would be to settle a dispute which arose between two WTO Members over trade measures applied pursuant to an MEA. A second was what scope there might be for enhanced institutional cooperation in this area, in particular the involvement of environmental expertise in WTO dispute settlement proceedings and of trade expertise in MEA dispute settlement proceedings when disputes concern trade measures applied pursuant to an MEA. The possibility of providing public access to WTO dispute settlement proceedings, as is the case for certain MEAs, was also raised.

33. Like the WTO, MEAs emphasize the avoidance of disputes. They include provisions to increase transparency through the collection and exchange of information, coordination of technical and scientific research, and collective monitoring of implementing measures as well as consultation provisions. Most of the MEAs that are the focus of the CTE's work contain mechanisms for resolving disputes. These range from non-binding, consensus-building mechanisms to binding, judicial procedures of arbitration, and in certain cases resort to the International Court of Justice.

34. Some feel it is each government's responsibility to avoid entering into conflicting obligations in treaties it is signatory to; that is best done at the negotiating and drafting stage. Some also have stated that disputes can be avoided if WTO Members, which are Parties to an MEA, review trade measures applied by other countries pursuant to the MEA in the context of the totality of their international obligations. Some have said that WTO Members should not resort to the WTO dispute settlement mechanism to circumvent or impair the obligations they have accepted by becoming MEA Parties. Article 3 of the Dispute Settlement Understanding (DSU) has been cited in that regard, which calls on Members before bringing a case to exercise their judgement about whether action through the DSB would be fruitful.

35. One view is that this Item raises procedural issues which could best be addressed once conclusions have been drawn under Item 1 of the work programme. Another view is that procedural issues do warrant attention; if trade measures are taken pursuant to new MEAs in the future, the possibility of a trade dispute arising may increase. In that case, attempts should be made to ensure that both trade and environment interests are taken into account and that

implementing one treaty's set of rules does not jeopardise the fulfilment of the objectives of the other.

36. Doubts have been expressed about any *a priori* WTO determination of the forum under which a dispute which involved WTO rights and obligations should be handled. Some feel a case-by-case approach would be a pragmatic solution. Others stress the importance of WTO Members maintaining their right to submit any conflict involving trade measures to WTO dispute settlement, and recall that the DSU explicitly states that the purpose of the WTO dispute settlement system is to preserve the rights and obligations of WTO Members. Thus, these Members are of the view that the WTO remains competent to deal with a conflict arising from the use of any trade measure independently of its policy objective.

37. Some feel that a dispute between WTO Members, Parties to an MEA, over trade measures taken pursuant to the MEA should in the first instance be pursued under the MEA dispute settlement mechanism. One suggestion is that MEA Parties might stipulate *ex ante* that they intend trade disputes among them arising out of implementation of the obligations of the MEA to be settled under the MEA's provisions. One contribution[29] notes that the 1982 UN Convention on the Law of the Sea, and in particular the 1994 Agreement Relating to the Implementation of Part XI of the Convention (Section 6: Production Policy), attributes competence to the WTO in settling disputes involving trade-related measures, notably production subsidies and trade restricting measures. This approach, it is suggested, can help ensure the convergence of the aims of MEAs and the WTO while safeguarding their respective spheres of competence, thus overcoming problems arising from overlapping jurisdictions. There may be value in strengthening MEA dispute settlement mechanisms, but it is recognized that this matter lies outside WTO competence. Another suggested approach is to examine whether recourse to arbitration, as provided for in DSU Article 25, can be an appropriate means of resolving trade and environment disputes.

38. In the event of a dispute between two WTO Members, one a non-party to an MEA, over trade measures applied pursuant to the MEA, some have noted that the WTO would provide the only available dispute settlement mechanism since the non-party would have no rights under, nor access to, the MEA dispute settlement mechanism. In such circumstances, it would be important for the DSB to avoid becoming involved in pure environmental conflicts, but a WTO dispute settlement panel could seek relevant environmental expertise and technical advice.

39. Article 13 and Appendix 4 of the DSU allow a panel to seek information and technical advice from any individual or body which it deems appropriate, to seek information from any relevant source and to consult experts to obtain their opinion on certain aspects of the matter, and to request a report in writing from an advisory review group with respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute. This facility is available to panels examining disputes that arise over the use of any environment-related trade measures, whether these have been applied pursuant to an MEA or not.

40. One view is that these DSU provisions are sufficient and there are no grounds for making special provision for environmental expertise. Some have stated that full use of these provisions should be encouraged. Nevertheless, mechanisms could be explored to inform panels of MEA provisions, including the application and interpretation of an MEA or judgements on environmental matters in MEAs. One suggestion has been the establishment of cooperation and consultation arrangements between MEAs and the WTO to ensure that an MEA's environmental objectives are given appropriate consideration.

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[29]Communication from Chile, WT/CTE/W/2, 16 February 1995.

41. Some have suggested strengthening the role of expert groups in WTO disputes involving environmental issues, particularly in any disputes that might arise over the use of trade measures applied pursuant to MEAs, for example by requiring the use of such groups where there are scientific and technical points at issue in the dispute. It has been noted in that connection that under the provisions of the GATS Annex on Financial Services "panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute". In this regard, it is felt that environmental expertise would be particularly important in any disputes involving the interpretation and application of an MEA, for testing the necessity of an environment-related trade measure and for the assessment of scientific evidence. However, concerns have been raised that the independence of WTO panellists to judge a dispute should not be compromised; expert opinion could help inform a panel, but outside experts should not become involved in judging whether or not measures are WTO consistent. Also, doubts have been expressed about the legal basis for WTO panels to take account of an MEA's objectives or provisions, and about whether the CTE is the appropriate forum to consider changes in the provisions of the DSU. One proposal[30] has been to confirm that DSU provisions are adequate to deal with any trade dispute brought to the WTO which may be linked to environmental issues.

42. The possibility of providing, upon request, trade expertise to MEA dispute settlement proceedings has been discussed. One circumstance which could warrant that is where an MEA refers explicitly to WTO provisions.

43. Some MEAs provide opportunities for the public to have knowledge of and observe their dispute settlement proceedings. One view is that the DSU might suffer in comparison in this regard. It has been recalled that the UN Commission for Sustainable Development at its 1994 session stressed the importance of transparency and active involvement of the public and experts in work on trade and environment, including in dispute settlement processes, and considered there was considerable need for improvement in these areas.

ITEM 2 The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

44. This Item covers environmental polices and measures not already covered under other Items of the work programme.

45. Property rights, market-making measures such as tradeable emission permits, fiscal instruments, emission taxes, financial subsidies and soft loans, liability systems, and bond and deposit-refund systems have been mentioned by some. Some consider that compared to traditional regulatory approaches towards the internalization of environmental externalities, measures such as these can often be used more flexibly in a market economy and they can be more transparent. Others consider that, nevertheless, depending on how they are designed and implemented, they can generate significant trade effects and raise national concerns about relative competitiveness differentials which can provoke demands for compensatory trade measures to be imposed.

46. Environmental subsidies were discussed. Subsidies can be used to create incentives for producers to adopt environmentally-sustainable production practices, and the specific, environmentally-related, non-actionable subsidies identified in Article 8.2(c) of the Agreement on

[30]Non-paper by India, 23 July 1996.

Subsidies and Countervailing Measures (SCM) were noted in that regard.[31] Some were of the opinion that environmental subsidies may differ from more traditional forms of production subsidies but they can still exert an important influence on prices and producers' incomes, and hence on trade. Further analysis has been suggested of the relationship of the SCM Agreement to various forms of environmental incentives, of the extent to which WTO provisions encouraged subsidization that could be environmentally-harmful, in particular but not limited to energy use, and of the use of environmental subsidies in relation to the Agreement on Agriculture, particularly its Annex 2.12.

47. One proposal and a draft Decision[32] recommends that national governments undertake environmental reviews of trade agreements likely to have significant environmental effects, and that WTO Members be invited to provide copies of such reviews and related material and methodologies to the WTO Secretariat for reference by other Members. Some feel that this issue falls outside the mandate and competence of the WTO, and that the WTO should not therefore be making recommendations of this nature. Some others feel that environmental reviews fit within the provision of the terms of reference calling for identification of the relationship between environmental measures and trade measures.

48. One proposal[33] is to consider the relationship and comparability of general trade and environmental principles. Among the principles to be considered are *inter alia* the principle of sustainable development, Principle 12 of the *Rio Declaration*[34], MFN and national treatment, transparency, the concepts of least trade-restrictiveness, proportionality and equivalence, special and differential treatment for developing countries, common but differentiated responsibility, sovereignty over environmental resources, fair and equitable sharing of benefits, and the special needs of developing countries. Some feel that consideration of environmental principles lies outside the mandate of the WTO. Some feel that summarizing complex principles could create misunderstandings. Some feel that any such list of principles should be comprehensive and include the principle of the obligation to cooperate, the polluter pays principle, and the precautionary principle. A related suggestion is to analyse the flexibility of trade principles to accommodate current and emerging environmental policies, to determine whether they prevent the internalization of environmental externalities, and whether the trade rules contribute to integrated sustainable development policies. Another suggestion is that the relationship between specific environmental policies and specific WTO Agreements could only be usefully examined on a case-by-case basis.

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[31]It was noted that SCM Article 8.2(c) provides for one-time, non-recurring measures to meet specified conditions with the purpose of promoting the adaptation of existing facilities to meet new environmental regulations and standards. It was also pointed out that Article 8.3 requires *ex ante* notification of subsides claimed under the provisions of Article 8.2(c).

[32]Submission by the United States, WT/CTE/W/37, 23 July 1996 and Non-paper by the United States, 11 September 1996.

[33]Non-paper by India, Item 2, 23 July 1996.

[34]"States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus."

ITEM 3(A) The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

49. One issue examined is the application of GATT rules on Border Tax Adjustment (BTA) to environmental taxes and charges. The potential effects of environmental taxes on trade and problems involved in the valuation for tax purposes of tradeable environmental products have also been discussed.

50. Views have been presented on the potential trade effects and general economic and environmental effectiveness of levying environmental taxes and charges on imports and rebating them on exports, depending on whether they are assigned to correcting consumption or production externalities and are levied at the national or international levels.

51. With regard to the treatment of environmental taxes and charges under the BTA provisions, the 1970 Report of the GATT Working Party has been taken as a point of reference and several of its findings were noted.[35] These were that the BTA provisions are based on the concept of trade neutrality and they apply the destination principle. Furthermore, the Working Party concluded that certain taxes not levied directly on products are ineligible for BTA. There was a convergence of views in the Working Party that taxes levied directly on products are considered eligible for tax adjustment, and a divergence of views regarding the application of BTA for *taxes occultes* (consumption taxes on capital equipment, auxiliary materials and services used in the transportation and production of other taxable goods, for example taxes on advertising, energy, machinery and transport).[36]

52. Views have been presented in the CTE on the application of BTA to environmental taxes or charges applied to non-product-related PPMs. One view is that BTA applies solely to taxes levied on products or product-related PPMs, and that taxes or charges levied on non-product-related PPMs are not eligible for BTA. Another is that GATT jurisprudence remains unclear on this point, and that certain important environmental taxes and charges might fall into the category of *taxes occultes* on which the 1970 Working Party did not reach a firm conclusion. Since the BTA provisions could influence a Member's choice of what environmental taxes and charges to apply, some feel that it is important to clarify them in certain aspects. Some suggested that environmental taxes and charges might need to be accorded different treatment under WTO rules than other fiscal measures, and cautioned against drawing premature conclusions on BTA disciplines which would make it more difficult to apply them. Some feel that the environmental policy decision to impose the internal tax or charge should be taken as given and should not influence consideration of the adequacy of WTO rules on BTA.

53. Reference has been made to the Agreement on Subsidies and Countervailing Measures (SCM), in particular its provisions on "Prohibited Subsidies" (Article 2 and Annex I) and its "Guidelines on Consumption of Inputs in the Production Process" (Annex II). Different views have been expressed on the likely treatment under the Agreement of a rebate for exported products of indirect environmental taxes on a non-product-related PPM in excess of the tax rebated on like products when sold for domestic consumption. One view is that energy taxes appear to be covered by Footnote 61 of the SCM Agreement. Another is that the principle of physical incorporation remains the basis upon which BTA is applied.

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[35]BISD 18S/97.

[36]The Working Party noted that it appeared adjustment was not normally made for *taxes occultes* except in countries having a cascade tax.

54. Views have been presented by some and questions were raised by others on methodologies to value environmental resources for the purposes of taxation, and the potential impact of different types of environmental taxes and charges on the trade of developing countries.

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

55. The key point of reference for discussion of this Item has been the WTO Agreement on Technical Barriers to Trade (TBT) and its relationship to environmental regulations and voluntary standards. Discussions focused on environmental labelling (eco-labelling) schemes/programmes and measures and their relationship to the provisions of the TBT Agreement[37]. Considerable empirical and analytical work was done by the GATT EMIT Group in this area, covering not only eco-labelling but also environmental packaging and waste handling requirements. That work has been recalled, and some stressed their continued interest in taking up again the analysis on environmental packaging, waste handling, and related requirements.

56. Discussions on eco-labelling have been enriched by presentations of several existing eco-labelling schemes/programmes at a joint informal session of the CTE and the TBT Committee.[38] Those presentations illustrated the variety of approaches that have been adopted towards eco-labelling by WTO Members and described the perceived environmental benefits and cost effectiveness of the different approaches.

57. Some consider there are still few eco-labelling schemes/programmes in operation in WTO Member countries and they have expressed doubts about them becoming a significant new force in the market. In this regard, some questioned why the CTE spent a large amount of time discussing voluntary eco-labelling schemes/programmes, given that approximately 20 schemes/programmes were in operation. Some feel that a deeper analysis of eco-labelling schemes/programmes is required to determine their effectiveness as policy instruments for environmental protection, particularly in view of their potential trade-distorting nature.

58. Some noted that *Agenda 21* recognized the importance of eco-labelling as an environmental policy tool to assist consumers in making informed choices, along with the need to develop criteria and methodologies for the assessment of environmental impacts and resource requirements throughout the full life-cycle of products and processes.

59. Some have noted that eco-labelling schemes/programmes are variously administered in different Members by central governments, local government bodies, and non-governmental bodies. Some of those administered at the local government level or by non-governmental standardizing bodies have significant government involvement at various stages of the process from product selection to product certification and the award of a label.

60. Existing eco-labelling schemes/programmes are overwhelmingly voluntary in nature, which some consider should relieve concerns that may exist about their potential trade restricting effects. Some others express doubts in that regard, however, saying that if the schemes/programmes are successful they influence consumer behaviour and that in this respect they can affect significantly market access and conditions of competition.

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[37]One Member suggested that the term voluntary labels be used instead of eco-labelling schemes/programmes, since it was felt that voluntary labels were not only limited to environmental issues but could be used to help achieve other objectives.

[38]WT/CTE/W/23-G/TBT/W/23, 19 March 1996.

