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WORLD TRADE ORGANIZATION

Committee on Trade and Environment

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REPORT OF THE MEETING HELD ON 24-25 JULY 1996

Note by the Secretariat

1. The Committee on Trade and Environment met on 24 and 25 July 1996 under the chairmanship of Ambassador Juan Carlos Sánchez Arnau of Argentina. The agenda contained in WTO/AIR/380 was adopted.

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

2. The representative of the United States introduced his delegation's paper (WT/CTE/W/37) on the use of environmental reviews as a policy tool of governments, providing background on how environmental reviews had been used and the type of analysis they provided to policy makers, for example in the context of trade agreements. Environmental reviews could help to identify complementarities between environmental and trade policies and identify actions to enhance positive and avoid negative environmental implications in support of sustainable development. In view of recommendations by international bodies, such as the CSD, encouraging governments to undertake environmental reviews of trade agreements, the US proposed that WTO Ministers could recommend to governments to carry out environmental reviews of trade agreements likely to have significant environmental effects as part of the process of developing these agreements. Also, Ministers might recommend that WTO Members be invited to provide copies of such reviews and their methodologies to the Secretariat for reference by Members.

3. The representative of India said his delegation had contributed a non-paper on this Item (dated 23 July 1996) to initiate discussion of general principles which should be applied to evaluate the appropriateness of environmental policies and measures having trade effects from the point of view of WTO principles. The relevant trade principles were non-discrimination (MFN, national treatment), protection through tariffs, transparency, Article XX (necessity and effectiveness, least trade restrictiveness, proportionality and equivalence, and special and differential treatment of developing countries). The relevant environmental principles were common but differentiated responsibilities, sovereignty over environmental resources, fair and equitable sharing of benefits, and the special needs of developing countries. India's view was these principles, some of which were elaborated in the non-exhaustive list in the non-paper, should be contained in the Report of the CTE to Ministers ("the Report") to guide future CTE work. India had focused on principles related to developing country concerns, which already had been accepted in both multilateral trade and environment fora. By discussing these principles, the CTE would be better placed to analyze how to use existing WTO provisions flexibly to meet the objectives of sustainable development, keeping in mind the interests of developing countries.

4. The representative of Singapore, on behalf of ASEAN, agreed with India that the Report should contain general principles to evaluate the appropriateness of environmental policies given their potential trade effects. The essence of Agenda 21 was the concept of common but differentiated responsibilities and that countries had a sovereign right to design and implement their environmental policies and measures as appropriate to protect their domestic environment.

5. The representative of New Zealand said his delegation was familiar with the merits of environmental reviews. However, he asked the US to clarify the proposed Ministerial recommendation for governments to carry out such reviews and why the WTO should endorse environmental reviews when international bodies with environmental competence had already done so. Given the WTO's limited competence in the area of the environment, New Zealand questioned whether the WTO should recommend the use of a tool which was oriented around environmental considerations.

6. The representative of Korea supported New Zealand's comments on the US proposal.

7. The representative of Canada welcomed the US proposal as a way to help countries ensure trade and environment policies were mutually supportive. Canada had completed assessments on the environmental effects of the NAFTA and the WTO.

8. The representative of Nigeria supported India's proposal in principle. He agreed with New Zealand and Korea that the question raised by the US proposal was whether the WTO was the appropriate forum to conduct environmental reviews of trade agreements.

9. The representative of the European Communities said India's list of general environmental principles should include other Rio principles, such as cooperation, and the polluter pays and precautionary principles.

10. The representative of Egypt agreed that India's general principles should be taken into account in the Report and future CTE work. She supported New Zealand's comments.

11. The representative of Mexico said his delegation felt environmental reviews were useful and had conducted them. However, as he did not see the competence of the WTO on environmental matters, Mexico could not support the suggestion to submit environmental reviews to the WTO. These reviews should be submitted to organisations with environmental competence. For the same reason, he doubted the appropriateness of discussing India's environmental principles, but felt the trade principles should be reflected in the Report and be kept in mind when discussing other Items.

12. The representative of Peru asked the US to clarify whether its proposal was within the CTE's mandate. Peru supported India's proposal to include some general principles in the Report, which also could incorporate other trade-related principles.

13. The representative of Bangladesh supported India's proposal, keeping in mind the special situation of LLDC's.

14. The representative of Pakistan broadly supported the principles in India's non-paper, and said he would comment further on the US and India's proposals.

15. The representative of Japan said he would comment on the proposals at a later stage.

16. The representative of Hong Kong said India's proposal to develop general principles could be complemented by his delegation's proposal on Item 1 (non-paper dated 23 July 1996) for a guide to WTO principles for reference by MEA negotiators.

17. The representative of the United States responded to comments on his delegation's paper. As to how the proposal fit with the WTO mandate and competence, the US was not suggesting the WTO prescribe how environmental reviews should be conducted, but that Ministers could point to reviews as a useful tool. Environmental reviews were relevant to CTE work. Reviews could contribute to discussion in view of the CTE's terms of reference, which mandated it to identify the relationship between trade and environmental measures to promote sustainable development, and the issues raised by Item 2. They were also of benefit for work on Item 6 to find ways to maximize the positive relationship between trade and environment. The premise of the US paper related to the importance of national coordination. To

the extent that environmental reviews provided information on the relationship between trade and environment, the US was suggesting these reviews be made available to interested Members. He recalled that the US had provided its reviews to the Secretariat for analytical work it had conducted for the CTE.

18. The US felt India's non-paper was too broad in that it suggested the CTE's role should be to evaluate the appropriateness of environmental policies and measures having trade effects. He said that in the establishment of GATT/WTO work on trade and environment, India's view had been that this was inappropriate. Although the idea to identify relevant trade principles was interesting, he asked where it would lead. If the idea were similar to Hong Kong's proposal, he said that attempts to reduce a complex set of rules might create confusion. Some of the trade principles, such as effectiveness, were not found in Article XX jurisprudence. There was a reference to effectiveness in the Appellate Body Report on Reformulated Gasoline, which had found this term was not a sensible proposition as the effectiveness of a measure could not be assessed in advance. Some of the principles were related to their specific context and generalizing them was problematic. Given the WTO was a rules-based system, general principles did not help Members abide by the rules. The environmental principles were useful to the extent that the list would be comprehensive and addressed the flexibility of WTO rules to take them into account.

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

19. The representative of India said his delegation had submitted a non-paper (dated 23 July 1996) to draw attention to the fact that this Item as a whole covered issues that had a direct trade impact, especially for developing countries. India proposed the discussion of this Item be broadened to examine all of its aspects in an objective and integrated way. India's non-paper sought to convey that discussion of eco-labelling had not clarified some of India's concerns. The primary purpose of examining environmental measures such as eco-labelling should be whether they promoted or obstructed the WTO commitment to an open, equitable and non-discriminatory trading system. Discussion should include developing country concerns about the impact of environmental measures on market access. It would be premature to reach any conclusion on this Item without taking into account the concerns expressed in India's non-paper.

20. The representative of Singapore, on behalf of ASEAN, shared the concerns expressed in India's non-paper. The Report should not contain any conclusions on Item 3. As no internationally-agreed methodology of life cycle approaches (LCA) existed, clarification of this issue was necessary.

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

21. The representative of Australia said, although there had been no proposals on this Item, it was important and should be included in future work.

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

Packaging and recycling

22. The representative of Mexico said this Item should be included in future CTE work.

23. The representative of Canada said this Item needed to be further addressed as work to date had focused on eco-labelling. However, the approach taken on eco-labelling might provide some indication as to how other issues could be addressed after Singapore.