61. One focus of discussion has been the implications that the use of Life-Cycle Approaches (LCA) in some eco-labelling schemes/programmes can have in requiring *inter alia* the use of non-product-related PPMs in order for a product to be eligible to receive an eco-label. Some have said in this context that LCA can result in standards that are based on a mixture of criteria relating to product and performance characteristics, product-related PPMs and non-product-related PPMs. They have suggested that it would not be practical to separate the coverage under WTO provisions of eco-labelled products according to the nature of the criteria used, and that all criteria involved in granting an eco-label should be covered by WTO disciplines. From an operational perspective an eco-labelling scheme programme needs to be treated as an integrated whole under WTO provisions.

62. One Member noted that the business community in both developed and developing countries acknowledged non-product-related PPMs as one of the realities of the marketplace. In many cases, business was more concerned about transparency and consultation issues, rather than with whether or not a particular standard was based upon non-product-related PPMs. However, developing country exporters appeared to require additional time to adapt to new requirements. A number of individual case studies demonstrated the pragmatic attitude of some developing country textile exporters in meeting non-product-related PPM requirements.[39]

63. Another Member noted that a number of developing countries had reported difficulties in complying with standards based on non-product-related PPM.[40] These problems were particularly acute for small firms, because of difficulties in obtaining and adapting required technology, among other factors. While transparency was a basic requirement, it was not considered adequate, as complying with the standard would restrict their market access.

64. Some others have expressed concern that multiple criteria-based schemes/programmes will inevitably reflect the environmental conditions, preferences and priorities prevailing in the domestic market, and that this can create market access difficulties. Overseas suppliers operating under different sets of environmental conditions could find it difficult and costly, especially in developing countries, to adjust their products to meet the criteria required in their export markets, and may even be placed in a situation of having to adopt practices unsuited to their local environmental conditions. They have expressed concern also about the implications of the use of LCA based *inter alia* on non-product-related PPMs, particularly where these are chosen selectively by an eco-labelling authority, for the maintenance of WTO disciplines based on the principle of "like product".

65. The view of some is that there is a need to extend the examination to different types of eco-labelling standards and discuss the trade implications of each. In this regard, it is felt important when designing LCA-based eco-labelling standards to recognize adequately different countries' particular environmental conditions and to accommodate different approaches that produce an equivalent, environmentally-beneficial result. Also, eco-labelling schemes/programmes should be designed so as to ensure that they provide sufficient and accurate information to consumers regarding the relative environmental impacts of competing products, and in that respect the principles of truthfulness, scientific basis and substantiability are important.

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[39]International Trade Centre, *Eco-labelling and other environmental quality requirements in textiles and clothing: Implications for developing countries*, 1996

[40]UNCTAD case studies, 1992-1995.

66. The CTE examined the relationship of the provisions of the TBT Agreement to eco-labelling in the light of a document prepared by the WTO Secretariat.[41] The CTE discussed (i) the application of the notification and other transparency provisions of the TBT Agreement to voluntary eco-labelling standards, and (ii) the applicability of the provisions of the TBT Agreement to voluntary eco-labelling schemes/programmes based, *inter alia*, on criteria on non-product-related PPMs.

67. Divergent views were expressed in this regard. Some expressed the view that the analysis of the two issues may not be conducted separately, and consequently should be dealt with together.

68. With regard to the first issue, given various trade-related concerns about eco-labelling schemes/programmes, it is a widely held view that full transparency plays a pivotal role in avoiding potential trade difficulties and increasing the legitimacy of such schemes/programmes and participation by interested parties in their development. It was recalled that the TBT Committee has decided that mandatory labelling requirements are subject to the notification provisions of Article 2.9 of the TBT Agreement regardless of the kind of information that is provided on the label.[42]

69. Some consider that all voluntary eco-labelling standards are subject to the transparency provisions of the Code of Good Practice for the Preparation, Adoption and the Application of Standards (Annex 3 of the TBT Agreement). Some others consider that voluntary schemes/programmes based on LCA do not seem to be fully covered by the transparency provisions of the TBT Agreement to the extent that criteria concerning non-product-related PPMs do not fall within the definition of "Standard" in Annex 1. Furthermore, in accordance with this view, a partial coverage is not in practical terms sensible, because in the operation of these schemes/programmes all criteria established for specific categories of products have to be jointly taken into account when awarding the label.

70. With regard to the second issue, many delegations expressed the view that the negotiating history of the TBT Agreement indicates clearly that there was no intention of legitimizing the use of measures based on non-product-related PPMs under the TBT Agreement, and that voluntary standards based on such PPMs are inconsistent with the provisions of the Agreement as well as with other provisions of the GATT. There is objection[43] to any attempt through CTE work on eco-labelling to extend the scope of the TBT Agreement to permit the use of standards based on non-product-related PPMs.

71. Another view is that the definition of the term "Standard" in the TBT Agreement is ambiguous with respect to its coverage of standards based on non-product-related PPMs. Some Members suggested that the definition does not seem to cover standards based, *inter alia*, on non-product-related PPMs. It cannot be stated, therefore, *a priori*, that such standards are inconsistent with the terms of the Agreement. It has been suggested that, if any kind of

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[41]WT/CTE/W/10-G/TBT/W/11, 29 August 1995."Note by the Secretariat on the Negotiating History of the Agreement on Technical Barriers to Trade with Regard to Labelling Requirements, Voluntary Standards, and Process and Production Methods unrelated to Product Characteristics."

[42]"In conformity with Article 2.9 of the Agreement, Parties are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Parties. That obligation is not dependent upon the kind of information which is provided on the label, whether it is in the nature of a technical specification or not." (G/TBT/1/Rev.3).

[43]Non-paper by the Arab Republic of Egypt, 18 June 1996.

inconsistency between the use of LCA tools in the context of voluntary eco-labelling and the provisions of the multilateral trading system were identified, the CTE should, in accordance with its terms of reference and the first preambular paragraph of the Agreement establishing the WTO, devise positive solutions to preserve the integrity of LCA. This would not imply that the use of non-product-related PPM requirements would be generally allowed.

72. Still others have stated that the TBT Agreement does not cover measures based on non-product-related PPMs, and voluntary eco-labelling schemes/programmes based on LCA are not covered by transparency provisions of the Agreement, since criteria concerning non-product-related PPMs do not fall within the definition of "Standard" in Annex 1. The CTE is not the proper forum to discuss preserving the integrity of LCA. Further, environmental impacts of different stages of a product depend on the absorptive capacities of different countries.

73. Another view is that all forms of eco-labelling, including eco-labels that involve non-product-related PPMs, are covered by the TBT Agreement and that the inclusion of non-product-related PPM-based elements in an eco-labelling regime is not *per se* a violation of WTO rules. According to this view, the TBT Agreement provides sufficient flexibility to permit non-product-related PPM-based eco-labelling to be used, subject to appropriate trade disciplines, and the validity of any eco-labelling regime under the WTO must be judged according to the relevant rules of the multilateral trading system.

74. A number of specific proposals have been made. One[44] is to confirm that the provisions of the TBT Agreement and its Code of Good Practice for the Preparation, Adoption and Application of Standards apply to all eco-labelling schemes/programmes, whether voluntary or mandatory, and whether administered by governmental or non-governmental bodies. In addition, the CTE, jointly with the TBT Committee should in its future work-programme analyse the impact of the development of international standards based on LCA in a way that does not prejudice the views of Members regarding non-product-related PPMs. In this regard it has been suggested[45] that the scope of the TBT Agreement should be interpreted to cover the use of standards based upon non-product-related PPMs in eco-labelling schemes/programmes provided that these standards adhere to multilaterally-agreed eco-labelling guidelines based on scientific criteria, are transparent, consensual and non-discriminatory.

75. In response to this proposal, some have stated that they do not see any need to confirm what is already included in existing provisions of the TBT Agreement, and they have opposed changing the interpretation or application of the TBT Agreement to permit standards to be based on non-product-related PPMs. In this regard, they have objected to including as a point of reference in the TBT Agreement international standards based on LCA that are currently being developed by the International Organization for Standardization (ISO). In their view, accepting LCA under the TBT Agreement would permit one country to impose its environmental priorities on another. They have also expressed concern about the ISO process and the difficulties for some WTO Members, particularly developing countries, to participate effectively in it because of the considerable resource commitments it involves. Consequently, they do not consider that the ISO standards currently being developed in this field take their trade interests adequately into account.

76. Some have suggested more generally that where environmental standards, not only eco-labelling but also in such areas as packaging and waste handling, are based on national environmental attributes which are not necessarily shared by other countries, international standardization will not prove to be an acceptable way forward under WTO provisions as a means

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[44]Draft Decision by Canada, WT/CTE/W/38-G/TBT/W/30, 22 July 1996.

[45]Submission by Canada, WT/CTE/W/21-G/TBT/W/21, 21 February 1996.

of avoiding unnecessary trade restriction or distortion. Rather, they consider there is a need to examine and develop the TBT provisions relating to the "equivalence" of standards and "mutual recognition" of conformity assessment procedures as a way of alleviating trade concerns. They have referred to the work of UNEP and UNCTAD in this regard.

77. Another proposal[46] is that full transparency should be encouraged to enable timely public input at each stage of an eco-labelling programme's development. This would reduce the risk that environmental criteria in eco-labelling schemes/programmes narrowly reflect national considerations, take different environmental approaches into account, and help ensure that foreign producers or countries with significant trade interests in a labelled product have both timely and effective input throughout the entire eco-labelling process. Transparency provisions should emphasize the timely access to information regarding product group definition; the identification and elaboration of environmental criteria; procedures used in the awarding of labels, and other factors. Transparency, it has been noted, is of importance not only to the trading system but to the environmental policy objectives as well.

78. Another proposal[47] in support of the importance of full transparency in the development and operation of voluntary eco-labelling schemes/programmes based on LCA suggests that two possible options should be considered: (i) seeking full coverage by the TBT Agreement; and (ii) negotiating an *ad hoc* instrument such as a code of conduct taking as a point of reference the mechanisms and procedures established in the TBT Agreement. However, the proposal notes that it may be inappropriate to address the transparency issue without first clarifying the status of LCA-based voluntary eco-labelling schemes/programmes.

79. In response to this proposal, some have expressed objection to developing a separate code of conduct.

80. One proposal[48] emphasizes the potentially adverse market access impact which eco-labelling schemes/programmes can have on developing countries, and seeks clarification of the extent to which countries, particularly developing countries, are able to participate effectively in existing transparency provisions. Article 12 of the TBT Agreement has been recalled, in which special and differential treatment of developing country Members should be accorded. In this regard, the proposal includes consideration of the transfer of appropriate technologies as one aspect of an effective transparency regime with regard to eco-labelling schemes/programmes.

81. Some consider that the discussions on this Item to date have focused on eco-labelling to such an extent that insufficient attention has been given to other environmental product requirements, notably packaging and waste handling requirements, including recycling requirements. In that regard, one view is that eco-packaging requirements generally are based on conditions which reflect the national priorities in the country which imposes them. Applying these measures to imports might not only be environmentally inappropriate but also have a negative impact on market access. According to this view, in depth discussion is necessary on the best way of ensuring that eco-packaging requirements effectively comply with the relevant provisions on non-discrimination and national treatment, since these requirements might lead to significant *de facto* trade barriers. Equality of opportunity to compete is central to this issue, and the effective application of the concept of necessity is also important.

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[46]Submission by the United States, WT/CTE/W/27; G/TBT/W/29, 25 March 1996, and as proposed in a "Draft Decision on Transparency in Eco-labelling Programmes", 11 September 1996.

[47]Non-paper by the European Community, 24 July 1996.

[48]Non-paper by India, 22 July 1996.

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

82. Ensuring that trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects (hereinafter trade-related environmental measures) are transparent helps to avoid unnecessary trade restriction and distortion from occurring and provide important information to producers and traders about overseas market access opportunities. The role which transparency plays in dispute avoidance was also noted.

83. Trade-related environmental measures should not be required to meet more onerous transparency requirements than other measures that affect trade. However, it has been felt important to examine whether any category of trade-related environmental measures currently escapes entirely coverage by WTO transparency provisions, whether existing levels of transparency provided for are adequate in the light of a measure's potential trade effects, and what improvements might be made to facilitate WTO Members' access to information about these measures. Many emphasize the horizontal nature of transparency and its links to discussions under Items 1, 3, 6, 7, 8 and 9.

84. There were initial concerns in the CTE that certain categories of trade-related environmental measures may not be covered at all by WTO transparency provisions and that consequently there may be absolute gaps which would need to be filled. A list was drawn up of the measures mentioned in this regard.[49] On the basis of a Secretariat survey, it was noted that notifications of these measures are being made by at least one Member under one or other WTO provisions. From the point of view of some therefore, the new Uruguay Round Agreements have filled the gaps which were previously identified. It has been noted also that some Trade Policy Review (TPR) reports contain information on these measures, and that TBT and SPS enquiry points are available to provide supplementary information on measures covered by those Agreements.

85. As regards the adequacy of existing levels of transparency for particular categories of trade-related environmental measures, it has been noted that WTO provisions provide incremental degrees of transparency. Beyond the general GATT obligation to publish information about all trade-related measures, higher degrees of transparency are achieved through *ex post* notification requirements, *ex ante* notification requirements, and through the establishment of enquiry points under the TBT and SPS Agreements. One view is that the degree of transparency should be correlated with the potential significance of a measure's trade effects, and a suggestion was made for the CTE to conduct more work on the potential significance of the effects of trade-related environmental measures. Some feel that in any event these measures warrant being made subject to *ex ante* notification so that foreign suppliers can comment upon them at an early stage in the development of legislation, and that special enquiry points should be established in each Member to provide upon request additional information about them. Others feel, however, that while the introduction of more stringent transparency requirements might be warranted in specific instances, no transparency provision is without cost and this issue should be pursued on a case-by-case basis under other Items of the CTE work programme or in specialized WTO Committees. Specific concerns raised about the adequacy of existing provisions for ensuring the transparency of trade measures taken pursuant to MEAs and of voluntary eco-labelling schemes/programmes were pursued further under other Items of the work programme dealing directly with those measures.

86. The issue of establishing special enquiry points in Members to provide upon request information about trade-related environmental measures was taken up in the context of discussions

[49] "Potential Identified Gaps in Existing Transparency Provisions," Annex, WT/CTE/W/28, 19 April 1996.

on what improvements might be made to facilitate Members' access to information about these measures. One proposal[50] suggests consideration be given to establishing enquiry points. Another[51] proposes that information on trade-related environmental measures which do not fall within the purview of TBT or SPS enquiry points should be provided through national enquiry points or relevant authorities. They could handle requests for additional information on measures notified under the WTO, or more generally supply information to Members, especially developing country Members, about any non-notified trade-related environment measures in effect as well as informing exporters about market opportunities created by environmental measures, such as government incentives for the consumption of certain products, government procurement requirements which give preference to products that fulfilled voluntary environmental standards, and information on NGO programmes for environmentally-friendly products.

87. Concern has also been expressed about the creation of enquiry points. Some have expressed doubts about the appropriateness of establishing a mechanism that is based on a measure's policy purpose rather than its characteristics, which is not traditional WTO practice. There are concerns also about the administrative costs involved in operating them, which it is felt would need to be weighed against their potential benefit in terms of increased transparency in order to justify the use of resources. Some stress the need not to duplicate the work of TBT and SPS enquiry points or other WTO transparency provisions, and some express concern about the essentially bilateral nature of the transparency which would be generated in this way.

88. Views have been expressed that lack of transparency may be associated more with differences in interpretation among Members of how existing WTO transparency provisions apply to trade-related environmental measures or differences in compliance with those provisions than with any systemic inadequacy. This could make it difficult for Members to have comprehensive and consistent information about trade-related environmental measures. It is proposed,[52] therefore, that Members should collectively clarify existing notification obligations covering trade-related environmental measures. Some others feel this matter could be addressed more properly in the Working Group on Transparency Obligations and Implementation than in the CTE, and it is suggested that the results of the CTE's discussions on this issue should be transmitted to that Working Party.

89. Some have noted that the absence of a centralized collection point in the WTO for notifications of trade-related environmental measures which makes it difficult at present for Members to retrieve information about these measures easily and efficiently. In this respect, a proposal was made that the Secretariat should therefore collect from the Central Registry all such notifications in a single database, which would be regularly updated.[53] The database could contain the following information for each notified measure: its nature/title; objective(s); product coverage; relevant WTO or MEA provisions; a description of how it operates; and comments on its trade effects. It could include also information provided on an essentially bilateral basis by national enquiry points, which should be copied to the WTO Secretariat so that this could be made available on a multilateral basis, as well as information on trade-related environmental measures provided in TPR reports. Attention has been drawn in this context to the existence of other databases of this nature, for example one maintained by UNCTAD, and it is felt it would be important not to create duplication.

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[50]Non-paper by Hong-Kong, 28 May 1996.

[51]Non-paper by Brazil, 22 July 1996.

[52]Non-paper by Hong Kong, 28 May 1996.

[53]Non-paper by Hong Kong, 28 May 1996.

90. Some suggest that TPR reports can help improve transparency by covering trade-related environmental measures systematically. However, others feel it is not appropriate for the TPRM to become involved in environment-related issues which they consider lie outside its mandate.

91. One point raised in relation to all of these proposals is the difficulty of defining the term "environment" in an operational way for the WTO. Many trade-related measures can be associated with a variety of different policy objectives, and environmental or conservation aims may be only a secondary or related policy characteristic. For some, this makes it difficult to arrive at any conclusion on whether gaps in transparency exist, and they feel that greater definitional clarity would be particularly important in the context of considering proposals for enquiry points dedicated to trade-related environmental measures.

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

92. This Item is of relevance to many aspects of the CTE's terms of reference and to WTO Members' agreement to conduct their trade relations in a way which allows for the optimal use of the world's resources in accordance with the objective of sustainable development, while seeking to both protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.[54]

93. Extensive reference has been made by some during discussions under this Item to the importance of a number of the general principles contained in the Rio Declaration.

94. One is that poverty is a basic cause of environmental degradation in many Member countries, and that the contribution trade can make to the eradication of poverty by raising income levels is an indispensable requirement for the promotion of sustainable development.

95. A second is that it is not trade that is generally at the root of environmental degradation, but rather unsustainable production and consumption processes. Some consider this has important implications for choosing and assigning corrective policy measures efficiently. Some have noted in this regard that the key to the achievement of environmental benefits is the development of more sustainable patterns of production and consumption.

96. A third is the principle of "common but differentiated responsibility". Some feel this should be applied to an examination of the introduction of new trade-related environmental measures which could create high adjustment costs for developing countries exporters. Some others have noted that all countries have the sovereign right to make their own judgements on the standards which they apply within their own territories and that in this regard there is a need to ensure flexibility and fairness in the implementation of sustainable development strategies in all countries.

97. A fourth principle is that policy measures applied to promote the internalization of environmental costs should not distort international trade and investment. One comment made in this regard is that measures to improve environmental conditions in one country should not shift the costs onto others. Another is that the polluter should, in principle, bear the costs of pollution.

98. A fifth is that Members should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all

[54]Preamble to the Marrakesh Agreement Establishing the World Trade Organization.

countries, to better combat the problems of environmental degradation. Some considered that where trade liberalization does not bring environmental benefits, it should be accompanied by complementary environmental and resource management policies if its full potential contribution to better protecting the environment and promoting sustainable development through more efficient allocation and use of resources is to be realized. Some others stressed that while an open multilateral trading system makes possible a more efficient use of natural resources in both economic and environmental terms, the achievement of sustainable development depends crucially on the implementation of sound environmental policies at the national and as appropriate at the international level. Some consider that trade liberalisation in general results in environmental benefits although in some cases it may need accompanying environmental policies.

99. One proposal[55] describes the problems of low-income, commodity-dependent countries and other countries which remain marginal participants in world trade, and notes that the most urgent environmental problems they face are often different from those of other countries. It suggests that action by their trading partners to assist the expansion and diversification of their export opportunities, including diversification into higher value-added products, could help these countries in their efforts to both reduce poverty and protect the environment. Some others consider that trade liberalization should be accompanied by technology and financial transfers to developing countries.

100. Some consider there is a need for more empirical and analytical work on the design and sequencing of trade and environmental policies to address the fact that trade liberalization might exacerbate environmental problems in terms of the income, scale, composition, technology and product effects resulting, in certain circumstances, from market and policy failures. Some take the view that the elimination of trade restrictions and distortions that affect international commodity prices is a *sine qua non* for achieving the goals of environmental protection and sustainable development, particularly in developing countries; their elimination should not be made conditional on changes in environmental policies in exporting countries. Some feel that even if in certain circumstances trade liberalization may magnify existing environmental problems, the proper policy response is to put in place the necessary environmental and domestic resource management policies. Policy choices in that regard, it is felt, are the responsibility of governments at the national level.

101. One proposal[56] suggests that: (i) freer trade can contribute to an expansion of economic growth; (ii) economic growth, accompanied by sound environmental policy, can improve environmental quality; (iii) eliminating market distortions leads to more rational and efficient use of market resources, thereby supporting sustainable development; (iv) opening agricultural markets contributes to a more efficient allocation of resources and may improve environmental quality; and (v) agro-environmental policies that internalize environmental externalities contribute to a more efficient allocation of resources and improve environmental quality. It also notes that sound environmental policies directed at those unique nationally-specific environmental problems are preferable to trade restrictions. It concludes that free trade and environmental policies can work in tandem to achieve social benefit, economic growth and environmental quality.

102. Many consider that environmental problems should be dealt with at the national level by Members at their source, and not indirectly through trade restricting or distorting measures applied by their trading partners. In this regard, Principle 11 of the Rio Declaration was recalled. This Principle recognizes that "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental

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[55]Submission by Australia, WT/CTE/W/36, 23 July 1996.

[56]Submission by the United States,WT/CTE/W/35, 23 July 1996.

and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries." Measures based on non-product-related PPMs were referred to particularly in this regard. Some expressed concern that while it might prove necessary to base environmental measures on life cycle analysis and non-product-related PPMs, these should not be applied in such a way as to differentiate "like products" at the border. Some have noted that Members have a responsibility to ensure that activities within their jurisdiction do not cause physical environmental damage elsewhere, but transboundary environmental problems should be resolved cooperatively through the negotiation of MEAs; claims that unilateral action may be necessary where it proves difficult to negotiate an MEA are unacceptable and such action would damage seriously the trading system.

103. In that context, many have noted that environmental standards differ from one country to another and trade-related measures should not be used to try to harmonize them or compensate for differences between them. Some feel this could amount to the extra-jurisdictional imposition of a country's environmental standards on its trading partners. In addition, it could cause both adverse economic and adverse environmental effects where producers are required to adapt to PPMs that are not suited to the local environmental conditions of countries in which their production is based. Some have referred to the 1995 Report on Trade and Environment to the OECD Council at Ministerial Level in which governments confirmed their commitment to *Agenda 21* and Principle 12 of the Rio Declaration, and agreed that "these principles also extend to unilateral import restrictions based on PPM-related requirements". It has been suggested by some that enhanced market access could be granted for some sectors like wood products, fisheries and agriculture, particularly to developing countries having better environmental absorptive capacities, thereby enhancing their income and engendering balanced environmental protection.

104. The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, is widely viewed as a cross-cutting issue which could be taken up in part in a more detailed way in respect of particular trade-related environmental measures addressed under other Items of the CTE work programme.

105. At the general level, some have recalled the conclusions of the OECD[57] that high levels of environmental protection can have positive effects on the competitiveness of domestic producers by encouraging them to economize on resource use and otherwise increase their efficiency, and can stimulate the development of new products, services and technologies, thereby creating new market opportunities.

106. Some others consider these opportunities may not be easy to access by producers in a large number of WTO Members, particularly small and medium scale enterprises (SMEs) in developing and least developed countries. Analysis and empirical work by UNCTAD was recalled in this regard which, it was stated, showed that compliance costs could be considerably more burdensome for developing countries. Substantial financial and technological resources as well as technical and administrative expertise, and in certain cases even material resource endowments, might be required to adapt to new regulations and standards in export markets, and these are frequently not available to developing country producers. This could take on an important dimension and lead to the creation of non-tariff trade barriers. Eco-labelling and packaging requirements and eco-taxes have been mentioned in this connection. There is, therefore, concern that environmental measures could have, and do have in the view of some, significant adverse trade effects, particularly for developing countries.

[57] *Report on Trade and Environment to the OECD Council at Ministerial Level*, Paris, 1995.

107. One view is that to mitigate and eliminate their adverse trade effects, environmental measures should be based on the criteria of sound science, transparency, and equity, and they must be compatible with the open, equitable and non-discriminatory nature of the trading system and conform to its basic provisions and disciplines. Some consider that in the design of environmental measures, use of environmental principles such as the precautionary principle and the principle of proportionality between environmental benefits and economic costs should be studied from the point of view of the effects of their application on the trade of developing countries.

108. Some consider that strengthened WTO disciplines might be justified to reduce and eliminate the adverse trade effects of certain environmental measures. In this regard, one contribution[58] suggests that work should focus on safeguarding existing market access opportunities, particularly for SMEs which account for a large share of manufactured exports in developing countries. Various WTO provisions should be reviewed from this point of view, in particular the provisions of the TBT and SPS Agreements, the Agreement on Subsidies and Countervailing Measures and the TRIPs Agreement, as well as all WTO provisions for special and differential treatment for developing countries. Further work should also address means of increasing market access for environmentally-friendly products from developing countries including the development of environmentally-sound technologies for such products and their use. One suggestion made in this regard is to examine how best to allow developing countries to benefit from differential schedules for compliance with trade-related environmental measures, such as time limited exceptions, or the development of an environmental *de minimis* clause. Another is to explore the means of providing additional technical assistance to developing countries.

109. In discussions on the environmental benefits of removing trade restrictions and distortions, the environmental benefits that are accruing from implementation of the commitments agreed in the Uruguay Round negotiations have been widely noted. Many consider the focus of further work should be trade and trade-related measures applied by Members that will remain after the Uruguay Round results are fully implemented. Measures cited by one or more Members in the CTE are tariff escalation and tariff peaks, production and export subsidies, high internal taxes particularly on tropical products, export restrictions and export taxes, the export practices of state trading enterprises, and various non-tariff barriers. Reference[59] has been made in particular to the potential environmental benefits which could accrue from the reduction and removal of remaining trade restrictions and distortions affecting sectors and products in which developing countries have a particular export interest, such as textiles and clothing, leather and leather products, footwear, forest products, fish and fish products, minerals and mining products, agricultural products, other natural resource-based products and primary commodities. Many support the need for further empirical work and analysis in these areas. These effects could be positive or negative. Positive effects, or opportunities, are not always easy to exploit and require expertise, technology and resources which may not always be available to developing countries. It also was noted that the globalization of the economy suggests the need to look for trade liberalization across the board.

110. Environmental benefits are expected to accrue in a variety of ways. Some consider they accrue most directly through the removal of trade restrictions on environmentally-friendly goods and environmental services; they will accrue also through the removal of restrictions on the transfer of environmentally-sound technologies (discussion under Item 8 reflects different views on this point); in addition, trade restrictions and distortions can lead to an inefficient allocation of resources, hold back income growth, particularly in developing countries, and artificially shift resources into activities which place additional pressure on domestic, environmentally sensitive

[58]Non-paper by India, 20 June 1996.

[59] See, *inter alia*, Non-paper by India, 20 June 1996.

resources; reducing or removing them would help to correct this. Some others also consider that to ensure direct and substantial environmental benefits, trade liberalization should be complemented by measures to improve market access, access to environmentally-sound technologies, finance and capacity building.

111. The environmental effects of subsidies, in particular in the agriculture sector, and of tariff escalation were paid particular attention in the CTE discussions.

112. Some have focused on the adverse environmental effects of the subsidization of agricultural production and exports. These are described as involving or arising from intensified land use, increased application of agro-chemicals, the adoption of intensive animal production practices and overgrazing, the degradation of natural resources, loss of natural wildlife habitats and biodiversity, reduced agricultural diversity and the expansion of agricultural production into marginal and ecologically sensitive areas. Agricultural assistance through output-related policies in many OECD countries was shown to have imposed high environmental costs in those countries at high financial expense. It also imposed high economic and environmental costs on other countries with a comparative advantage in agricultural production and trade, particularly developing countries. Empirical work by the OECD, UNCTAD, and the FAO was cited in this regard[60], and many consider it important to extend that further. A number of delegations consider that further reductions of agricultural protection and support would represent a "win-win" situation for trade and environment.

113. Some others feel it is inappropriate for the CTE to focus narrowly on the agricultural sector. They also consider that it would not be appropriate for the CTE to engage in discussions that would prejudge the agriculture negotiations. They feel that the WTO Agreement on Agriculture remains the best suited forum for the consideration of agricultural liberalization, since it already contains a built-in structure for dealing with such issues, and they express caution about drawing generalized conclusions on the environmental impact of agricultural support programmes, which they feel is a complex issue. Further analysis is needed to take account of differing geographic and environmental conditions between countries, different levels of socio-economic development, and other factors, and this should be done on a country basis case-by-case. The environmental externalities associated with agriculture need not only be negative; agriculture has a dual environmental function and it can have positive environmental effects through conservation and related practices. Abandoning farming might lead to environmental damage associated with soil erosion or biodiversity loss. Well-designed agricultural support programmes, they feel, could have beneficial effects on the environment, as well as on the linked issues of food security and sustainable development. A reference has been made in this regard to FAO work on Sustainable Agriculture and Rural Development. These Members noted that sustainable agriculture requires an integrated approach combining environmental, social and economic factors into a comprehensive framework of political and economic decision-making. They considered that strategies resulting from the understanding of these linkages should correspond to the multiplicity of functions of agriculture, including the protection of natural resources and the preservation of the landscape.

114. Many point to the potential economic and environmental benefits they feel would accrue from the reduction and removal of tariff escalation by helping to raise the value added by producers in commodity-dependent countries, increase incomes in those countries, and reduce direct pressure on natural resource exploitation. Some suggest that on similar grounds benefits could be expected to accrue also from the reduction and removal of export restrictions on primary products.

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[60]OECD, *The Environmental Effects of Trade*, Paris 1994; UNCTAD/COM/35, 25 April 1995: "Internalization of Environmental Damages in Agriculture"; FAO, 16th Regional Conference for Europe.