Eco-labelling

24. The representative of Canada introduced his delegation's draft Decision on eco-labelling (dated 23 July 1996), which was based on Canada's paper (WT/CTE/W/21-G/TBT/W/21), subsequent consultations (plurilateral, bilateral and with Canada's business community), and Canada's statement at the June 1995 meeting. Paragraphs 1 to 3 were points (a) to (c) of Canada's initial paper, which a large number of delegations supported. Paragraph 4 was Canada's suggested approach to point (d) given that the development of LCA was of direct relevance to discussion in the CTE and the Committee on Technical Barriers to Trade (CTBT). Paragraph 5 was a "without prejudice" paragraph that recognized the diversity of views on non-product-related PPMs. Canada felt the draft Decision represented a realistic and balanced result in Singapore and asked delegations to review it in the context of an overall review of the Report and the state of play of discussion on other Items. He said the EC non-paper (dated 23 July 1996) differed in its objectives for Singapore (i.e. Canada was aiming for "transparency with teeth"), but converged with respect to the need for increased transparency of eco-labelling programmes based on the TBT Agreement. The draft Decision recognized further analysis was necessary for aspects of eco-labelling, but not for basic TBT transparency requirements. It was in the interest of exporters both in developed and developing countries to enhance transparency. Canada did not foresee any difficulty in integrating this draft Decision into an omnibus decision at the Ministerial Conference.

25. The representative of the European Communities introduced his delegation's non-paper (dated 23 July 1996) on voluntary eco-labelling schemes based on LCA, the first of the categories identified by ISO (multiple criteria-based, third party labelling programmes). The use of voluntary eco-labelling schemes was consistent with Chapter 4 of Agenda 21 and was less trade-restrictive than other environmental policy instruments which resulted in product-related trade barriers. Voluntary eco-labelling schemes based on LCA did not seem to be fully covered by the TBT Agreement and non-product-related PPM criteria did not fall within the definition of a standard in Annex 1. Partial coverage by the TBT Agreement excluding non-product-related criteria did not make sense for the operation of eco-labelling schemes. There were two alternative options to ensure an appropriate level of transparency: (i) to seek full coverage under the TBT Agreement; or (ii) to negotiate an *ad hoc* instrument, for example a code of conduct. The EC felt it was not possible to shape an agreement dealing only with those elements for which a certain measure of consensus had emerged. It was inappropriate to address the transparency issue without first clarifying the status of LCA in voluntary eco-labelling. The EC expected progress on eco-labelling was possible to achieve balanced, comprehensive results in Singapore, taking into account, as agreed in other fora, that the use of eco-labelling based on LCA should be encouraged as a means to assist consumers in making informed choices and to promote sustainable patterns of production and consumption. The EC hoped Canada's draft together with the other proposals would contribute to a results-oriented discussion on eco-labelling. Canada's draft contained some valuable elements, particularly the recognition that voluntary eco-labelling schemes were predominantly based on LCA and were effective market-based instruments to promote environmentally-preferable products and services. The fourth preambular paragraph was consistent with the EC's position. However, the EC could not agree to provide formal recognition in Singapore that eco-labelling programmes were covered by the TBT Agreement as the question of whether their use of LCA was WTO compatible would be left undecided. As the EC was not convinced these issues could be disassociated, the status of LCA under WTO Agreements should be clarified first. The EC had doubts on the logical consistency of the draft, particularly recognizing that all eco-labelling programmes were within the TBT Agreement's scope and indicating that the Decision would not prejudge views on non-product-related PPMs. The draft Decision prejudged the latter issue.

26. The representative of Nigeria did not agree that the development of international standards based on LCA could be presumed to be covered by the TBT Agreement as indicated in Canada's draft Decision. He asked if Canada would consider deleting the second sentence of paragraph 4.

27. The representative of Pakistan said eco-labelling based on LCA including non-product-related PPMs tended to restrict market access for developing countries and undermine their comparative

advantage. Before arriving at any recommendations, analytical work was necessary on the impact of eco-labelling on developing countries' trade opportunities.

28. The representative of the Sierra Leone expressed concern at the attempt to include non-product-related PPMs in the TBT Agreement. Although LCA was a valuable tool for assessing environmental impact and should be developed to improve environmental protection, its current application was limited to one aspect of the cradle-to-grave cycle (usually the final production stage) instead of throughout a product's the life cycle. A comprehensive LCA was time-consuming and expensive. To include non-product-related PPMs in the TBT Agreement would disadvantage developing country imports and might not even benefit the environment in the exporting country. Deciding which factors should be considered was subjective and the importing country might not consider the other countries' ecological capacities and environmental priorities. The OECD had judged that "to allow countries to discriminate against imports based on their method of production and the resulting environmental externalities would be an unmanageable feature for the trading system. In many cases, it would also not make environmental sense due to environmental differences across countries." The OECD had outlined practical problems in implementing measures based on LCA, including difficulties in determining the environmental impact for products, comparing these impacts across products, and the high cost of this assessment. Canada's draft Decision would use ISO 14000 as its basis. It had already been acknowledged that ISO 14000 needed to improve on areas such as public access, the link between compliance and environmental performance, and qualification requirements. It would be interesting to learn which procedures were followed for inspection and certification for developing countries. Sierra Leone noted the weak provisions in the TBT Agreement on the concepts of mutual recognition and equivalencies. Reference was made to mutual recognition for technical regulations, but not for standards and there was no reference to equivalencies. She suggested the CTE consider how to include mutual recognition and equivalencies in the TBT Agreement.

29. The representative of Mexico asked for clarification on the difference between scope and coverage and measures and programmes in Canada's draft Decision. He asked if mandatory eco-labelling measures were the same as technical regulations in the TBT Agreement. If so, then there was no doubt as to their coverage. He asked whether there was anything new in the draft Decision compared to the existing TBT Agreement. On paragraph 4, he asked Canada for examples of international standards that were being developed and whether this was an indirect reference to ISO work. In his view, this paragraph prejudged the issue; the only way not to prejudge was not to refer to the matter. Mexico's position was that non-product-related PPMs were not legitimized by WTO rules. Before progress could be made, the trade effects of eco-labelling should be clarified. He preferred to discuss eco-labelling with the other issues under Item 3 and not in isolation.

30. The representative of Japan said there were elements of Japan's position in the EC non-paper, such in paragraphs 8 and 10. He supported the first points in the preamble of Canada's draft Decision. Japan agreed that the issue of non-product-related, PPM-based criteria should be further studied.

31. The representative of Korea said, although his delegation supported Canada's draft Decision, Korea was not convinced paragraphs 1 and 5 were compatible. The relationship between LCA and the TBT Agreement should be clarified before addressing the trade effects of eco-labelling schemes. In this regard, Korea shared the view expressed by the EC in paragraph 13. He sought clarification of the meaning of the references to scope and coverage, as well as the development of international standards based on LCA. Korea felt it was premature to draw partial conclusions on eco-labelling given the implications and unanswered questions it raised.

32. The representative of Hong Kong supported paragraphs 1, 2, 4 and 5 of Canada's draft Decision. The recommendation in paragraph 4 would be easier to accept if the second line read "should consider as part of its future work programme the need to analyse the impact ... ". He asked Canada to clarify whether there were implications of developing international standards based on LCA for the interpretation of "like product".

33. The representative of Egypt said that it was premature to have a decision on eco-labelling in Singapore and that eco-labelling should be dealt with comprehensively after Singapore.

34. The representative of Venezuela agreed with Sierra Leone that analysis should focus on mutual recognition and environmental equivalencies. He indicated that in doing so attention should be given to work undertaken by the ISO and UNEP's expert group on eco-labelling.

35. The representative of Bangladesh said the growing number of eco-labelling schemes for products of developing country export interest were a matter of concern. An element of protectionism was felt to be hidden in eco-labelling schemes. The costs to firms that wished to comply with eco-labelling criteria might be significant. For example, an Indian study reported that for some firms the costs of testing the product to comply with the requirements of the Dutch eco-label for footwear could lead to a cost increase of about 50 per cent. Eco-labelling schemes were based on LCA which meant products must have less environmental impact during their life cycle. This was difficult to assess. As the co-existence of more than one eco-labelling scheme for the same product compounded the problems, there was a need to harmonize eco-labelling schemes to minimize the difficulties for developing country exporters. Existing eco-labelling schemes should be examined to be aware of the concerns of developing countries, which should be taken into account when developing eco-labels. Analysis of the costs and benefits of eco-labelling schemes would be useful. Efforts towards a multilateral understanding on criteria for eco-labels should be made as value judgements were involved. The proliferation of eco-labelling schemes without any multilateral agreement would further marginalize LLDC's. The offer of technical assistance for adjustment to eco-labelling schemes appeared to be diversionary. The development dimension should be linked with the issue of eco-labelling. Development of environmentally-friendly products would require a substantial amount of financing, which should be included in official development assistance. Article 12 of the TBT Agreement should also be kept in mind. Eco-labelling could not be treated as a *fait accompli* and all its aspects should be considered before reaching a decision.