115. One proposal[61] focuses on the need for environmental policy to build upon prices that reflect full private costs of production. Therefore, it suggests that the first step to this end should be to identify and eliminate those governmental policies responsible for these price distortions. It proposes that the CTE address in its future work the need for fundamental, on-going reform in the agricultural sector and identify ways and means to reduce and eliminate trade restrictions and distortions there. This, it is suggested, would be a contribution to future negotiations under the Agreement on Agriculture.

116. Another proposal[62] notes that there is considerable scope to promote more sustainable agricultural policies and practices in the context of the agenda built-in to the Uruguay Round results for the continuation of the reform process in agriculture.

117. One proposal[63] suggests that there are various inter-related factors, including natural conditions, and socio-economic circumstances in each country which cause environmental problems, and the CTE should advance empirical and theoretical analysis. Agricultural trade liberalization could cause environmental problems in some Members by intensifying pressure on and the degradation of their natural resources if effective environmental policies were not in place. This proposal also suggested that in more general terms trade liberalisation without appropriate environmental policies may have negative effects on the environment.

118. Another proposal[64], which is based on the premise that there is no simple or automatic link between trade liberalization and environmental protection, notes with respect to the link between pricing policies and environmental policies, that the effect of trade liberalization on prices cannot be predicted with certainty, and that adjustment of prices is not *a priori* environmentally efficient. Such environmental efficiency would depend to a certain extent both on wider economic factors in agricultural markets and the conditions conducive to structural adjustment in producer economies. Furthermore, market mechanisms could only lead to both an economically and ecologically optimal allocation of production resources if full internalization of environmental costs were achieved. This is difficult to achieve, and is a function not only of price levels but also of political will.

119. In reaction, the difficulties involved in the internalization of environmental externalities have been noted by some. In their view, an important consideration is that internalization needs to take account of and coincide with development priorities. Other questions also have been raised, such as who would decide what and when to internalize, and whether the decision should be taken based on scientific evidence and relying on cost-benefit analysis.

120. Another proposal[65] suggests that it is not appropriate to draw the hasty conclusion that the removal of trade distorting agricultural measures will have environmental benefits, or that distorting measures necessarily have negative environmental effects when helping to correct market failures. It is therefore proposed to undertake analytical and empirical studies, on a case-by-case basis taking into account country-specific conditions, to determine the relationship between agricultural trade and the environment. This proposal also suggests that particular respect

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[61]Communication from Argentina, WT/CTE/W/24, 31 March 1996.

[62]Submission by Australia, WT/CTE/W/36, 23 July 1996.

[63]Non-paper by Japan, 24 June 1996.

[64]Non-paper by the European Community, 23 July 1996.

[65]Non-paper by the Republic of Korea, 23 July 1996.

should be given to the issues of food self-sufficiency towards food security, particularly in net food importing countries.

121. Another proposal[66] suggests that in negotiations on further trade liberalization, the WTO should ensure that environmental consequences are considered. In this respect, the WTO should be supportive of efforts to internalize environmental costs. One way to proceed in the CTE may be to identify sectors where trade liberalization could be conducted in a way so as to yield both economic and environmental gains. The energy sector was pointed out as one example where trade liberalization (*inter alia*, the reduction of subsidies and other measures) may result in such a double dividend. Further, the links between trade rules and environmental principles, in particular the polluter-pays principle (PPP) and the precautionary principle, should be examined. The CTE should also examine how to integrate concerns related to use of the life-cycle approach. It was suggested that the multilateral trading system should offer scope for incentives for the use of environmentally friendly products, and that the multilateral trading system should not encompass incentives for production and use of environmentally-damaging products.

122. Some have questioned and objected to this proposal, particularly in reference to the energy sector. One specific reaction is that any proposal regarding analysis of incentives for the use of environmentally-friendly products should take account of the complexities of the links between energy generation and use and environmental quality. National decision making on energy choices includes such variables as efficiency in production, availability of energy sources, economic costs for users and social impacts on the local population. Offering or withdrawing incentives to products, for example energy, cannot be undertaken on a selective basis.

ITEM 7 The issue of exports of domestically prohibited goods

123. This issue covers products whose sale and use are banned or severely restricted domestically on the grounds that they present a danger to human, animal, plant life or health or the environment, but which nevertheless may be exported. It is of particular concern to many developing and least-developed countries. In 1991, a GATT Working Group on Domestically Prohibited Goods and other Hazardous Substances (DPGs) produced a "draft Decision on Trade in Banned or Severely Restricted Products and Other Hazardous Substances". Consensus to adopt the decision could not be reached.[67] Taking account of the need not to duplicate or impede work done or underway in other intergovernmental fora to improve the monitoring and control of trade in DPGs, the CTE has examined what additional contribution the WTO might make in this area.

124. Since the examination of this issue by the GATT Working Group on DPGs, a number of new international agreements and conventions dealing, *inter alia*, with the monitoring and control of trade in certain DPGs have entered into force and others are under negotiation. Particular mention has been made in this regard of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the preparation under the Amended London Guidelines of an internationally legally-binding instrument for the application of the Prior Informed Consent (PIC) procedures for certain hazardous chemicals in international trade, the decision to develop a draft Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, and the draft Protocol on Bio-Safety. Multilateral rules on exports of DPGs should continue to be developed primarily through environmental instruments such as these.

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[66]Non-paper by Norway, 20 June 1996.

[67]See Report by the Chairman of the Working Group on Domestically Prohibited Goods and Other Hazardous Substances, L/6872, 2 July 1991.

125. A draft Decision on Exports of Domestically Prohibited Goods has been submitted to the CTE for consideration.[68] It draws on elements of the 1991 draft GATT Decision on this subject, including, *inter alia*, the definition of product coverage, the obligation of exporting countries to notify other WTO Members of DPGs they export if these are not already being notified under another international instrument, and the need to ensure that measures taken for the purpose of the Decision are in conformity with WTO rules. The draft Decision includes provisions for technical assistance to be provided to Members in this area, for enquiry points to be established, and it encourages exporting Members to consider whether the measures they apply to DPGs domestically should also be applied to exports.

126. Some consider that while the WTO's role should be limited strictly in this area to supplementing the activities of other specialized international organizations, it nevertheless has within its competence an important contribution to make by helping to fill any gaps which may be left by existing mechanisms in the monitoring or control of exports of DPGs and by helping to strengthen the regimes of other international instruments whose provisions are not legally-binding or which are voluntary. Two general areas of potential gaps have been suggested: DPGs not covered by other international instruments, and DPGs exported by WTO Members which are not Parties to those other international instruments. With regard to this first area, some consider that special emphasis should be placed on exports of domestically prohibited or severely restricted consumer goods, cosmetics, foodstuffs and certain pharmaceutical products. Another view is that hazardous wastes should not be dealt with under this Item since they are already fully covered by the Basel Convention.

127. Some consider that much trade in DPGs is already covered by existing international instruments and that with further improvements in their operation the issue of exports of DPGs will prove to be of decreasing importance. They feel that the identification of potential gaps in coverage of DPGs, to the extent they exist, is technical work which lies outside the WTO's competence and which could be undertaken better by, or only in consultation with, other relevant international organizations such as UNEP and WHO. They have pointed to the information contained in existing notifications by Members under the TBT and SPS Agreements about technical regulations they impose on the sale or use of products on the domestic market, and they have suggested that this may provide an important source of information on DPGs and help resolve the perceived problem. They doubt there is a further contribution which the WTO could make in this area that would fall within its competence or mandate, beyond ensuring that WTO rules do not conflict with the rules of other multilateral instruments applied in this area.

128. Ensuring the transparency of trade in DPGs has been felt by some to be an area where the WTO could contribute, but without duplicating existing transparency and notification procedures in other relevant international instruments[69] to which priority should always be given, nor in relevant WTO Agreements such as the TBT and SPS Agreements. Some have suggested that countries exporting DPGs could be required to notify the products in question, and that they could establish enquiry points to provide, on request, information about why the domestic sale or use of the products notified has been banned or severely restricted. Another suggestion is that WTO Members may limit exchange of information in this area to regulatory actions relating to DPGs. Some emphasize the importance of ensuring that one Member's notification of a DPG in the WTO would not lead to its exports being treated differently by an importing country from exports of the same product from other countries or from domestically produced goods. Some others consider

[68]Proposal by Nigeria, WT/CTE/W/32, 30 May 1996. See also Proposal by Nigeria, WT/CTE/W/14, 27 November 1995.

[69]A list of other relevant international instruments was compiled by the Secretariat in WT/CTE/W/29, 14 May 1996.

that a DPG notification programme, including prohibited but also severely restricted goods, would create a serious administrative burden and the important amount of notifications resulting from such a programme would eventually impair transparency. One suggestion is to consider to what extent an environmental data base, as examined under Item 4, could address the problem, or whether a chapter dealing with DPG regulations could be included in TPR reports.

129. One issue examined was where the responsibility for taking a decision to restrict trade in DPGs should lie: with the exporting country, the importing country, or jointly between the two? Some feel that a reasonable degree of the responsibility for controlling trade should lie with the exporter, which should consider extending its domestic sales bans and restrictions to exports or engage in mandatory labelling of DPGs. However, some express concern that this could imply endorsement of a Member applying its own health or environmental standards extra-jurisdictionally. Another view is that the decision to restrict trade in a product should lie exclusively with the importing country, but that the exporting country could be asked to cooperate in ensuring the decision was implemented effectively.

130. Providing technical assistance to help Members improve their capacity to take informed decisions about whether or not to import DPGs and to monitor their imports of DPGs more effectively has been viewed as a potentially important part of the solution to problems in this area, particularly over the longer term. It has been noted that the customs authorities of developing countries often lack adequate product testing facilities and that the absence of product standards and regulations in these countries adds to the problem, for example by enabling products to be marketed beyond their expiry dates. It has been recalled that Chapter 19 of *Agenda 21* on "Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products" recommends, *inter alia*, that capacity-building for trade in DPGs be consolidated by assisting developing countries in developing and strengthening risk assessment capabilities in order to make informed decisions about their imports. One view is that the WTO could cooperate in this regard with other organizations, such as the Amended London Guidelines and the Basel Convention, which could provide the necessary technical expertise. Another is that technical assistance of this kind does not fall within the WTO's competence or mandate.

131. One suggestion has been made that compensation and liability should be considered, linked with a dispute settlement provision, without being necessarily related to notification and transparency provisions. The rationale for a compensation and liability provision within the framework of an instrument which would focus mainly on transparency and notification has been questioned by others.

ITEM 8 The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights

132. Issues discussed under this Item include the relationship of the TRIPs Agreement to the following: the environment generally; the generation of, access to and transfer of environmentally-sound technology (EST); environmentally-unsound technologies; indigenous and traditional knowledge; and certain MEAs in particular the UN Framework Convention on Biological Diversity (CBD).

133. Recalling the CTE's terms of reference, one view is that this Item should be approached from the perspective that WTO rules should promote sustainable development, with special consideration to the needs of developing countries. Some feel, in that regard, that the TRIPs Agreement lacks specific mechanisms to achieve the objectives of sustainable development and

environmental protection. Some others feel that effective implementation of the TRIPs Agreement enhances the protection of the environment and encourages the transfer of EST.

134. The role of the TRIPs Agreement in the generation of, access to and the transfer of EST has been described by some as the need to strike a balance between the rights and obligations of IPR holders on the one hand and IPR users on the other, and between promoting the generation of EST on the one hand and ensuring access to it and its transfer on the other. Some believe that such a balance is built into the TRIPs Agreement, for example in Article 7, and that the Agreement also authorizes the use of appropriate measures to prevent abuse of IPRs to ensure that unreasonable restraints will not be placed on trade or on the international transfer of technology.

135. Some feel that the utility of EST can be questioned if it is not disseminated and used widely and that additional rules may be necessary to limit the discretionary power of owners of technologies to restrict access to EST. It has been suggested in that regard to review those provisions of the TRIPs Agreement which deal with patents, compulsory licensing and anti-competitive practices. Some consider, furthermore, that IPR protection increases the cost of technology. Obtaining new technology at a reasonable cost is a concern in developing countries, particularly for small and medium scale enterprises (SMEs). Insufficient access to EST can adversely affect developing countries' competitiveness in export markets as well as their capacity to protect their environments. Reference has been made to *Agenda 21*, which regards access to and transfer of EST on concessional terms as essential for sustainable development. Attention has also been drawn to the importance of capacity-building to allow recipients to identify the technologies most suitable to their needs. Some feel that in the case of anti-competitive practices or if access to technologies is not being provided within a reasonable period by IP owners, such technologies should be made available through compulsory licensing. Regarding the consequences of IPR protection for access to and the transfer of EST not in the public domain, it has been suggested that the lack of adequate financial resources to facilitate access to technology is an impediment in the implementation of environmental measures, including those mandated in MEAs.

136. Some others expressed the view that by ensuring, *inter alia*, publication of new knowledge and by providing R&D returns, effective IPR systems promote innovation and technology transfer. They noted that technology must exist before its transfer can be promoted or the benefits associated with its commercialization shared. They also noted that consistent rules regarding IP actually facilitate technology transfer by providing a platform for cooperation among private and public sector entities. Moreover, the existence of an IP regime is only one of the factors which supports technology transfer; others are economic and political stability in the country of destination, the level of infrastructure and availability of skilled labour, access to financial resources, as well as domestic policies concerning investment, market access, services and environmental regulation which play a more direct role in technology transfer.

137. One contribution,[70] focuses on the relationship between IPRs and the environment, in particular the need to encourage the global use of ESTs and products which are produced with them (EST&Ps) that benefit or protect the environment. It seeks to reconcile the TRIPs Agreement with the encouragement of the global use of proprietary EST&Ps relating to the limited cases where these EST&Ps are mandated to be used under an MEA or by national authorities or where standards or other environmental measures are laid down by multilateral bodies. It proposes that the TRIPs Agreement reconcile the development or generation of EST&Ps with the easy access to and wide dissemination of them on "fair and most favourable conditions", interpreted as "preferential and non-commercial terms". It suggests that the compulsory licensing provisions in Article 31 and the term of protection provision in Article 33 should be examined in such a way as to ensure that they encourage the transfer of EST&Ps. It also suggests that an

[70]Non-paper by India, 20 June 1996.

obligation be imposed on IP owners of EST&Ps in the TRIPs Agreement to transfer such technology and sell such products on "fair and most favourable conditions" upon demand to any interested party which has an obligation to adopt these under the national law of another country or under international law. Such IP owners should be compensated through a financial mechanism for any losses incurred by them in complying with such an obligation.

138. Some consider there is no need to undertake the kind of reconciliation proposed. The experience of countries with TRIPs-consistent IP systems does not indicate that a problem exists with the dissemination of EST&Ps as a result of these systems, but that, rather, problems related to transfer of proprietary technology or to trade in products based on such technologies tends to occur as a result of impediments to foreign investment and trade in such products. No actual problem with the transfer of proprietary technology or in trade in products based on such technologies has been established and, should an actual problem be identified, the true source of the problem should be identified rather than simply presuming that the source lies in the TRIPs Agreement.

139. Concerns have been expressed by some Members about the negative effects of some technologies on the environment, in particular the effects of bio-technologies which involve genetically modified organisms whose effects are uncertain. Some have voiced concern over the patenting of micro-organisms, genes, genetic materials and genetically-engineered crops and plants, which they feel raises ethical, moral and religious problems, and over the patenting of life forms which may lead to biodiversity loss and so create environmental and development problems.

140. The view expressed by some others is that Articles 27.2 and 27.3 of the TRIPs Agreement are adequate to address real problems in this area, should any arise, and that national health and safety standards as well as MEAs can offer additional protection. Also, it is not within the competence of the WTO to seek to remedy ethical, moral and religious problems.

141. Noting that Article 27.3(b) of the TRIPs Agreement is to be reviewed in 1999, one view is that a detailed discussion of its implications in the area of trade and environment be part of the review. Another view is that the CTE does not have a role to play in this review, given that the TRIPs Council is the proper forum and has the necessary expertise for conducting a review of specific TRIPs provisions, including Article 27.3(b) as specified in the TRIPs Agreement.

142. With regard to traditional and indigenous knowledge, one view is that this knowledge has been the basis for much of the development of modern agriculture and medicine, yet these communities have to pay for patented products that are derived from their knowledge and innovation. One suggestion in this regard is that the TRIPs Agreement should exclude the possibility of patenting processes and products derived from naturally occurring biological resources, since it is doubtful these can be considered "novel" in terms of the criteria for patentability, but it should accord recognition to traditional interests and rights holders. New legislation and codes of conduct, including changes in the notion of trade secrets, may be needed to ensure that communities which are the source of traditional knowledge receive benefits from its exploitation. It has been suggested by those sharing this view that the review of Article 27 of the TRIPs Agreement should take account of the results of negotiations on "farmer rights" under the FAO Global System for Plant Genetic Resources and other developments regarding protection of traditional knowledge, both in the realm of the CBD and at the domestic level.

143. Another view is that it is inappropriate to consider amending the TRIPs Agreement because traditional or indigenous knowledge is not an IP and involves subject matter that is widely known or in the public domain. Therefore, it cannot and should not be deemed to be an IPR. Pursuant to this view, unrestricted and unpaid access to plant genetic resources for food and agriculture needs to be maintained for it is to the advantage of all countries, and that an open

exchange of such genetic material leads to better research, improved knowledge, more productive crop cultivars and more and better food. Free movement of plant genetic resources for research and breeding facilitates gene conservation, including the improvement of crop gene banks. Rather than seeking a solution in an IPR context, it was proposed that voluntary agreements involving firms, foreign governments and indigenous people could provide for benefit-sharing and technological cooperation to information providers which would represent an effective means for compensating traditional knowledge not subject to IP protection; such private contractual arrangements do not require multilateral disciplines and remove the need for an international *sui generis* system in this area.

144. In considering the relationship of the TRIPs Agreement to MEAs containing IPR-related provisions, some suggested taking a cautious approach because so little experience in the implementation of either is available so far. They feel it lies outside the CTE's competence to judge or interpret provisions of MEAs, and the CTE should not prejudge or prejudice future MEA discussions. It has been suggested that input from the private sector, the scientific community, or NGOs should be sought when relevant to facilitate work in this area.

145. With a view to ensuring the objectives and provisions of MEAs and the TRIPs Agreement are mutually supportive, some suggested an examination of Articles 7 and 8 of the TRIPs Agreement, particularly Article 8.1 which grants Members the authority to limit R&D activities or approval of technology on grounds of environmental protection. In that respect attention has been drawn to Chapter 34 of *Agenda 21* which states that technologies in the public domain should be freely transferred to further MEA objectives and the means explored to encourage the transfer of privately-owned technologies protected by IPRs. Another suggestion is to interpret Article 27.2 of the TRIPs Agreement in a way that is conducive to MEA objectives while not derogating from it. One question raised is whether the term "necessary" in Article 27.2 should be interpreted in the same way as it has been in GATT Article XX, or whether it should be given a broader interpretation in the context of MEAs. Noting that, on one hand, some MEAs, such as the Montreal Protocol either implicitly or explicitly prohibit the use of certain types of technology in favour of alternative EST, and that, on the other hand, patent holders may refuse to license EST on reasonable commercial terms, one proposal[71] has been to ensure that Article 31(b) does not hamper the actual transfer of EST by favouring a monopolistic position for patent holders of alternative technology, and by examining whether, for the purpose of Article 31(l), it would be appropriate to interpret the alternative EST technology in an MEA as an "important technical advance of considerable economic significance". This proposal explicitly mentions that it does not intend to modify the TRIPs Agreement as such, but to introduce such IPR-related matter involving an MEA and the TRIPs Agreement to the CTE with a view to clarifying potential ambiguities, if any. Another view is that the elements of Article 31 of the TRIPs Agreement adequately address the issue of remedying anti-competitive practises.

146. The relationship between the TRIPs Agreement and the CBD has been discussed. Some consider they have a different scope, subject matter and intent but there is no conflict or inconsistency between their obligations and objectives. By ensuring adequate protection for the innovator, the TRIPs Agreement promotes the CBD's objective of furthering technology transfer related to the commercialization and use of genetic resources. By setting as an objective the equitable sharing of the benefits of commercialization or other uses of genetic resources, the CBD addresses IPRs indirectly and identifies technology transfer as one form of benefit sharing its Parties should promote. The CBD does not address specific IPR systems or the particular characteristics of IPRs but it does provide that mechanisms used to promote technology transfer should recognize and be consistent with adequate and effective IPR protection, which is the standard demanded by the TRIPs Agreement. Both agreements are viewed as having the

[71]Non-paper by the Republic of Korea, 24 July 1996.

flexibility to achieve environmental objectives. The TRIPs Agreement permits Members to carry out national policies in favour of sustainable development and to take adequate measures in conformity with the CBD. Accordingly, they did not see the need for further work in this area.

147. Some feel there is a need to examine possible inconsistencies between WTO provisions and the CBD in the following areas: which agreement would prevail if a conflict arose between them, specifically between Parties and non-parties; what is the relation between the terms of access to genetic resources under the CBD (which is based on the idea of mutually-agreed terms) and the MFN and national treatment principles of the TRIPs Agreement; and what are the possible consequences of CBD Article 22 which provides that "[t]he provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity"?

148. A number of more specific questions have been raised: for example, what is the relationship between preferential access to genetic resources under Article 15 of the CBD and GATT provisions such as Articles I and XI, and what is the link between rights and obligations under the SPS and TBT Agreements and a country's policies regarding bio-safety pursuant to the CBD? Noting Article 16.5 of the CBD provides that IPRs should be implemented in a way that is supportive of and does not run counter to the objectives of the Convention, it has been asked whether Parties are entitled to use measures which limit or restrict IPR protection, or resort to compulsory licensing, on grounds that this is consistent with the CBD's objectives, especially as it relates to technology transfer. A related issue is whether Article 16.1 of the CBD, which provides for transfer of technology relevant to the conservation and sustainable use of biodiversity or technology which uses genetic resources in an environmentally-sound manner, and Article 33 of the TRIPs Agreement have consistent objectives.

149. Comparing the relevant provisions of the CBD and those of the TRIPs Agreement, one contribution[72] proposes various changes to the latter in order to accommodate the former: (i) in order to better address biotechnological inventions, Article 29 of the TRIPs Agreement on conditions on patent applicants including full disclosure of patentable inventions should be modified so as to require a clear mention of the biological source material, the known country of origin and all known information pertaining to knowledge and practices of the use of biological source material by indigenous communities in the country of origin. This part of the patent would be open to full public scrutiny immediately after filing of the application; (ii) to remedy the lack of prior informed consent mechanism in the TRIPs Agreement, a Material Transfer Agreement with the country of origin would be necessary where the inventor wishes to use biological material, and an Information Transfer Agreement (ITA) where the inventor makes use of indigenous or traditional knowledge; and (iii) an obligation on patent owners to execute ITAs for any traditional or indigenous knowledge which is already in the public domain or is a part of the recorded or otherwise publicly accessible knowledge systems. It is also proposed that the CTE examine the pros and cons of evolving a system for patenting of indigenous knowledge and local, contemporary innovations of traditional folk.

150. Some consider it contradictory to recognize the importance of EST development while at the same time calling for changes in the TRIPs Agreement which would have the effect of diminishing incentives to develop and disseminate EST, both absolutely and relative to other technologies. One suggestion is that solutions to problems faced by developing countries in obtaining EST should not be sought in the TRIPs Agreement but through the relevant MEAs. According to this view, technical issues of this sort would require at a minimum fuller study in

[72]Non-paper by India, 19 July 1996.

more appropriate fora. Those expressing this view questioned the value and feasibility of the proposal relating to patent information.

151. There have been suggestions for possible areas of cooperation between the TRIPs Agreement and MEAs which contain IPR-related obligations. One is that those obligations should be notified under the TRIPs Agreement so as to facilitate synergies with MEAs. Another is to consider channelling relevant information on the implementation of IPR-related commitments contained in these MEAs through the TRIPs Agreement's notification mechanisms. The CTE should be kept informed of developments in other fora such as the CBD and International Convention for the Protection of New Varieties of Plants, and of the developments of emerging IPR-related concepts, such as farmer's rights and plant breeder's rights in relevant international organizations. Some support closer cooperation between the WTO Secretariat and other international organizations in this area. Following a request from the Biodiversity Convention's Secretariat to assist in the preparation of a report on "Biological Diversity and Trade-Related Intellectual Property Rights: Synergies and Relationships", the CTE agreed to derestrict relevant parts of its documentation.[73]

152. One proposal suggests[74] discussion continue on a number of issues raised by the relationship between the TRIPs Agreement and environmental objectives: (i) the generation, access to and transfer of ESTs; (ii) the provision of incentives for the conservation and sustainable use of biological resources and the equitable sharing of the benefits of this use, including in relation to the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles; and (iii) the treatment of technology that may adversely affect the environment.

ITEM 9 The work programme envisaged in the Decision on Trade in Services and the Environment

153. Pursuant to the Ministerial Decision on Trade in Services and the Environment, the Council for Trade in Services, at its meeting on 1 March 1995, adopted a Decision "[a]cknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement; and [n]oting that since measures necessary to protect the environment typically have as their objective the protection of human animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV". It decided "[i]n order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures (i.e. measures necessary to protect the environment), to request the CTE to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The CTE shall also examine the relevance of intergovernmental agreements on the environment and their relationship to the Agreement. The CTE shall report the results of its work at the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization".[75]

154. Discussions on this Item have been only exploratory. One view is that similar issues with regard to trade and environment arise in the area of trade and services to those that arise in the

[73]WT/CTE/W/8 (8 June 1995), WT/CTE/M/3 (18 July 1995), WT/CTE/W/22 (21 February 1996), WT/CTE/M/8 (11 April 1996).

[74]Non-paper by Australia, 11 September 1996.

[75]S/L/4, 4 April 1995.

area of trade in goods, but that they might need to be approached differently in view of the differences between the GATT and the GATS provisions. Careful analysis is needed to distinguish environmental measures applied directly to trade in services from environmental measures applied to products associated with that trade in order to identify whether the issues raised should be addressed in the context of the GATS or of other WTO provisions. In this regard, some are of the view that services, being intangible, are not polluting *per se*; environmental considerations may occur only when the delivery of services is associated with trade in goods. Those considerations are already covered by the WTO provisions relevant to trade in products.

155. Given that GATS Article XIV(b) contains the same language as GATT Article XX(b), one view is that the need to modify it should be considered only after progress has been made on Item 1. It has been noted, however, that the GATS is still evolving and includes concepts that are not contained in the GATT so that conclusions reached in the area of goods trade may not apply automatically to services trade. It has been noted that there is no analog to GATT Article XX(g) in the GATS. A suggested approach is to identify restrictive measures applied to services trade, consider whether these could be justified by GATS provisions other than Article XIV(b), such as Article VI, VII and XIV(c), and examine whether Article XIV(b) is an adequate basis on which to address environmental concerns. One potential problem raised in this context is that invoking Article XIV(b) after a service supplier has invested and established in a domestic market could prove particularly disruptive and costly if the supplier is obliged to disinvest. Before the CTE conducts a separate analysis of this issue, Members have been asked to bring to its attention evidence they may have of measures which they feel may need to be applied for environmental purposes to services trade but which may not be covered by the GATS provisions and in particular Article XIV(b).

156. Concerning the relationship of relevant MEAs to the GATS, it is suggested that progress might be possible independently of progress under Item 1 and that a first stage would be to identify possible points of contact between relevant MEAs and the GATS. The importance of taking account of work in other fora, such as the Negotiating Group on Maritime Services as well as the International Civil Aviation Organization and the International Maritime Organization is emphasized. Analysis could focus on the relationship of the GATS provisions, such as Article VI, to trade measures applied pursuant to MEAs dealing with services trade, such as the Basel Convention, the London Convention on Dumping and the Montreal Protocol. Consideration should also be given to whether MEAs indicated that particular services sectors need special environmental measures.

157. With regard to the relationship between services trade and the environment, including the issue of sustainable development, one suggestion is that sectoral case studies could be conducted, taking account of work in other fora, to identify the environmental impact of the liberalization of trade in services (e.g. transport and tourism) and the impact that certain environmental legislation might have on trade liberalization (e.g. conditions applicable to services suppliers in the field of waste management). One view is that improved market access for environmental services and technology resulting from the GATS hold out "win-win" opportunities for trade and the environment. Another view is that the CTE has neither the mandate nor the capability to conduct studies on the environmental impact of service trade or its liberalization.

158. It has been suggested that particular attention should be paid to ensuring that GATS Article XXVIII(c)(ii) measures are applied on a national treatment basis to allow all services suppliers access to and use of public environmental services. Further analysis is also suggested on the trade effect of environmental subsidies and how this might be reflected in future GATS disciplines.

ITEM 10 Input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO

159. This Item was discussed in informal consultations under both the Sub-Committee on Trade and Environment of the WTO Preparatory Committee and the CTE, as well as on a number of occasions in informal and formal meetings of the CTE.

160. Pending a decision by the General Council on conditions and criteria for observer status for intergovernmental organizations (IGOs), the CTE extended observer status on an *ad hoc* basis to fourteen IGOs.[76] The procedures were confirmed by the General Council at its meeting on 18 July 1996.[77] The WTO Secretariat was requested to keep the CTE informed about work on trade and environment underway in other intergovernmental organizations, including relevant MEA bodies.

161. There has been support for continuing to improve the transparency of the work of the WTO in the area of trade and environment and increasing public access to information through timely derestriction of the CTE's working documents and the records of its formal discussions, while emphasizing the importance attached to each Member respecting fully the confidential nature of WTO documentation that is restricted in its distribution. It is recognized that there is a need to respond to public interest in this area, to provide a clear idea of what is being discussed in the WTO and how those discussions are progressing, and to build public support for the contribution that the WTO can make to better environmental protection and the promotion of sustainable development. At its meeting on 18 July 1996, the General Council adopted a Decision on "Procedures for the Circulation and Derestriction of WTO documents".[78]

162. Different views have been expressed about the involvement of non-governmental organizations (NGOs) in the work of the CTE[79].

163. One view is that NGOs could play a constructive role by providing information and technical expertise on environmental matters, and their presence at formal CTE meetings would be a recognition of the public interest that exists in this area of the WTO's work and would help to make that work more broadly available to the public. Untransparent proceedings, it is felt by some, perpetuated a secretive image of the WTO and diminished public confidence in and support for WTO work. This leads to misunderstanding and suspicion of the deliberative processes of the trading system. A suggestion has been made to invite representatives of specialized NGOs with a direct interest in trade and the environment to make contributions to CTE meetings.