36. The representative of India said his delegation's non-paper on Item 3 sought to broaden the focus of discussion. The time was not right for the Report to contain any conclusions on eco-labelling. Voluntary eco-labelling had not been demonstrated to be an effective market-based instrument which encouraged environmentally-preferable products and services in terms of WTO provisions. The effectiveness of eco-labelling programmes needed to be tested and discussed further, particularly with regard to their impact on developing countries. As there had not been much experience with the impact of such programmes on services, this portion of Canada's draft Decision could be examined in future work. India asked for clarification of the impact of LCA on developing country trading prospects. It was not clear whether eco-labelling would promote or obstruct the WTO commitment to an open, non-discriminatory and equitable trading system. *Prima facie,* India's view was that eco-labelling requirements, including the use of environmentally-friendly technologies and products should be assessed in future work. He sought clarification on the ability of developing countries to participate effectively in the formulation of eco-labels. Issues such as the transfer of appropriate technology and the use of criteria which were verifiable and scientifically-based were important. India said reference should be made to the special WTO provisions for developing countries, such as Article 12 of the TBT Agreement.

37. The representative of Australia said differences of view remained on the extent to which standards based on non-product-related PPMs were or should be covered by the TBT Agreement. Although agreement on this issue was unlikely in Singapore, it should be possible to agree on the desirability of eco-labelling schemes adhering to the TBT Code of Good Practice. Future work could examine whether this Code and the provisions of the TBT Agreement were adequate to address the issues raised by eco-labelling schemes. Discussion should distinguish between: (i) the applicability of the TBT Agreement to labels, irrespective of the kind of information provided on the label; (ii) the disciplines that should apply to eco-labelling schemes as standardizing bodies; and (iii) the extent to which the criteria used in awarding labels to particular products were standards (or technical regulations) as defined by the TBT Agreement. On the first point, a consideration was the CTBT's decision that the obligation to notify mandatory labelling requirements "is not dependent on the kind of information provided on the label, whether it is in the nature of a technical specification or not". While it only applied to mandatory labelling

requirements, it pointed to the principle that labels were covered by the TBT Agreement. On the second, most eco-labelling schemes involved some criteria which related to a product's characteristics or performance. In relation to these activities, the eco-labelling scheme itself would seem to be clearly covered by the TBT Agreement as a standardizing body. There might be uncertainty on the third issue on the status of criteria dealing with product characteristics and product-related PPMs and those dealing with non-product-related PPMs. A first step would be to agree in principle and for the Report to endorse that the TBT Agreement covered: (i) eco-labels irrespective of the kind of information provided on the label; and (ii) the practices of eco-labelling schemes as standardizing bodies. Further work in cooperation with the CTBT on the application of the TBT Agreement to the criteria used by eco-labelling schemes should examine the extent to which the criteria applied by eco-labelling schemes were standards (or technical regulations) as defined in the TBT Agreement and the adequacy of the TBT disciplines, including the Code of Good Practice, in addressing the concerns raised by eco-labelling schemes.

38. The representative of Canada clarified that his delegation's draft Decision had been submitted for discussion of Section III of the Report. On the link between scope and coverage, a better distinction might be scope in a general and specific sense. Eco-labelling programmes were within the general scope of the TBT Agreement. However, the question of whether specific measures within eco-labelling programmes such as standards based on non-product-related PPMs fell within the scope of the TBT Agreement needed to be determined. In terms of measures and programmes, Canada could agree to limit the reference to programmes. Given the difference between a technical regulation for mandatory programmes and standards for voluntary programmes, the issue of PPMs only related to the latter. Canada's interpretation of the TBT Agreement was there was nothing new contained in paragraphs 1, 2, and 3 of the draft Decision. Eco-labelling programmes were covered and should be notified under the TBT Agreement, as Canada had done. However, this view was not universally shared and needed to be explicitly reaffirmed. On paragraph 4, it was useful to recognize work in international fora on the development of standards based on LCA. Canada would reflect on Hong Kong and Sierra Leone's drafting suggestions. Canada was not sure what the impact of LCA would be on "like product" and discussion of this could be part of future work. The reference to services was a result of Canada's eco-labelling programme which had a number of service-related criteria.

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

39. The representative of India introduced his delegation's non-paper (dated 23 July 1996), which proposed the Report recommend this Item be included in future CTE work. There was a separate Ministerial Decision on this subject, the Council for Trade in Services had entrusted the work programme contained in the Decision on Trade in Services and the Environment to the CTE, and CTE discussion had been exploratory, with interest expressed for further analysis.

Items 1 & 5 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 the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

40. The representative of Singapore, on behalf of ASEAN, introduced her delegation's proposal (WTO/CTE/W/39) for a multi-year, case-by-case waiver accompanied by non-binding guidelines. ASEAN's proposal was built on a distinction between specific and non-specific trade measures pursuant to MEAs and extended to existing and future MEAs. Specific trade measures in MEAs might be recognized on a case-by-case basis as exceptional circumstances qualifying for a WTO Article IX waiver, subject to the application of non-binding guidelines. These included necessity and the related criteria of least trade restrictiveness, effectiveness, proportionality and degree of scientific evidence. In this context, measures needed to be examined to avoid their abuse for protectionist purposes. It had often been argued that discriminatory trade provisions *vis-à-vis* non-parties were necessary in MEAs to overcome the

problem of "free riders". Although ASEAN was supportive of multilateral efforts to address environmental concerns, it felt discriminatory trade measures should not be used to coerce countries to become signatories to an MEA. Instead, the free rider problem should be resolved through the use of positive measures and trade with non-parties should be permitted if a non-party was in conformity with an MEA's requirements or obligations. The requirements for a waiver would help ensure discriminatory trade provisions *vis-à-vis* non-parties would only be used if absolutely necessary to attain an MEA's objectives. On non-specific trade measures pursuant to MEAs and the use of unilateral trade measures not pursuant to MEAs, ASEAN advocated the maintenance of the *status quo.* Under the current scope of Article XX, it was not possible to take such extra-jurisdictional measures against other WTO Members to protect extra-jurisdictional environmental resources. This should remain the case. WTO Members should formally agree not to resort in future to the use of non-specific measures pursuant to MEAs and the use of unilateral trade measures to protect extra-jurisdictional environmental resources. WTO Members' right to resort to the DSU should be preserved concerning measures for which a waiver had been granted as pursuant to the Understanding in Respect of Waivers of Obligations under GATT 1994. In line with the DSU, ASEAN proposed that in the case of environment-related disputes, panels might resort to the use of independent external experts. The benefits of a multi-year waiver were that it was temporary, which allowed the opportunity to revisit the area and it preserved the WTO's role as a trade regulating body. The majority decision required for an MEA to be granted a waiver would reflect agreement that the environmental issue in question was of multilateral concern, without there being a need for the WTO to arrive at a definition of an MEA. ASEAN's view was that the Ministerial Conference was a point in a continuum and not the end-point. She said that discussion had focused on Item 1 and had inadequately dealt with market access under Item 6, which should be kept in perspective as countries were dependent on trade as a source of economic growth.