164. A second view is that it would not be appropriate to allow NGOs to participate in the proceedings of the CTE. Many feel that primary responsibility for taking account of the many

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[76]The United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the International Monetary Fund (IMF), the United Nations Environment Program (UNEP), United Nations Development Program (UNDP), Commission for Sustainable Development (CSD), the Food and Agriculture Organization (FAO), the International Trade Centre (ITC), the Organization for Economic Cooperation and Development (OECD), and the European Free Trade Association (EFTA), the UN Industrial Development Organization (UNIDO), the World Customs Organization (WCO) and the International Organization for Standardization (ISO).

[77]Decision on "Observer status for international intergovernmental organizations in the WTO". WT/L/161/Rev.1.

[78]WT/L/160, 22 July 1996.

[79]The Secretariat provided information on arrangements in place in other inter-governmental organizations for consultations with non-governmental organizations (PC/SCTE/W/2).

different elements of public interest which are brought to bear on trade policy-making, and consequently for relations with NGOs, lies at the national level. Arrangements in the WTO cannot substitute for this. Furthermore, some feel that such arrangements would unnecessarily complicate the consultative process with NGOs at the national level, and that the WTO's deliberations could be compromised if public interest groups were allowed to participate directly in its work. Also, practical difficulties have been foreseen in involving NGOs directly in CTE meetings.

165. At its meeting of 18 July 1996, the General Council adopted a Decision on "Guidelines for arrangements on relations with non-governmental organizations".[80]

III. CONCLUSIONS AND RECOMMENDATIONS

166. The WTO Committee on Trade and Environment (CTE) has initiated work on all Items of its work programme set out in the Marrakesh Ministerial Decision on Trade and Environment. The CTE's discussions were enriched by the work undertaken previously by the GATT Group on Environmental Measures and International Trade and in the WTO Preparatory Committee. Discussions have demonstrated the comprehensive and complex nature of the issues covered by the Ministerial work programme, which reflects the WTO's interest in building a constructive relationship between trade and environmental concerns.

167. The CTE's discussions have been guided by the consideration contained in the Ministerial Decision that there should not be nor need be any policy contradiction between upholding and safeguarding an open, equitable and non-discriminatory multilateral trading system on the one hand and acting for the protection of the environment on the other. These two areas of policy-making are both important and they should be mutually supportive in order to promote sustainable development. Discussions have demonstrated that the multilateral trading system has the capacity to further integrate environmental considerations and enhance its contribution to the promotion of sustainable development without undermining its open, equitable and non-discriminatory character; implementation of the results of the Uruguay Round negotiations would represent already a significant contribution in that regard.

168. The CTE's discussions have been guided also by the consideration that the competence of the multilateral trading system is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its Members. It is recognized that achieving the individual as well as the joint objectives of WTO Member governments in the areas of trade, environment and sustainable development requires a coordinated approach that draws on interdisciplinary expertise. In that regard, policy coordination between trade and environment officials at the national level has an important role to play. Work in the CTE is helping to better equip trade officials to make their contribution in this area.

169. WTO Member governments are committed not to introduce WTO-inconsistent or protectionist trade restrictions or countervailing measures in an attempt to offset any real or perceived adverse domestic economic or competitiveness effects of applying environmental policies; not only would this undermine the open, equitable and non-discriminatory nature of the multilateral trading system, it would also prove counterproductive to meeting environmental objectives and promoting sustainable development. Equally, and bearing in mind the fact that governments have the right to establish their national environmental standards in accordance with their respective environmental and developmental conditions, needs and priorities, WTO Members note that it would be inappropriate for them to relax their existing national environmental

[80]WT/L/162, 23 July 1996.

standards or their enforcement in order to promote their trade. The CTE notes the statement in the 1995 Report on Trade and Environment to the OECD Council at Ministerial Level that there has been no evidence of a systematic relationship between existing environmental policies and competitiveness impacts, nor of countries deliberately resorting to low environmental standards to gain competitive advantages. The CTE welcomes similar policy statements made in other inter-governmental fora.

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

ITEM 5 The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

170. These two Items have proved to be closely linked. The CTE has discussed them together and drawn conclusions and recommendations on them jointly.

171. The CTE notes that governments have endorsed in the results of the 1992 U.N. Conference on Environment and Development their commitment to Principle 12 of the *Rio Declaration* that "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global problems should, as far as possible, be based on an international consensus." There is a clear complementarity between this approach and the work of the WTO in seeking cooperative multilateral solutions to trade concerns. The CTE endorses and supports multilateral solutions based on international cooperation and consensus as the best and most effective way for governments to tackle environmental problems of a transboundary or global nature. WTO Agreements and multilateral environmental agreements (MEAs) are representative of efforts of the international community to pursue shared goals, and in the development of a mutually supportive relationship between them due respect must be afforded to both.

172. The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes taken pursuant to multilateral environmental agreements is multifaceted. Finding the right balance to describe and address this relationship in the CTE has proved to be a very demanding task, particularly given the varying nature of the issues involved in each MEA.

173. Adequate international cooperation provisions, including among them financial and technological transfers and capacity building, as part of a policy package in MEAs are important and can be indispensable elements to facilitate the ability of governments, particularly of developing countries, to become Parties to an MEA and provide resources and assistance to help them tackle the environmental problems which the MEA is seeking to resolve and thus to implement the provisions of the MEA effectively, in keeping with the principle of common but differentiated responsibility. Trade measures based on specifically agreed-upon provisions can also be needed in certain cases to achieve the environmental objectives of an MEA, particularly where trade is related directly to the source of an environmental problem. They have played an important role in some MEAs in the past, and they may be needed to play a similarly important role in certain cases in the future.

174. The CTE recognizes that the evolving relationship between MEAs and the multilateral trading system is complex and that different questions may emerge. In this respect, the following points have been noted in the course of discussions in the CTE:

(i) Trade measures have been included in a relatively small number of MEAs. There is no clear indication for the time being of when or how they may be needed or used in the future. Up to now, there has been no GATT or WTO dispute concerning trade measures applied pursuant to an MEA.

(ii) A range of provisions in the WTO can accommodate the use of trade-related measures needed for environmental purposes, including measures taken pursuant to MEAs. That includes the defined scope provided by the relevant criteria of the "General Exceptions" provisions of GATT Article XX. This accommodation is valuable and it is important that it be preserved by all.

(iii) In the context of the consideration of the inclusion of specifically agreed-upon trade provisions in MEAs, mutual respect should be paid to technical and policy expertise in both the trade and environment areas.

(iv) In practice, in cases where there is a consensus among Parties to an MEA to apply among themselves specifically mandated trade measures, disputes between them over the use of such measures are unlikely to occur in the WTO.

(v) In the negotiation of a future MEA, particular care should be taken over how trade measures may be considered for application to non-parties.

(vi) Policy coordination between trade and environment policy officials at the national level plays an important role in ensuring that WTO Members are able to respect the commitments they have made in the separate fora of the WTO and MEAs and in reducing the possibility of legal inconsistencies arising.

175. In order to enhance understanding of the relationship between trade and environmental policies, co-operation between the WTO and relevant MEAs institutions is valuable and should be encouraged. The CTE recommends that the WTO Secretariat continue to play a constructive role through its cooperative efforts with the Secretariats of MEAs and provide information to WTO Members on trade-related work in MEAs. As noted in the CTE's conclusions under Item 10 of its work programme, observer status for relevant MEAs in WTO bodies, as appropriate, can play a positive role in creating clearer appreciation of the mutually supportive role of trade and environmental policies. Requests from the appropriate bodies of MEAs for observer status should be considered in this light. The CTE should also consider extending invitations to appropriate MEA institutions to attend relevant discussions of the CTE.

176. As described in Section II of this Report, views differed on whether any modifications to the provisions of the multilateral trading system are required under this Item of the work programme. This matter should be kept under review and further work under this Item should be carried out drawing on the work undertaken to date.

177. The CTE notes that both the WTO and MEA dispute settlement mechanisms emphasize the avoidance of disputes, including through parties seeking mutually satisfactory solutions.

178. The CTE recognizes that WTO Members have not resorted to WTO dispute settlement with a view to undermining the obligations they accepted by becoming Parties to an MEA, and the CTE considers that this will remain the case. While WTO Members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms

available under the MEA. Improved compliance mechanisms and dispute settlement mechanisms available in MEAs would encourage resolution of any such disputes within the MEA.

179. The CTE recognizes the benefit of having all relevant expertise available to WTO panels in cases involving trade-related environmental measures, including trade measures taken pursuant to MEAs. Article 13 and Appendix 4 of the DSU provide the means for a panel to seek information and technical advice from any individual or body which it deems appropriate and to consult experts, including by establishing expert review groups.

ITEM 2 The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

180. A number of trade-related environmental policies and measures not covered elsewhere in the work programme have been discussed in a preliminary way under this Item. Further examination and analysis of these policies and measures in the CTE will be required, including analysis of their effects on trade.

181. There has also been some discussion of the use by governments at the national level of environmental reviews of trade agreements, and of the relationship and compatibility of general trade and environmental policy-making principles. No conclusions have been drawn so far on either of these issues. Further work will be required on this Item in the CTE.

ITEM 3(A) The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

182. Scope exists under WTO provisions for Member governments to apply environmental charges and taxes. The CTE has undertaken so far a preliminary examination of some of these issues under this Item. Further work on this Item is needed.

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

183. The major part of the CTE's work so far under this Item has involved examination and analysis of voluntary eco-labelling schemes/programmes, including those based on life cycle approaches, and their relationship to WTO provisions and to the Agreement on Technical Barriers to Trade (TBT) in particular. Well-designed eco-labelling schemes/programmes can be effective instruments of environmental policy to encourage the development of an environmentally-conscious consumer public. The CTE noted that Chapter IV of *Agenda 21* encouraged the expansion of environmental labelling and other environmentally-related product information programmes designed to assist consumers in making informed purchasing decisions. The CTE also noted that eco-labelling schemes/programmes have raised, in certain cases, significant concerns about their possible trade effects.

184. Increased transparency can help deal with trade concerns regarding eco-labelling schemes/programmes while it can also help to meet environmental objectives by providing accurate and comprehensive information to consumers. The CTE felt that an important starting point for WTO Members to address some of the trade concerns raised over eco-labelling schemes/programmes is by discussing how to ensure adequate transparency in their preparation,

adoption and application, including affording opportunities for participation in their preparation by interested parties from other countries. The transparency provisions contained in the TBT Agreement, including the Code of Good Practice for standardizing bodies contained in Annex 3 of the Agreement provide a reference point to the further work of the CTE in enhancing transparency of eco-labelling schemes/programmes.

185. As stated above, the CTE's discussion on eco-labelling has focused primarily on voluntary eco-labelling schemes/programmes and in particular on the transparency of such schemes/programmes. Without prejudice to the views of WTO Members concerning the coverage and application of the TBT Agreement to certain aspects of such voluntary eco-labelling schemes/programmes and criteria, i.e. those aspects concerning non-product-related PPMs, and therefore to the obligations of Members under this Agreement regarding those aspects, the CTE stresses the importance of WTO Members following the provisions of the TBT Agreement and its Code of Good Practice, including those on transparency. In this context, the CTE underlines the particular importance of ensuring fair access of foreign producers to eco-labelling schemes/programmes.

186. The CTE will conduct further work on all issues contained under this Item, including with respect to developing countries and least developed countries. Such further work could involve cooperation with the Committee on TBT and take into account the work of other international fora, for instance UNEP, UNCTAD, OECD, ITC and ISO, as appropriate.

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

187. WTO transparency provisions and mechanisms are not an end in themselves. However, they fulfil an important role in ensuring the proper functioning of the multilateral trading system, in helping to prevent unnecessary trade restriction and distortion from occurring, in providing information about market opportunities and in helping to avoid trade disputes from arising. They can also provide a valuable first step in ensuring that trade and environment polices are developed and implemented in a mutually supportive way. The CTE considers transparency to be an important aspect of all Items of its work programme where the relationship of WTO provisions to specific trade-related environmental measures is receiving attention.

188. The CTE recognizes that trade-related environmental measures should not be required to meet more onerous transparency requirements than other measures that affect trade.

189. The CTE concludes that no modifications to WTO rules are required to ensure adequate transparency for existing trade-related environmental measures. Nevertheless, the CTE should keep under review the adequacy of existing transparency provisions with respect to trade-related environmental measures, including the results of the work of the Working Group on Notification Obligations and Procedures and whether the Committees and Councils dedicated to individual WTO Agreements consider there is any need to review the transparency provisions of those Agreements in particular instances and whether compliance with the provisions is viewed as satisfactory.

190. The CTE notes that some WTO Members are dealing with some notifications differently, both in terms of their understanding of which types of environmental measures require notification, and under which WTO provisions. Such a situation needs to be improved through joint efforts by Members to clarify the understanding of the notification requirements concerned.

191. The CTE suggests that Members consider requests for additional information on measures notified under the WTO, or more generally supply information to Members, especially developing country Members, about market opportunities created by environmental measures.

192. In the meantime, the CTE recommends that the WTO Secretariat compile from the Central Registry of Notifications all notifications of trade-related environmental measures and collate these in a single database which can be accessed by WTO Members. The database could contain information where available for each notified measure: its nature/title; objective(s); product coverage; relevant WTO provisions and MEA provisions; and a description of how it operates. This database should be kept updated.

193. The CTE welcomes the efforts of other inter-governmental organizations, in particular the UNCTAD and ITC, to collect and disseminate additional information on the use of trade-related environmental measures, and recommends the WTO Secretariat cooperate with those organizations to ensure duplication is avoided.

194. The possibility of information on trade-related environmental measures being made available voluntarily by Members in their Trade Policy Reviews and of the Secretariat including such information in its TPR Reports was noted as a possible issue to be explored in consultation with the TPR Body.

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

195. It is under this Item that the CTE has discussed how the WTO can contribute to making international trade and environmental policies mutually supportive through trade liberalization and appropriate development and environmental policies determined at the national level for the promotion of sustainable development.

196. The CTE acknowledges that an open, equitable and non-discriminatory multilateral trading system and environmental protection are essential to promote sustainable development and that there is a close linkage between poverty and environmental degradation. Emphasis has been placed on the importance of cooperation in the essential task of alleviating and eradicating poverty in order to achieve sustainable development and the important role that increased trade and market access opportunities can make in this regard. It was noted that many countries remain marginal participants in world trade. In this respect, the CTE could contribute to the identification of trade policy actions which can enhance the participation in world trade of developing countries, and in particular the least developed among them, and promote environmental protection in the interest of sustainable development.