41. The representative of Hong Kong introduced his delegation's non-paper (dated 22 July 1996), which identified: (i) the perception by MEA negotiators of WTO obligations;
(ii) the status of MEA-based trade measures in the context of WTO rules; and (iii) the respective competences of WTO and MEA dispute settlement provisions. In responding to these issues, the CTE would have addressed one of its main tasks, namely to ensure the compatibility of trade measures in MEAs and the WTO. Hong Kong proposed: (i) that the WTO provide MEA negotiators with the best advice possible to promote the compatibility of MEA-based trade measures with the WTO, without intervening in MEA negotiations. To this end, Hong Kong proposed the establishment of a WTO Guide for reference by MEA negotiators setting out WTO principles and obligations to be observed when trade measures were being considered in MEAs. This Guide would be supplemented by briefings between MEAs and the WTO through their respective secretariats, which should cover, *inter alia*, trade measures under consideration for incorporation in the MEA and WTO provisions relevant to their use; (ii) that an arrangement be devised whereby a multi-year waiver might be granted to trade measures taken pursuant to an MEA, subject to certain criteria having been met. Hong Kong proposed a set of guidelines be established for granting a multi-year waiver based on the criteria in the headnote to GATT Article XX, and provide for tests of genuine international consensus, least inconsistency with WTO provisions, least trade restrictiveness, effectiveness, and proportionality. For trade measures specifically mandated in an MEA, the necessity test under Article XX might be dispensed with. A multi-year waiver, once granted, would be subject to a summary review procedure in the form of "negative vetting". The review would enable the granting of an annual extension, provided there had been no change in the original circumstances which had justified the waiver. This would afford security to legitimate actions to resolve environmental problems over an extended period of time; (iii) that WTO Members who were MEA Parties might opt, voluntarily and based on mutual consent, to resolve disputes in the MEA's dispute settlement mechanisms. Any WTO Members who wished to resort to the DSU to resolve a dispute related to an MEA-based trade measure must be permitted to do so, irrespective of whether that Member was an MEA Party and whether or what MEA dispute settlement provisions were available.

42. The representative of India introduced his delegation's non-paper (dated 23 July 1996) on Items 1 and 5, which described India's view that experience with the GATT/WTO dispute settlement mechanism in dealing with trade measures for environmental purposes, including those pursuant to

MEAs, had not demonstrated any need to recommend changes to existing provisions of GATT 1994. These provisions were adequate to deal with trade measures in existing MEAs. By analysing trade measures in MEAs in isolation from other measures and not limited to existing MEAs which fulfilled certain criteria, the CTE might encourage dependence on trade measures to achieve environmental objectives, thereby legitimizing the unilateral use of trade measures as sanctions against countries to enforce non-trade issues. Existing DSU provisions appeared adequate to meet any demand to provide environmental expertise in dispute cases involving trade-related environmental measures. Keeping in mind the interest in this issue and the WTO's evolving nature, India suggested it continue to be examined after the Ministerial Conference.

43. The representative of Venezuela asked ASEAN for clarification as to whether the proposed multi-year waiver was for the trade measure in the MEA or the MEA itself. Venezuela was not in favour of waiving the WTO rights of MEA non-parties.

44. The representative of Mexico supported India's proposed recommendations to be contained in the Report that WTO provisions were adequate to deal with trade measures in MEAs; such trade measures should take into account WTO provisions; and the DSU was adequate to deal with any environment-related trade dispute. Future problems might result due to a lack of coordination at the national level, but not as a result of any shortcoming of WTO provisions. One major advantage of the WTO was that its provisions were not tailored to non-trade policy needs. It was this characteristic of the WTO that ensured governments' freedom to adopt environmental policies in accordance with their priorities without infringing on WTO rules.

45. The representative of Nigeria said the proposals on this Item revealed the complexity of the issues and the need to keep discussion on Item 1 open-ended, representative and transparent. He agreed with India that international cooperation based on positive measures to resolve environmental externalities was preferable to discriminatory trade measures. There was a need to distinguish, as had ASEAN and Korea, between specific and non-specific trade measures in MEAs, and to exclude unilateral measures. Hong Kong's proposal for a WTO Guide merited consideration. Based on a set of guidelines, the exclusion of the necessity test represented a compromise which should be considered carefully. A multi-year waiver would offer the opportunity to monitor the problematic relationship between MEAs and the WTO. In supporting India's proposal, he said it was time to think of a structured CTE work programme for the post-Singapore period taking into account current proposals.

46. The representative of Egypt understood it had been agreed that there would be no limit for written proposals. She reiterated Egypt's comments on Item 1 which had been circulated to delegations (dated 18 June 1996). Before assessing any proposals, a necessary starting point was to define what constituted an MEA. Egypt favoured the *status quo* as contained in Article XX, along with the *ex post* waiver approach. ASEAN's multi-year waiver combined with a WTO Guide should be considered in the CTE's post-Singapore work programme.

47. The representative of Switzerland said the objective under this Item was to determine relations between two instruments of international law on a lasting basis without creating any hierarchical relationship between them. The use of a waiver approach, even on a multi-year basis, would commit Members to a timetable. WTO Article IX provided for waivers in exceptional circumstances. As MEAs negotiated with broad-based participation could not be considered to be an exceptional circumstance, Switzerland had reservations on a waiver-based approach. Also, ASEAN's criteria for granting a waiver were a restrictive interpretation of WTO rules. He felt ASEAN's proposal would impose additional constraints and would restrict the use of trade measures in MEAs which were necessary to meet their environmental objectives.

48. The representative of Sierra Leone supported efforts to address transboundary environmental problems based on multilateral consensus and recognized the usefulness of trade restrictions mandated in an MEA with broad participation. However, efforts to accommodate such measures in the WTO could lead to protectionist abuse and restrict trade. Sierra Leone did not support putting trade interests

above environmental protection. As there had never been a formal dispute involving a trade measure in an MEA and the WTO contained exceptions which could be used for environmental protection, she questioned the magnitude of the problem. The issues needed to be reassessed in light of the Appellate Body Report on Reformulated Gasoline. After analysing this Report and considering the current proposals on this Item, Sierra Leone felt the interpretation of Article XX was evolving in a way that could be beneficial to environmental protection. She wondered if this process should be disrupted with new rules and criteria. The goal was to provide for environmental protection without such measures becoming unnecessary trade barriers. The Appellate Body's interpretation of Article XX might already provide for this. The measure must fit one of the exceptions in Article XX(b), (d) or (g). For example, to fulfil the requirements for (g), a measure did not have to be "necessary". This suggested that it was easier than had been thought to justify a measure under Article XX. Once it was found to fit under one of the exceptions, the measure was then judged under the headnote of Article XX. According to the Appellate Body Report, the purpose of the headnote was to "avoid abuse or illegitimate use of the exceptions to substantive rules available in Article XX" and it was not meant to be restrictive, but was designed to ensure exceptions were not abused. This was the kind of effect the CTE hoped to achieve on this issue. This two-tiered approach allowed WTO exceptions for environmental measures if they were not an unjustifiable trade restriction. Future work could analyse the Appellate Body Report, in the light of which an interpretive statement of WTO Members' understanding of Article XX could be agreed. This would contribute to establishing whether a problem existed, and identifying its nature.

49. Sierra Leone felt ASEAN's proposal for a waiver was useful as it advocated a cautious approach to a complex issue. However, a waiver also implied a fundamental conflict between MEAs and the WTO which would undermine the equal status of the legal obligations under both systems. A waiver would include reference to the "exceptional circumstances" relied on to obtain it, which suggested the MEA had been accepted on sufferance. Where trade was the cause of the global environmental problem, trade measures had proven useful in assisting national agencies to come up with first-best policy options to tackle the environmental problem. Where trade was not the cause and would not serve as a catalyst for the use of first-best policy options, trade measures should be avoided. The free-rider problem should be dealt with through technology transfer and technical assistance; trade should not be used to coerce countries into becoming parties to agreements. On ASEAN's reference to the need for certainty and predictability, Sierra Leone felt a distinction should be made between trade-restrictive measures specifically mandated in an MEA, trade-restrictive measures authorized or envisaged in an MEA, and trade-restrictive measures connected with an MEA's implementation, including national measures to implement commitments in framework MEAs. The question was then how to distinguish between trade-restrictive measures in the latter category from unilateral measures taken for protectionist purposes.

50. Sierra Leone was not convinced of the usefulness of non-binding guidelines. In examining criteria which were contained in several proposals, least-trade restrictive and proportionality were elements of "necessary" as it had been interpreted by panels. She agreed effectiveness was not used in WTO rules, nor had it been referred to *per se* by WTO panels. However, effectiveness was also implied by "necessary". The Appellate Body had rightly questioned the "effects test" for measures concerning conservation of natural resources due to the delay in observing their effects. She understood the idea of effectiveness used in several proposals as not questioning the usefulness of a particular measure in achieving its goal, but rather the choice of that measure as the most effective approach available. She suggested the "effectiveness" principle be referred to as the "first-best approach" principle. This principle was already used in the international arena, especially in conjunction with the recognition that environmental problems were best tackled at their source. Viewing these two principles together, the use of policy options like technology transfer and technical assistance for environmental purposes became preferable to trade-restrictive measures. Sierra Leone supported ASEAN's call to shift the focus from Item 1 to Item 6. She agreed with Nigeria on the need for broad-based, transparent discussion and for these issues to be included in future work.

51. The representative of Korea said ASEAN and Hong Kong's proposals were encouraging as they adopted approaches based on the specificity of the trade measure and preserved WTO Members' right to invoke the DSU. He supported the points in paragraph 2 of Hong Kong's

non-paper. He asked who would assess the criteria for the non-binding guidelines and the "negative vetting" and how. He said the "negative-vetting" approach would give more flexibility to the operation of a waiver. He asked for clarification of paragraph 20 of ASEAN's paper.

52. The representative of the European Communities was disappointed by the lack of ambition in the CTE on this Item. He agreed with Switzerland that the objective was not to make the work of MEA negotiators more difficult. If necessary, rules should be drafted to increase positive interaction between MEAs and the WTO and achieve positive results in Singapore. In the examination of the relationship between the WTO and MEAs, much time had been devoted to the role of Article XX(b). Developments in jurisprudence following the Appellate Body Report on Reformulated Gasoline indicated the importance of Article XX(g) in settling questions related to trade and the environment. Trade measures in MEAs could be equally covered by Article XX(b) and (g) and should be handled on a case-by-case basis. Although elements of the Appellate Body Report should be included in the discussion, the Report had not settled the relationship between MEAs and WTO rules. The legal uncertainty at the origin of the discussion remained.

53. The representative of Japan was encouraged by ASEAN and Hong Kong's proposals, which showed they would accept some criteria and contained some common ground with Japan's proposal. WTO disciplines would enhance predictability, legal certainty and avoid conflict. To this end, the sole use of a waiver was not sufficient. To have positive results in Singapore, flexibility should be shown. To facilitate consensus, Japan was willing to support discussion based on differentiated disciplines for MEAs depending on the definition of specific and non-specific trade measures in MEAs.

54. The representative of Colombia supported India's analysis of the issues, especially paragraph 15. Colombia was not convinced of the need to modify WTO rules as existing provisions provided an adequate framework to deal with trade-related measures in MEAs.

55. The representative of Pakistan agreed with Nigeria that discussion on this Item had not been exhausted and should continue after Singapore.

56. The representative of the United States said his delegation's comments on Hong Kong's non-paper were also relevant to ASEAN's paper. The waiver approach was not an appropriate mechanism to clarify the relationship between MEA trade measures and the WTO. A WTO Article IX waiver had been designed to provide temporary derogation from WTO obligations and not to accommodate international agreements. The US had doubts about Hong Kong's proposed WTO Guide given that WTO obligations already were compiled in the Final Act and it was difficult to imagine an abridged version; any attempt to create one would more likely confuse than clarify matters, such as for "like product" for which there was no set definition. Finding the right balance to address the relationship between MEAs and the WTO was a demanding task. The US had devoted time at the national level to this without being able to develop a proposal describing this evolving relationship in a way that dealt with its complexities. A balanced approach must be taken to secure the confidence of both trade and environment policy makers. Close coordination between trade and environment officials both at the national and international levels, including in the CTE, was essential. In this respect, he referred to the meeting of the Biodiversity Convention to develop a BioSafety Protocol, where delegations had taken positions on trade measures which were at odds with their CTE positions. MEA trade provisions had not been challenged and could be avoided by ensuring trade officials were involved in MEA negotiations relating to trade. Common threads describing the relationship between MEA trade measures and the WTO were that there was broad appreciation that trade liberalization and environmental protection should be mutually supportive in favour of sustainable development; MEAs were important to address global environmental problems; the use of trade measures in MEAs would continue to be an effective tool to achieve global environmental objectives; trade measures were not always needed and should be used prudently; WTO rules should provide sufficient flexibility to allow trade measures to be used in MEAs; that when negotiating trade measures in MEAs between Parties, governments should consider how they intended these provisions to relate to WTO rules; that an MEA non-party not be discriminated against if it took equivalent action to that required for Parties; coordination between trade and

environment officials in capitals was important; and avoiding disputes entailed ensuring the involvement of trade officials in MEA negotiations.

57. The representative of Canada recalled his delegation's intervention at the June 1996 meeting, reviewing the proposals and outlining Canada's position. Recent discussion had suggested the need to elaborate Canada's objectives and develop points of convergence. While there were significant differences in approaches in the proposals, there was agreement on where the least and most difficult issues arose. To provide Ministers with recommendations in Singapore, the CTE must agree on common elements in the proposals. Although Canada no longer favoured an Article IX waiver to accommodate MEAs, it was useful to have this option on the table. He understood that another delegation might table a paper proposing that no change from the *status quo* was required. He hoped it would take into account the Appellate Body Report on Reformulated Gasoline with respect to clarifying various paragraphs of, and the headnote to Article XX. While delegates were in the WTO in their capacity as trade officials, they represented their governments' position as a whole. Just as environmental colleagues in MEA negotiations were expected to take into account trade considerations, WTO trade officials needed to take into account environmental considerations to make trade and environment mutually supportive. The focus should be on how to avoid conflicts between MEAs and the WTO, and should not appear to undermine what had been agreed elsewhere multilaterally. The latter approach would lead to unnecessary criticism of the WTO and was not good trade nor good environmental policy.

58. The representative of Nigeria agreed with the US that coordination between trade and environment officials was necessary and not modification to WTO rules.

59. The representative of Peru felt that it was not advisable to modify Article XX. From the proposals which had been submitted, there was a range of alternative options which would permit a consensus to be reached on this matter.

60. The representative of Hong Kong responded to comments on her delegation's non-paper, which should be viewed in light of the CTE's mandate. There should be no confusion between "whether modifications are required" and "what modifications are required" as the latter could not be presumed. Switzerland had commented on the appropriateness of applying the waiver approach to MEA-based trade measures and that two different multilateral systems were involved. The use of a waiver was appropriate as it resolved the inconsistencies between MEAs and the WTO without placing one legal system above the other. The fact that waivers provided for medium or long term WTO exceptions spoke for their validity to resolve environmental problems. Only if a waiver could not resolve the issues would the question of modifying WTO provisions arise; this was not the present case. Switzerland and the EC had noted the "exceptional" circumstances of granting or renewing waivers. If it were the "exceptional" nature of the circumstances that caused objection to their use, then Hong Kong would like to know more about the arguments behind this. Exceptions should not be converted into the norm. She appreciated Nigeria's comment that exclusion of the necessity test would have to be considered carefully for waivers concerning MEA-based trade measures. Hong Kong's proposals were ambitious. She said WTO Members would test the applicability of guidelines for a waiver and that of the negative vetting approach when they decided on a multi-year waiver. She agreed with the US that it was not possible to provide a comprehensive guide to WTO principles. However, Hong Kong's proposal for enhanced communication between the WTO and MEA Bodies would help in this regard.

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

61. The representative of Hong Kong said his delegation's proposal for an environmental database (non-paper dated 28 May 1996) could be developed from information contained in the Central Registry of Notifications (CRN). As noted in WT/CTE/W/34, secondary information could be generated from the CRN on trade-related environmental measures, including the patterns and types of measures and the number of notifications. It was clear that certain information would not be available, such as the volume

of trade involved, or WTO conformity of measures. Concerning the need to avoid duplication in the case of the proposed environmental enquiry points, Hong Kong suggested Members could provide information on trade-related environmental measures through existing or new national enquiry points or relevant authorities.

62. The representative of Japan supported Hong Kong's proposal for the establishment of a database on the understanding any additional notification obligations would not be burdensome.

63. The representative of Peru said Hong Kong's proposals to enhance transparency were positive. However, the proposal for the TPRM to include trade-related environmental measures was not compatible with its objectives in so far as it might create additional obligations for the Member under review.