197. The possible effects of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, have been discussed. There is concern that environmental measures and requirements may adversely affect the competitiveness and market access opportunities of small and medium-sized enterprises especially in developing countries. The environmental benefits of trade liberalization, including the removal of trade restrictions and distortions, has been addressed at both a general and sectoral level and in relation to specific trade restrictions. The CTE emphasizes the importance of market access opportunities in assisting developing countries obtain the resources to implement adequate developmental and environmental policies determined at the national level, diversify their economies and provide income-generating activities for the poor. Consequently, improving market access opportunities and preservation of the open, equitable and non-discriminatory nature

of the multilateral trading system is essential for supporting countries in their efforts to ensure sustainable management of their resources. It has been recognized that trade liberalization including the elimination of trade restrictions and distortions can yield developmental and environmental benefits by facilitating a more efficient allocation and use of resources. At the same time, however, the CTE underlines that implementing appropriate environmental policies determined at the national level as part of sustainable development strategies is needed in order to ensure that these benefits are realized and that trade-induced growth will be sustainable. From this perspective, it has been recognized that the prompt and full implementation of the commitments made in the Uruguay Round will constitute an important contribution in this regard.

198. Discussions have taken place on whether and how the removal of trade restrictions and distortions, in particular high tariffs, tariff escalation, export restrictions, subsidies and non-tariff measures, has the potential to yield benefits for both the multilateral trading system and the environment. Up to now discussions have been centred on the agriculture sector, and a proposal on the energy sector has been tabled. Nevertheless, the Committee agrees that it should broaden and deepen its analysis also to other sectors, such as tropical and natural resource-based products, textiles and clothing, fisheries, forest products, environmental services and non-ferrous metals. Further work on this Item should be based on analytical work and empirical evidence and should take into account different country-specific natural and socio-economic conditions and the specificity of the sectors and measures involved.

199. Further work should also focus on the environmental benefits that may arise from enhancing existing market access opportunities for developing countries, and in particular the least developed among them, and the contribution that improved market access opportunities could make in assisting developing countries in implementing adequate environmental policies determined at the national level. In this context, particular attention should be devoted to the environmental benefits of initiatives that could enhance the trade performance of countries which remain only marginal participants in world trade, including low income commodity-dependent countries. Environmentally-friendly products from developing countries should also be considered in this regard. This work should take particular account of the needs of small and medium-sized enterprises. Further work is needed to ensure that the implementation of environmental measures does not result in disguised restrictions on trade, particularly those that have adverse effects on existing market access opportunities of developing countries.

ITEM 7 The issue of the export of domestically prohibited goods

200. The CTE recognizes that serious concerns have been expressed by some developing and least-developed country Members about the export to them of products whose domestic sale or use is banned or severely restricted because they pose a threat to human, animal or plant life or health or the environment. These Members consider that they do not have sufficient timely information about the characteristics of these products nor the technical or technological capacity to make informed decisions about importing them.

201. At the same time, progress continues to be made in other inter-governmental organizations in addressing problems created by trade in potentially hazardous or harmful products. The CTE recommends that WTO Members also consider participating in the activities of other organizations which have the relevant expertise for providing technical assistance in this field.

202. The CTE needs to continue to concentrate on what contribution could be made in this area by the WTO, bearing in mind the need for this work neither to duplicate nor to deflect attention from the work of other specialized inter-governmental fora.

203. In the meantime, the CTE: (a) recommends that the WTO Secretariat determine what information is already available in the WTO on trade-related environmental measures which relate to trade in domestically prohibited goods, including on restrictions or bans on domestic sales or use of products which are or may be exported; (b) encourages WTO Members to submit to the Secretariat any additional information they have which they feel could help it in drawing up a comprehensive picture of the situation throughout the WTO system.

204. This database can assist the further work of the CTE in this area, as well as potentially provide valuable information to individual WTO Members. The information should be installed in the database of trade-related environmental measures referred to under Item 4.

205. The CTE recognizes the important role that technical assistance and transfer of technology, on mutually agreed terms and conditions, related to domestically-prohibited goods where trade is allowed by the international community can play in this field, both in tackling environmental problems at their source and in helping to avoid unnecessary additional trade restrictions on the products involved. WTO Members should be encouraged to provide technical assistance to other Members, especially developing country Members, particularly the least-developed among them, either bilaterally or through appropriate inter-governmental organizations, to assist these countries in strengthening their technical capacity to monitor and, where necessary, control imports of domestically prohibited goods.

ITEM 8 The relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights

206. The CTE has discussed a wide variety of issues related to the generation, access to and transfer of environmentally sound technology and products (EST&Ps), including in the relevant provisions of some MEAs, as related to the TRIPs Agreement. The CTE recalls the reference in the preamble to the TRIPs Agreement to the need to promote the effective and adequate protection of intellectual property rights and the objectives of the TRIPs Agreement that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations.

207. The CTE noted the statement in Paragraph 34.7 of Agenda 21 that ". . . access to and transfer of environmentally-sound technology are essential requirements for sustainable development." The CTE also noted that the TRIPs Agreement has an essential role in facilitating such access and transfer. Positive measures, such as access to and transfer of technology both according to the terms and conditions stipulated in the covered MEAs and without prejudice to the requirements of the TRIPs Agreement can be effective instruments to assist developing countries to meet multilaterally-agreed targets in some MEAs and in keeping with the principle of common but differentiated responsibilities in the Rio Declaration.

208. Further work is required to help develop a common appreciation of the relationship of the relevant provisions of the TRIPs Agreement to the protection of the environment and the promotion of sustainable development, and whether and how, in comparison to other factors, these provisions relate, in particular, to the following issues: (a) facilitating the generation of EST&Ps; (b) facilitating the access to and transfer and dissemination of EST&Ps; (c) environmentally-unsound technologies and products; and (d) the creation of incentives for the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources including the protection of

knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biodiversity.

209. Some issues are under consideration by the Parties to the Convention on Biological Diversity who are also looking at the synergies and relationship between its objectives and the TRIPs Agreement. Information has been shared by the CTE regarding its work in response to requests by the Secretariat of the Convention on Biodiversity. The exchange of information between the CTE and the Convention on Biodiversity might be pursued further, as appropriate.

ITEM 9 The work programme envisaged in the Decision on Trade in Services and the Environment

210. The GATS is a new agreement which is still evolving and includes concepts which are not contained in the GATT. Preliminary discussion in the CTE to date on this Item has not led to the identification of any measures that Members feel may need to be applied for environmental purposes to services trade which would not be covered adequately by GATS provisions, in particular Article XIV(b). An invitation by the CTE to Members to submit any further information in this regard remains open.

211. Further work in the CTE on this Item is necessary before it could be in a position to draw any conclusions on the relationship between services trade and the environment, or on the relevance of inter-governmental agreements on the environment and their relationship to the GATS in the context of sustainable development.

ITEM 10 Input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO

212. It is recognized in the CTE that there is a need to respond to public interest in WTO activities in the area of trade and environment and to build support for the contribution that can be made through the WTO towards mutually supportive trade and environment policies and the promotion of sustainable development.

213. The CTE considers that closer consultation and cooperation with NGOs can also be met constructively through appropriate processes at the national level where primary responsibility lies for taking into account the different elements of public interest which are brought to bear on trade policy-making.

214. In the Decisions of the General Council of 18 July 1996 on "Procedures for the circulation and derestriction of WTO documents" and on "Guidelines for arrangements on relations with non-governmental organizations", WTO Members have agreed to improve public access to WTO documentation and to develop communication with NGOs.

215. The adoption of WTO procedures for the derestriction of documentation will provide public access to the CTE's working documents and the records of its meetings. In this regard, it is noted that the Decision on Procedures for the Circulation and Derestriction of WTO Documents, *inter alia*, affords WTO bodies substantial freedom to make their documents available to the public in order to increase transparency. The CTE has taken decisions already to derestrict a number of the working documents prepared for it by the Secretariat. It recommends that all remaining working documents prepared during these first two years of its operations be

derestricted. The CTE encourages all Members that have submitted papers and non-papers that have not already been derestricted to agree that these be derestricted along with this Report.

216. The WTO Secretariat has laid the foundations for providing timely public access to the proceedings of the CTE through issuing periodically its *Trade and Environment Bulletin* and for enhancing its contacts with NGOs concerned with matters related to those of the CTE, *inter alia* through the organization of informal meetings with NGOs. The CTE recommends that the Secretariat continue its interaction with NGOs which will contribute to the accuracy and richness of the public debate on trade and environment.

217. Following the Decision of the General Council of 18 July 1996 on "Guidelines for observer status for international intergovernmental organizations in the WTO", the CTE has agreed to extend observer status on a permanent basis to those intergovernmental organizations which previously participated as observers on an *ad hoc* basis at CTE meetings. The CTE has extended observer status to all those intergovernmental organizations which have so requested, and the possibility exists on the basis of the General Council's Decision to consider future requests from other relevant intergovernmental organizations, including MEAs. Observer status of relevant MEAs in WTO bodies, as appropriate, can play a positive role in creating clearer appreciation of the mutually supportive role of trade and environmental policies. Requests from the appropriate bodies of MEAs for observer status should be considered in this light.

218. The CTE will continue to keep these issues under review.

Future of the CTE

219. Work in the WTO on contributing to build a constructive policy relationship between trade, environment and sustainable development needs to continue. Therefore, the CTE recommends that it continue to work, reporting to the General Council, with the mandate and terms of reference contained in the Ministerial Decision on Trade and Environment of April 1994. Its rules of procedure shall be adopted by consensus.

ANNEX I

Trade and Environment

Decision of 14 April 1994[1]

Ministers, meeting on the occasion of signing the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations at Marrakesh on 15 April 1994,

Recalling the preamble of the Agreement establishing the World Trade Organization (WTO), which states that members' "relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,"

Noting:

— the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 48th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, the Committee on Trade and Development, and the Council of Representatives;

— the work programme envisaged in the Decision on Trade in Services and the Environment; and

— the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights,

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other,

Desiring to coordinate the policies in the field of trade and environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members,

Decide:

— to direct the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment open to all members of the WTO to report to the first biennial meeting of the Ministerial Conference after the entry into force of the WTO when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the Committee,

— that the TNC Decision of 15 December 1993 which reads, in part, as follows:

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[1]Source: MTN/TNC/45(MIN).

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

(b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular:

— the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and

— the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12; and

— surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;"

constitutes, along with the preambular language above, the terms of reference of the Committee on Trade and Environment,

— that, within these terms of reference, and with the aim of making international trade and environmental policies mutually supportive, the Committee will initially address the following matters, in relation to which any relevant issue may be raised:

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

— the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;

— 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;

— 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;

— the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;

— 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 issue of exports of domestically prohibited goods;

— that the Committee on Trade and Environment will consider the work programme envisaged in the Decision on Trade in Services and the Environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights as an integral part of its work, within the above terms of reference;

— that, pending the first meeting of the General Council of the WTO, the work of the Committee on Trade and Environment should be carried out by a Sub-Committee of the Preparatory Committee of the World Trade Organization (PCWTO), open to all members of the PCWTO;

— to invite the Sub-Committee of the Preparatory Committee, and the Committee on Trade and Environment when it is established, to provide input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO.

ANNEX II

RESTRICTED

WORLD TRADE ORGANIZATION

WT/CTE/W/17

12 December 1995

(95-4039)

Committee on Trade and Environment

SUMMARY OF ACTIVITIES OF THE COMMITTEE ON TRADE AND ENVIRONMENT(1995) PRESENTED BY THE CHAIRMAN OF THE COMMITTEE[1]

1. As directed by the Ministerial Decision on Trade and Environment, the Committee on Trade and Environment (hereinafter "Committee") was established by the General Council at its first meeting on 31 January 1995. At that meeting, the General Council also agreed to the nomination of Ambassador J. Sánchez Arnau (Argentina) as the Chairman of the Committee.

2. The first meeting of the Committee was held on 16 February 1995 (WT/CTE/M/1). The Committee adopted a schedule of meetings and programme of work for 1995 (Annex 1). The Committee agreed that meetings would be organized such that, once discussion of the item(s) constituting the focus of the meeting had been completed, delegations could address, if they wished, the item(s) that were discussed at the previous meeting. Delegations could submit papers on any of the items at any time which would be discussed at the appropriate time according to the agreed schedule of work.

3. Other formal meetings of the Committee were held on 6 April, 21 June, 12 September and 26-27 October 1995 (WT/CTE/M/2 to 5); the items discussed at these meetings were as per the work programme decided at the meeting of 16 February 1995. With regard to item ten of the work programme, i.e. appropriate arrangements for relations with non-governmental organizations, the Committee decided to postpone the discussions pending results of discussions in the General Council.

4. At the October meeting, the stocktaking exercise was completed. As a result of this exercise, the Committee decided on its work programme through to May 1996 (Annex 2).[2]

5. The work of the Committee was assisted by documents prepared by the Secretariat (WT/CTE/W/1, 3 to 10, 12) and documents submitted by delegations (WT/CTE/W/2 and 11); Annex 3 lists the topics covered by these documents.[3]

6. The discussions in the Committee meetings were wide ranging and there was a very high level of participation by WTO Members. Forty governments are observers to the Committee. The Committee extended observer status to those intergovernmental organizations (IGOs) which had had observer status in the Sub-Committee on Trade and Environment, pending agreement by the General Council on the conditions and criteria for IGO observer status. These IGOs were: the United

[1]This summary is submitted by the Chairman of the Committee on Trade and Environment on his own responsibility.

[2]The dates of the meetings in 1996 are going to be reviewed at the meeting of the Committee on Trade and Environment on 14-15 December 1995.

[3]The Committee's work also took into consideration several background documents prepared for the EMIT Group and the WTO Preparatory Committee's Sub-Committee on Trade and Environment.

Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the International Monetary Fund (IMF), the United Nations Environment Program (UNEP), United Nations Development Program (UNDP), Commission for Sustainable Development (CSD), the Food and Agriculture Organization (FAO), the International Trade Centre (ITC), the Organization for Economic Cooperation and Development (OECD), and the European Free Trade Association (EFTA).

7. The Committee 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, the Chairman had referred this matter to the Chairman of the General Council who would be consulting on the issue.

8. Following a decision taken at the meeting of the Committee on Technical Barriers to Trade (CTBT) on 20 October 1995, the Committee agreed to convene joint informal meetings on eco-labelling with the CTBT. It was agreed that the Chairman would consult informally on the possibility of holding a joint meeting of the Committee and the CTBT possibly around the time of the December or February meeting of the Committee.

Annex 1

At its meeting on 16 February 1995, the Committee on Trade and Environment adopted the following schedule of meetings and programme of work:

6-7 April:
- 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"
- Item 5: "the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements"
- Item 10: "appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation"

21-22 June:
- Item 8: "TRIPs"
- Item 9: "Services"
- Item 2: "the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system"

early September:
- 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"

late October:
- 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"
- Item 3: "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
- Stocktaking and planning program of work for 1995/1996

Annex 2

The Committee on Trade and Environment

The informal consultations made evident the following points:

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.

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 analyse 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 few studies/reports 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.

The Committee on Trade and Environment

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	- environmental taxes which could be adjusted at the border and their WTO-consistency	- gather information on national environmental taxes for the study	26/27 October 95 early February 96 (7/8 February 96)
(b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling"	- 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		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	- 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.