64. The representative of Nigeria recalled the TPRM was not intended to serve as a basis for the enforcement of specific obligations under the DSU or to impose new policy commitments.

65. The representative of the United States said the SPS and TBT enquiry points had been a considerable investment, but the US had committed the necessary resources as these enquiry points were important to the effective functioning of those Agreements. To give these enquiry points broad, new responsibilities would require a commitment of additional resources. He said the benefit of an environmental enquiry point was not clear and environmental measures did not require a greater amount of scrutiny than any other measures.

Item 6 The effects of environmental measures on market access, especially to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

66. The representative of the United States introduced his delegation's paper (WT/CTE/W/35) which expanded on Argentina and Australia's proposals so that common ground could be reached. While the paper's specific points were pertinent to the agricultural sector, the economic theory that supported them was relevant to almost all segments of any country's economy. The effect of freer trade on environmental quality depended on what happened to the level of economic activity and associated pollution, the intersectoral changes in economic activity, and changes in production methods. The effects also depended on whether appropriate, or optimal, environmental protection was already in place. Well-designed and enforced environmental policies were more likely to ensure trade liberalization would bring economic growth and environmental improvement. In the long term, economic growth and higher incomes engendered by freer trade might lead to a greater social preference for and the resources available to achieve environmental improvements. Removing agricultural distortions that affected the relative price of food products and farm input prices along with the implementation of sound environmental policies would change economic incentives and benefit the environment. The CTE should identify "win-win" situations in other areas as well. He recalled the five propositions highlighted in the paper. The CTE needed to present a positive Report recommending that Ministers endorse the principles contained in paragraph 34 of the US paper so the WTO could further the goal of sustainable development.

67. The representative of Australia introduced his delegation's paper (WT/CTE/W/36), which noted that an underlying theme in the CTE's work was the relationship between trade liberalization, the environment and the promotion of sustainable development. It pointed out that the preamble to the Marrakesh Agreement establishing the WTO clearly stated Members' desire to conduct their relations in the field of trade and economic endeavour in a way which allowed for the optimal use of global resources in accordance with the objective of sustainable development. In paragraph 3, Australia's proposed five key elements which should figure in the Report. Recommendations for a continuing work programme were contained in paragraph 4. The paper also outlined some issues that should be addressed in relation to low-income commodity-dependent countries and agricultural trade reform. The paper was aimed at ensuring that the Ministerial Conference endorsed a positive message about the contribution of a strong multilateral trading system to promoting sustainable development. The WTO could not ignore the

increased community interest in WTO work and expressions of concern that there was a conflict between WTO objectives and the promotion of environmental quality. The trade and environment debate posed both challenges and opportunities for the WTO. The challenges concerned the danger of protectionist interests using environmental justifications to put up trade barriers. Even when there was no protectionist intent, some environmental measures still had the potential to create trade barriers. These challenges pointed to the need for dialogue and cooperation to ensure countries were able to address environmental concerns in ways that did not create unnecessary trade barriers. Developing countries, in particular, had expressed concern that their access to markets and competitiveness might be affected by environmental initiatives, such as eco-labelling schemes. The opportunities concered the greater community interest in WTO work generated by the trade and environment debate. This debate was an opportunity to draw public attention to the WTO's role in promoting sustainable development. The CTE provided a forum for examining the issues and identifying the WTO's role in preventing environmental measures becoming unnecessary trade barriers. Australia requested its paper be derestricted.

68. The representative of the European Communities introduced her delegation's non-paper (dated 19 July 1996). The broad policy approaches adopted on this Item were likely to inform positions on other Items, so it was essential to achieve a balance between the trade, environment and development aspects of the debate. In principle, the trade community should welcome development of newer types of environmental measures, such as voluntary eco-labelling which tended to be less trade-restrictive than traditional measures. As such instruments might lead to indirect trade barriers, the EC recognized the concerns of developing countries in this regard. However, as noted in WT/CTE/W/26, "few generalisations can be made about the likelihood or otherwise of any particular measure creating, diverting or restricting trade in the absence of information about the particular circumstances under which it operates". There was a clear link with Items 2 and 3 and with the question of developing a framework of trade principles which could be applied to environmental measures. Provisions for environmental protection and for taking account of developing country concerns were relevant. Paragraph 7 outlined the considerations that should inform the CTE's case-by-case analysis of newer instruments of environmental policy and WTO provisions.

69. The non-paper outlined the view that trade-induced growth need not be incompatible with sustainable development. An open multilateral trading system made possible more efficient resource use to achieve any given income level. The removal of trade restrictions and distortions was particularly important for all countries, including developing countries and LLDC's to promote their integration into the global economy. The conclusion of the Uruguay Round constituted a major achievement, and it was import for commitments made in the Round to be implemented to ensure the potential benefits were realized. However, environmental benefits were not automatic and required the implementation of sustainable development strategies and effective environmental policies at the national and international levels. It was not the level of production, but the means of production which was important to achieve sustainable agriculture. Market mechanisms would only lead to both economically and ecologically optimal resource allocation with the full internalization of environmental costs. Sustainable agriculture depended on a coherent framework combining environmental, social and economic factors. Structural, regional rural development and land-use policies, including non-distorting measures (such as the Green Box) were needed to achieve the environmental and social assets which were part of the agricultural landscape. Further work should take account of these considerations, including reference to ongoing work in the CSD, UNCTAD, OECD and FAO. Although WT/CTE/W/25 helped identify product areas where escalation was likely to be most distortionary, the links were not automatic. Since trade, *per se*, was rarely the direct cause of environmental improvements or damage, it was the indirect benefits of the removal of trade restrictions and distortions rather than their direct benefits which provided environmental value. The links between tariff structures, export restrictions, commodity-dependency and the environment remained to be fully explored. Paragraph 25 of the non-paper listed areas for further work. Among the range of "win-win" scenarios, the CTE should consider the scope for multilateral approaches to the development of positive incentives to encourage sound environmental production.

70. The representative of Korea introduced his delegation's non-paper (dated 24 July 1996), which reflected Korea's concern that the availability of evidence on the relationship between government policies, trade liberalization and environmental quality was limited. Any assessment of the agriculture sector called for a multi-dimensional approach, taking into account, *inter alia*, issues related to food security before any conclusions were drawn. Korea called for a broadened framework to examine this issue, taking into account *inter alia*, transmission mechanisms related to sustainable agriculture and rural development, food security, and market failures. Korea's conclusions were contained in paragraph 21 of its non-paper.

71. The representative of Sierra Leone supported Australia's call for future CTE work, especially concerning low-income, commodity-dependent countries. All proposals underlined the premise of the relationship between the trade rules and environmental protection, namely the goal of sustainable development. This should be the case with respect to other Items. All proposals identified potential "win-win" situations under this Item. She suggested the Secretariat synthesize the similar suggestions to facilitate the development of a future work programme. The strength of Australia's paper was that it highlighted the need to consider the diversity of appropriate and effective environmental policies across countries. Sierra Leone saw a connection between paragraphs 11, 16 and 17 and supported paragraph 20.

72. The representative of Hong Kong welcomed Australia's proposal that the Report recommend to Ministers that future work should encompass an analysis of the relationship between trade liberalization and the environment for textiles and clothing, an important sector for developing countries. Hong Kong agreed the analysis should cover a broad set of trade restrictions and distortions which had both trade distortive effects and were environmentally-harmful. The Report should reject any perceptions that there was a conflict between trade liberalization and environmental protection and should set out the need for a continuing work programme to examine the environmental benefits of removing trade restrictions and distortions.

73. The representative of Argentina said there were many common points between Japan and Argentina's submissions: for example both recognized trade liberalization might contribute to the implementation of good environmental policy, that nevertheless, trade liberalization did not in itself guarantee the implementation of these policies, that it was necessary to continue the analysis beyond Singapore, and that work in other international organisations, such as UNCTAD and the OECD, be taken into account. In dealing with agricultural trade, reference had been made to quantifying the value of the externalities brought about by distortions and restrictions. However, in order to quantify the value of an environmental externality, it had to have been previously identified. Indeed, the proposals of Argentina, Australia, India, the US and Norway highlighted the need to begin by identifying those situations in which there was potential for "win-win" reforms. The first stage was to identify those sectors in which removing distortions would permit the elimination of negative externalities. As had been set out in many proposals, the agricultural sector must be mentioned in the Report. He agreed with Japan that the focus should not be exclusively on the agricultural sector and should include other sectors identified as able to generate "win-win" results. The market could not quantify environmental externalities in the production process. The removal or correction of government policies which exacerbated negative externalities would allow the identification and quantification of market failures and permit environmental cost internalization. He referred to the OECD work in this area. On India's proposal, he agreed improved market access for developing country exports might generate the necessary resources to enable them to implement environmental policies and set aside resources to finance environmental projects. He referred to the OECD Development Assistance Committee's work in this regard. As in the case of the elimination of agricultural trade distortions, the issue was that of indispensable prerequisites which would permit the implementation of adequate environmental policies. In this respect, market access for developing country exports or the elimination of distortions to trade in certain commodities were not sufficient, but were a necessary condition for the implementation of appropriate environmental policies.

74. The representative of Bangladesh said there should be discussion of the financing of environmental policies and the internalization of environmental externalities, which would not be automatic. It was also necessary to examine the impact of these policies, such as eco-labelling, on the development prospects of developing countries. Their capacity to combat poverty, adjust to trade liberalization and introduce environmental measures should be examined so that a balance could be achieved between environmental and other development priorities. Discussion incorrectly indicated that the environment was the only problem faced by developing countries.

75. The representative of Japan said there were many common points between the proposals of Japan and Korea. He agreed with the EC that the Committee on Agriculture was responsibility for overseeing the Agricultural Agreement. In general terms, trade liberalization could have positive environmental effects, but there were various, interrelated factors which should be taken into account, including natural and socio-economic conditions and environmental policies in each country. The US had noted the positive environmental effects of agricultural liberalization, but consideration also should be given to other factors. Empirical analysis was needed on the basis of each country's differentiated natural conditions, which could be carried out in collaboration with the OECD and UNCTAD. He would comment further on Australia's paper.

76. The representative of the United States said that although India's non-paper focused on the perspective of developing countries the issues it raised concerning market access were relevant to all countries. On the promotion of additional market access, the US agreed such improvements could play an important role in fostering environmental benefits by creating wealth which could be used to pursue environmental goals or enhance efficient resource use. At the same time, such environmental benefits were not automatic and complementary environmental benefits were essential to ensure these benefits were realized. While much had been accomplished by the WTO in improving market access, trade liberalization must be sought across the board. On safeguarding existing market access, the US understood India's concern about the potential impact of environmental policies and that green protectionism must be guarded against. He asked India to elaborate the meaning of unwarranted trade effects of environmental policies. There was no reason to assume that provisions related to the environment were an area that needed to be singled out for attention. Referring to India's generalizations on the negative effect of eco-labelling, he said that, although poorly conceived and implemented eco-labelling could have negative effects, many types of eco-labelling programmes did not raise such problems.

77. It was decided to derestrict Australia's submission contained in WT/CTE/W/36.

Item 7 The issue of exports of domestically prohibited goods

78. The representative of Switzerland said there already existed in the context of various international conventions an obligation to notify domestically prohibited goods (DPGs), such as the PIC procedure in the London Guidelines. It was in the context of such conventions that ways should be initially considered to improve information exchange on DPG trade. He agreed with Nigeria that the WTO's contribution in this area should be limited to DPGs which were not subject to existing notification obligations and should not duplicate work in other contexts. WTO action would be of a subsidiary nature. He said that without a sufficiently precise definition of products covered in Nigeria's draft Decision on DPGs (WT/CTE/W/32), it would not be possible to increase transparency without ending up with redundancies and repetition of other fora's work. The definition of banned products should not give rise to any difficulties, but that of severely restricted products could give rise to several problems. As competence to define severely restricted products could not be left to each country, Switzerland proposed that those products be defined by referring to international agreements where they received specific treatment. The treatment of hazardous wastes gave rise to specific problems which were dealt with in detail in the Basel Convention. This should be considered before deciding to include these wastes in a DPG definition. The question of technical assistance in Article 2 was being discussed in the Committee on Trade and Development in consideration of guidelines on WTO action in this area. The CTE was not the appropriate place to discuss this issue. Other organisations had the expertise and their contribution in this area would be better than that of the WTO.

79. WTO notification obligations for DPGs must remain subsidiary; only products which did not have to be notified under another international instrument should be notified. The WTO should limit its role to information exchange on regulatory action, which could be accomplished by using information in the TBT or SPS Agreements and including these notifications under an appropriate heading. Only banned products on the domestic market should be subject to WTO notification. Extending notification obligations to severely restricted products risked an onslaught of notifications which would endanger the transparency objective of the exercise. Strengthening cooperation between the WTO and the relevant international bodies should contribute to limiting this risk. Importing countries should be encouraged to participate and adhere to international instrument, which WTO efforts would complement. As Nigeria had stated, participation in related international instruments varied. In order to provide information related to severely restricted products to countries which were not parties to specific international instruments, TPR reviews could include a chapter describing applicable bans or severe restrictions on hazardous goods. During the review, interested parties could request any other relevant information on banned or severely restricted products. Article 3.1 of Nigeria's proposal suggested that whenever a banned product was exported a Member should notify each shipment. This was out of proportion and implied disproportionate expenses for producers in view of the objective of transparency. As some of the international instruments contained in the draft Decision's Annex II did not contain any notification obligations, it would be useful to distinguish between those that had a direct impact and those that had a secondary impact.

80. The representative of Japan asked Nigeria to clarify the product coverage of the draft Decision and to provide examples of actual problems concerning DPG imports. He asked if used cars were considered a DPG. Although the import of used cars was often prohibited if they did not meet environmental standards or failed to obtain certification, they could be exported to some countries. After product coverage had been clarified, it could be decided whether a Decision was necessary. He asked whether DPG exporting countries had to notify measures concerning a DPG for the first shipment or for each subsequent shipment.

81. The representative of Nigeria said his delegation's draft Decision contained a definition of a DPG. Countries designated products as DPGs pursuant to their domestic definition and notified them or this basis if there were no obligation to notify in a related international instrument. WT/CTE/W/14 addressed the issue of duplication, which had been avoided in Nigeria's proposal. Given the lack of technical expertise and capacity in some developing countries to determine whether goods were DPGs in the exporting country, technical assistance was an integral part of the draft Decision. Other elements had been considered, such as liability and compensation, but based on consultations with Members, Nigeria had decided to focus on notification given the premise of the problem was lack of information and expertise. Increased transparency through notification would enable importing countries to reach informed decisions on whether to permit DPG imports. There were differing views on the administrative costs, number of notifications and statistical difficulties involved in Nigeria's proposal. He noted that the EC was able to deal with this issue at a minimum cost. In redrafting, there was scope to account for the comments on Article 3.1 to clarify that notifications should be made for first time shipments and only if necessary thereafter. In terms of notifications, the TBT and SPS Agreements were inapplicable to DPG-related problems as these Agreements dealt with specifications and standards for imports and not exports. He felt the request for an illustrative list would not serve any useful purpose and the dynamism of technology made it impossible to produce one. The draft Decision stated that if a product were defined as a DPG and had not been notified under the provisions of any other related instrument, then it should be notified to the WTO. He referred to the fact that even though no dispute had arisen on the question of trade measures in MEAs, there was a willingness to seek a results-oriented solution to further certainty and predictability in this area of concern. He compared this to the situation of DPGs for which concrete problems existed and recalled the precautionary principle in this respect.

82. The representative of Canada said concern over duplication had been reduced on the understating that if a notification had been made under the TBT or SPS Agreement on a domestic ban or use of a product this would be similar to notifying a DPG.