Annex 3

WT/CTE/W/1	Environmental benefits of removing trade restrictions and distortions (background paper prepared by the Secretariat for item 6)
WT/CTE/W/2	Submission by Chile on relationship between dispute settlement in WTO and in multilateral environmental agreements, with special reference to Convention on the Law of the Sea which in certain parts emphasises the provisions of the General Agreement on Tariffs and Trade (including dispute settlement)
WT/CTE/W/3	Report submitted by the Secretariat on its own responsibility to the Secretariat of the Commission on Sustainable Development for the meeting of the Third Session of the Commission on 11-28 April 1995
WT/CTE/W/4	Approaches to the relationship between the provisions of the multilateral trading system and trade measures pursuant to multilateral environmental agreements (background paper prepared by the Secretariat for item 1)
WT/CTE/W/5	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 (background paper prepared by the Secretariat for item 4)
WT/CTE/W/6	A description of international agreements and instruments dealing with trade in domestically prohibited goods and other hazardous substances (background paper prepared by the Secretariat for item 7)
WT/CTE/W/7	Secretariat's note on the results of the third session of the Commission on Sustainable Development
WT/CTE/W/8	Environment and TRIPs (background paper prepared by the Secretariat for item 8)
WT/CTE/W/9	Environment and services (background paper prepared by the Secretariat for item 9)
WT/CTE/W/10	Negotiating history of the coverage of the Agreement on Technical Barriers to Trade with regard to labelling requirements, voluntary standards, and processes and production methods unrelated to product characteristics (background paper prepared by the Secretariat for item 3)
WT/CTE/W/11	Communication from the delegations of Nigeria and Senegal regarding the issue of domestically prohibited goods

WT/CTE/W/12	Trade measures for environmental purposes taken pursuant to multilateral environmental agreements: recent developments (note prepared by the Secretariat)

ANNEX III

RESTRICTED

WORLD TRADE ORGANIZATION

WT/CTE/W/33

4 June 1996

(96-2090)

Committee on Trade and Environment

RESULTS OF THE STOCKTAKING EXERCISE

Adopted at the 28-29 May 1996 meeting

I. The informal consultations on the stocktaking permitted the following consensus to be reached:

1. According to the results of the first stocktaking in October 1995, the CTE has completed two full rounds of analysis of each individual Item of the agenda (Items 2 and 4 will be revisited during the May session). The Secretariat has submitted a number of background and analytical documents and the Committee has benefitted from the discussion of a number of Items on its agenda in other intergovernmental fora (UNEP, UNCTAD, CSD). On the issue of "eco-labelling" a joint informal meeting was organized with the CTBT and the opportunity was given to managers/practitioners of national/regional eco-labelling schemes/programmes to present their experience to both Committees.

2. In preparing for the Singapore Ministerial Conference, the CTE has held a general debate on all Items of its agenda. Some agenda Items have been disaggregated, some specific issues and problems have been identified. The general debate clarified and promoted understanding of some issues and also permitted the identification of divergences of view. In some cases more analytical work is required. As a result of this process, the CTE is now in a position to centre its attention on specific issues, including issues covered by proposals submitted or to be submitted by Members, keeping in mind the need for a balanced and focused approach to the whole agenda.

3. A number of proposals have been submitted to the Committee either orally or as formal or informal documents and additional proposals are anticipated.

4. Thus, the next stage of the CTE activities in preparation for Singapore needs to be devoted to the preparation of the Final Report to be submitted to the Ministerial Conference including the identification of possible agreed conclusions and recommendations in the light of the CTE mandate.

II. To that end the following work programme, to be developed in the light of the CTE terms of reference contained in the Ministerial Declaration of Marrakesh, is adopted by the Committee[1]:

[1]The CTE is awaiting the adoption of a decision by the General Council on the matter referred to in Item 10.

Date	Meeting	Items/Issues	Objective
28, 29 May	CTE formal	2 and 4 6 and 8 1 + 5 and 7	To adopt the outcome of the stocktaking. To complete second review. To revisit and to discuss proposals submitted on these Items. Presentation of new proposals.
30 May	CTE informal	1 + 5 and 7	Clarification and analysis of new proposals.
20 June	CTE formal	1 + 5 2/3/4/6/7/8	Possible presentation of new proposals on these Items. Clarifications, comments and reactions.
21 June	CTE informal	same	Discussion of proposals.
30 June			The Secretariat starts preparing the first draft of the Final Report: Introduction + Chapters 1 and 2
3-24 July	Informal consultations[2]	same	Start of the process of informal consultations to build up consensus on individual issues.
24 July	CTE formal	2/9/BTA/ packaging	(a) Items/issues revisited in view of possible presentation of proposals on them. (b) Chairman's report on results of informal consultations on specific issues/Items/proposals.
24-25 July	CTE informal[3]	1 + 5 2/3/4/6/7/8	Discussion of specific issues/Items/proposals.
30 July			The Secretariat submits the first draft of Final Report to the Chairman for review and clearance.
31 July			Distribution of the first draft of the Final Report (introduction + Chapters 1 and 2).
11 Sept	CTE formal	All Items	Statements on any issue.
11/12/13 Sept	CTE informal	same	Discussion of proposals on any Item/issue.

[2]All interested delegations will have the opportunity to be consulted on all issues under consideration.

[3]Discussions of issues under Item 3(b) relevant to the work of the CTBT would take place in a joint formal/informal meeting with the CTBT.

Date	Meeting	Items/Issues	Objective
16 Sept to 23 Oct	Informal consultations[2]	All Items	(a) Continuation of consultations on specific Items/issues/proposals. The work is oriented towards building a consensus on possible conclusions and recommendations. (b) Consultations on the draft Final Report.
10 Oct			Secretariat completes draft Final Report to the largest possible extent. Review and clearance by the Chairman.
15 Oct			Distribution of the draft Final Report (introduction + Chapters 1 and 2 + Chapter 3)
24-25 Oct	CTE formal		(a) Report by the Chairman on informal consultations on: (i) all Items/issues/proposals (ii) draft Final Report (b) Final discussion on proposals/conclusions/recommendations (c) Adoption of the Final Report.

III. The Final Report to be produced by the Committee needs to involve the following broad components:

1. An introductory section briefly sketching the CTE's establishment, describing its mandate and pointing to previous GATT work (particularly in the EMIT Group) and outlining its work programme.

2. Three chapters covering each individual agenda Item:

(a) The first one, describing the problems/issues under each agenda Item and their background, and making reference to documents submitted by the Secretariat, with a short reference to their content.

(b) The second would be the analytical component, drawing on the discussions at Committee meetings, describing the proposals and documents submitted by delegations and the debate which followed their submission.

(c) The third chapter would include the conclusions and recommendations if any.

The Final Report has to be comprehensive, balanced among Items/issues and, at the same time, among the different "schools of thought"/perceptions on specific issues. The analytical component will be the most substantial part of the report and will need to be carefully structured. At the same time, a major effort has to be made to keep the report rather short.

ANNEX IV

List of documents and non-papers prepared on Items of the work programme

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

WT/CTE/W/4 + Corr.	Note by the Secretariat on Approaches to the Relationship between the Provisions of the Multilateral Trading System and Trade Measures Pursuant to Multilateral Environmental Agreements
WT/CTE/W/12	Note by the Secretariat on Trade Measures for Environmental Purposes taken pursuant to Multilateral Environmental Agreements: Recent Developments
WT/CTE/W/15 + Corr.	Note by the Secretariat on Trade Measures for Environmental Purposes taken pursuant to Multilateral Environmental Agreements: Recent Developments - FAO Code of Conduct for Responsible Fisheries
WT/CTE/W/18	Note by the Secretariat on the Convention on Biological Diversity: Recent Developments
WT/CTE/W/19	Note by the Secretariat on Trade Measures for Environmental Purposes taken pursuant to Multilateral Environmental Agreements: Recent Developments - Seventh Meeting of the Parties to the Montreal Protocol
WT/CTE/W/20	Submission by New Zealand on Item 1
WT/CTE/W/31	Submission by Japan on Item 1
WT/CTE/W/39	Submission by ASEAN on Item 1
Non-paper (19 February 1996)	Submission by the European Community on Item 1
Non-paper (20 May 1996)	Submission by Switzerland on Item 1
Non-paper (12 June 1996)	Submission by Korea on Item 1
Non-paper (23 July 1996)	Submission by Hong Kong on Item 1
Non-paper (23 July 1996)	Submission by India on Items 1 and 5
Non-paper (11 Sept. 1996)	Submission by the United States on Multilateral Environmental Agreements

Item 2: The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

WT/CTE/W/16	Note by the Secretariat on the Negotiating History of Footnote 61 of the Agreement on Subsidies and Countervailing Measures

WT/CTE/W/37	Submission by the United States on Environmental Review of Trade Agreements at the National Level
Non-paper (23 July 1996)	Submission by India on Item 2
Non-paper (11 Sept. 1996)	Submission by the United States: Draft Decision on Environmental Reviews of Trade Agreements at the National Level

Item 3: The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes; and (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

WT/CTE/W/10-G/TBT/W/11	Note by the Secretariat on the Negotiating History of the Agreement on Technical Barriers to Trade with Regard to Labelling Requirements, Voluntary Standards, and Process and Production Methods unrelated to Product Characteristics
WT/CTE/W/21-G/TBT/W/21	Submission by Canada on Elements of a Possible Understanding to the TBT Agreement on Eco-labelling
WT/CTE/W/23-G/TBT/W/23	Eco-labelling Programmes. Information provided by Canada, Chile, the Czech Republic, the European Community, Norway and the United States at the informal joint meeting of the Committees on Trade and Environment and Technical Barriers to Trade held on 27 February 1996 regarding their national and regional eco-labelling programmes
WT/CTE/W/27; G/TBT/W/29	Proposal by the United States on Further Work on Transparency of Eco-labelling
WT/CTE/W/38-G/TBT/W/30	Proposal by Canada on a Draft Decision on Eco-labelling Programmes
Non-paper (18 June 1996)	Submission by the Arab Republic of Egypt
Non-paper (23 July 1996)	Submission by the European Community on Eco-labelling Programmes
Non-paper (23 July 1996)	Submission by India on Item 3
Non-paper (11 Sept. 1996)	Submission by the United States: Draft Decision on Transparency in Eco-labelling Programmes

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

WT/CTE/W/5	Note by the Secretariat on Item 4

WT/CTE/W/28	Note by the Secretariat on Item 4
WT/CTE/W/34	Note by the Secretariat on the WTO Central Registry of Notifications
Non-paper (28 May 1996)	Submission by Hong Kong on Transparency: A Proposal on an Environmental Database

Item 5: The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

WT/CTE/W/2	Communication from Chile on Item 5

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

WT/CTE/W/1	Note by the Secretariat on the Environmental Benefits of Removing Trade Restrictions and Distortions
WT/CTE/W/24 + Corr.	Submission by Argentina on The Environmental Benefits of Removing Trade Restrictions and Distortions, including tariff escalation, subsidies, state trading, and excessively high tariffs
WT/CTE/W/25	Note by the Secretariat on Tariff escalation
WT/CTE/W/26	Note by the Secretariat on The effects of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them
WT/CTE/W/35	Contribution by the United States on Trade Liberalization and the Environment
WT/CTE/W/36	Submission by Australia on Trade Liberalization, the Environment and Sustainable Development (replaces the non-paper submitted on 21 May 1996)
Non-paper (20 June 1996)	Submission by India on Item 6
Non-paper (20 June 1996)	Submission by Norway on Market Access and Environmental Effects of Removing Trade Restrictions and Distortions
Non-paper (28 June 1996)	Preliminary views of Japan on Item 6
Non-paper (23 July 1996)	Submission by the European Community on Item 6
Non-paper (24 July 1996)	Submission by Korea on Item 6

Item 7: The issue of exports of domestically prohibited goods

WT/CTE/W/6	Note by the Secretariat on A description of international agreements and instruments dealing with trade in domestically prohibited goods and other hazardous substances
WT/CTE/W/11	Communication from Nigeria and Senegal under Item 7
WT/CTE/W/14	Proposal by Nigeria on Domestically Prohibited Goods
WT/CTE/W/29	Note by the Secretariat on Domestically Prohibited Goods: An assessment of the product coverage in specific international instruments
WT/CTE/W/32	Proposal by Nigeria on Domestically Prohibited Goods

Item 8: Trade-Related Aspects of Intellectual Property Rights and the environment

WT/CTE/W/8	Note by the Secretariat on Environment and TRIPs
WT/CTE/W/22	Note by the Secretariat on Factors affecting transfer of environmentally-sound technology
Non-paper (20 June 1996)	Submission by India on The Relationship of the TRIPs Agreement to the development, access and transfer of environmentally-sound technologies and products (revises the non-paper submitted on 2 April 1996)
Non-paper (23 July 1996)	Submission by India on The Relationship between the TRIPs Agreement and the Convention on Biodiversity
Non-paper (23 July 1996)	Submission by Korea on Consideration of relevant provisions of the Agreement on TRIPs
Non-paper (11 Sept. 1996)	Submission by Australia on the TRIPs Agreement

Item 9: The work programme envisaged in the Decision on Trade and Services and the Environment

WT/CTE/W/9	Note by the Secretariat on Services and the Environment
Non-paper (23 July 1996)	Submission by India on Services and the Environment

General

WT/CTE/W/3	Report submitted by the Secretariat on its own responsibility to the Secretariat of the Commission on Sustainable Development at its Third Session, 11-28 April 1995

WT/CTE/W/7	Note by the Secretariat on UNCED Follow-up: Results of the Third Session of the Commission on Sustainable Development, 11-28 April 1995
WT/CTE/W/13	Draft Rules of Procedure for the Meetings of the Committee on Trade and Environment
WT/CTE/W/17	Summary of activities of the Committee on Trade and Environment (1995) presented by the Chairman of the Committee
WT/CTE/W/30 + Corr.	Note by the Secretariat on UNCED Follow-up: Results of the Fourth Session of the Commission on Sustainable Development, 18 April - 3 May 1996
WT/CTE/W/33	Results of the Stocktaking Exercise adopted at the 28-29 May 1996 CTE meeting
Non-paper (11 Sept. 1996)	Submission by Nigeria: Preliminary comments on the draft of Sections I and II of the CTE Report to the Ministerial Conference

ANNEX V

Matrix for the Korean Approach

<table>
<tr><th colspan="3" rowspan="2">Trade measures</th><th rowspan="2">Discipline</th><th colspan="2">Criteria</th><th rowspan="2">Notification</th></tr>
<tr><th>Procedural</th><th>Substantive</th></tr>
<tr><td rowspan="2">Between Parties</td><td>Specific Measures</td><td>A</td><td rowspan="2">Qualified Codification</td><td rowspan="2">Notification subject to review</td><td>Least inconsistency</td><td rowspan="2">All Parties of an MEA</td></tr>
<tr><td>Non-specific measures</td><td>B</td><td>Least trade restrictiveness , necessity</td></tr>
<tr><td rowspan="3">Parties to non-Parties</td><td>Specific measures</td><td>C</td><td>Non-binding guidelines for MEA negotiator</td><td>MEA</td><td>GATT Art. 20 or WTO Art.9</td><td rowspan="2">Party; Notif,

Non-Party; Counter-notif.</td></tr>
<tr><td>Non-specific measures</td><td>D</td><td rowspan="2">No accommo-dation</td><td rowspan="2">-</td><td rowspan="2">GATT Art. 20 or WTO Art. 9</td></tr>
<tr><td>Unilateralism</td><td>Unilateral measures</td><td>E</td><td>Imposer; Notif. Imposed; Counter-notif.</td></tr>
</table>