83. The representative of the United States said his delegation had supported efforts in various relevant international fora to address DPG-related issues. The US had doubts as to the role the WTO could play in this area. The US had not asked for an illustrative list as part of a DPG Decision, but a description example of problems which were not being addressed in other international fora. It was difficult to assess a solution without an adequate understanding of the details of the problem. To work, the notification of the first shipment system required that products were controlled. As this type of control would need to be established in many countries, without a description of the problem, this would be a difficult task. The US supported Hong Kong's proposal on Item 4 for the Secretariat to compile trade-related environmental measures which could also address some of Nigeria's concerns.

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

84. The representative of India introduced his delegation's non-paper (dated 23 July 1996) on the TRIPS Agreement and the Framework Convention on Biological Diversity (CBD), which contained several IPR-related obligations. The TRIPS Agreement recognized IPRs to be private rights and incorporated specific obligations on the issue of patenting life forms to the extent that it obliged Members to provide product patents for micro-organisms and non-biological and microbiological processes. The CBD reaffirmed that countries had sovereign rights over their biological resources and recognized the desirability of sharing equitably the benefits arising from their use. India suggested the CTE discuss the relationship between the CBD and the TRIPS Agreement. India's suggestions for the reconciliation of the TRIPS Agreement with the CBD were contained in Section IV of the non-paper. The non-paper raised some points for further discussion and did not preclude India from modifying these or raising other points in future.

85. The representative of Korea introduced his delegation's non-paper (dated 24 July 1996) examining the possibilities for the transfer of environmentally-sound technology (EST) as an instrument to achieve MEA objectives. Korea's non-paper noted that strong IPR protection promoted technological development. Such protection was critical since technology, if it were to be transferred, must exist. However, in the context of MEAs, the IPR issue invited attention. If the use of existing technology were controlled, those with the rights for alternative technology were able to exercise stronger monopoly power. If the alternative technology under an MEA was monopolized or oligopolized, there seemed to be a potential that MEA goals and IPR protection could be rendered mutually exclusive. Korea's paper highlighted two cases concerning the Montreal Protocol which dealt with methyl bromide and HFC production. Although such issues indicated possible gaps surrounding an MEA and the TRIPS Agreement, the cases cited in the non-paper were not sufficient to lead to any general conclusions. Korea felt the CTE should remain cautious in rendering a conclusion on this issue and examination should continue.

86. The representative of the United States said the common thread through India's proposals seemed to be ambivalence about the TRIPS Agreement. He hoped that this was not an attempt to return to the negotiating table for issues settled during the Uruguay Round. The US position was there were no contradictions between the TRIPS Agreement and the CBD. He asked how India dealt with the issue of indigenous rights domestically. He asked for clarification of India's position on Item 1 as compared to Item 8. India's position on Item 1 seemed to be that there was no need for the WTO to accommodate MEAs and that WTO rules were as flexible as they should be with respect to MEAs. However, on Item 8, India felt there was room for WTO amendment to help the implementation of the CBD. He asked if India would agree to look at other MEAs to see if changes to WTO Agreements were necessary to accommodate them.

87. The US did not feel India's non-paper (dated 20 June 1996) made a case that work in this area was needed. Instead the non-paper pointed to the conclusion that there was no evidence of conflict between the TRIPS Agreement and MEAs or in the transboundary transfer of proprietary environmentally-sound technologies and products based on such technologies (EST&Ps). India's non-paper was based on a presumption that problems existed or would arise for the global use and availability

of proprietary EST&Ps, which were attributable to IP standards in the TRIPS Agreement. US experience indicated that there had not been a problem with EST&P dissemination among those countries that had established TRIPS-consistent IP systems. Instead, problems tended to occur as a result of impediments to foreign investment and trade in such products. Any problems should be identified at their source, to the extent they were within the CTE's mandate, rather than presuming their source lay in the TRIPS Agreement. IP protection was only one of many factors that influenced EST&P transfer. Environmental regulations, the foreign investment climate and market conditions had a more direct effect. India's non-paper did not reflect factors other than TRIPS standards in its analysis of a hypothetical problem of lack of access to proprietary EST&Ps. India suggested nothing in the TRIPS Agreement precluded a Member from revoking a patent. Several Articles in the TRIPS Agreement clarified that a Member could not summarily revoked patents covering EST&Ps and remain consistent with the TRIPS Agreement. The US could not agree to India's interpretation of Article 16.2 of the CBD that suggested Article 16.2 imposed a generalized obligation on all developed countries to transfer all ESTs on "fair and most favourable" terms to developing countries, regardless of whether they were proprietary. India's non-paper ignored the second sentence of Article 16.2, which clarified that any effort of a country to facilitate the transfer of proprietary technology must comply with the TRIPS Agreement's obligations through its reference to the necessity for such transfers to be on terms consistent with adequate and effective IPR protection. There was no obligation in the CBD that developed countries provide developing countries with proprietary technologies owned by the private sector on "preferential and non-commercial terms".

88. WT/CTE/W/22 noted that certain technologies were more susceptible to misappropriation through copying by their parties without the authority of the right holder. Concerning paragraph 19 of India's non-paper, the US disagreed with the suggestion that misappropriation of privately-owned proprietary technology should be a goal promoted by the WTO. Paragraph 20 cast compulsory licensing provisions as tools to facilitate technology transfer. The purpose of compulsory licensing provisions, as is evident in Article 31 of the TRIPS Agreement, was to provide governments with specific, limited remedies for addressing an abuse of patent rights. The US disagreed that it was more appropriate for Members seeking to misappropriate patented technology and trade secrets to go first to the government instead of contacting the proprietary technology owner. India also suggested the TRIPS Agreement should be modified to permit Members to reduce the protection term for patent owners to less than the 20 years from the filing term required by Article 33, which it characterized as a "win-win" situation. This was a "lose-lose" situation, as it served neither the interests of the patent owner, nor the public. The US did not feel India's non-paper demonstrated a need to amend the TRIPS Agreement. The US would submit written comments on India's non-paper.

89. The representative of the European Communities drew attention to the non-paper the EC had circulated at the TRIPS Council held on 22-26 July 1996 which stated that the TRIPS Agreement should not be weakened by anything which might transpire in the CTE.

90. The representative of Canada said, without prejudice to the development of new forms of IPRs favouring traditional knowledge of indigenous peoples, Canada supported the US comments on India's non-papers on the TRIPS Agreement. Canada's position was that there was no inconsistency between the CBD and the TRIPS Agreement, taking "inconsistency" to mean a situation in which, with respect to the same parties and the same subject matter, two treaties contained conflicting provisions which could not be complied with simultaneously. The Dunkel draft of the TRIPS Agreement had already been available when Canada had considered signing the CBD, to which Canada adhered after ensuring that there was no conflict between them. Given that the contributions from India and Korea raised some questions about the relationship between IPRs and technology transfer, he said that technology transfer had been extensively discussed during the Uruguay Round. At that time, it was recognized that most domestic regimes maintained laws with respect to anti-competitive practices and that there was a significant polarity between the exclusive rights conferred by IP statutes and the remedies available to discipline "abuse of IPRs". Canada felt the latter issue was a systemic phenomenon with no special sectoral connection to the question of access to ESTs or CTE work. Moreover, the CTE's attention should be directed to Articles 8.2, 31(k) and 40, which addressed "abuse of IPRs" as an anti-competitive practice.

In this connection, it was also relevant to note that possible international disciplines with respect to competition law ranked as one of the "new" trade issues attracting attention within the WTO and other fora.

91. The representative of Singapore, on behalf of ASEAN, said he would comment further on the proposals on this Item. Recalling its statement on this Item at the CTE meeting held in June 1995, he said ASEAN would like to be included in any informal consultations on this Item.

92. The representative of Japan supported the thrust of Korea's non-paper. Given the priority of implementing the TRIPS Agreement, it was premature to discuss its modification. Any IPR-related problems faced by developing countries should be solved through technical assistance.

93. The representative of Switzerland said that IPR protection contributed to the development of new technologies which were more environmentally-friendly than older technologies and favoured EST transfer. He supported paragraphs 19-22 of WT/CTE/W/22 describing the reasons why IP protection had a favourable impact on companies carrying out technology transfer. He agreed with the US that IP protection was only one of the factors that influenced technology transfer. Of far more relevance were factors such as political stability of the recipient country, infrastructure, access to financial resources and the level of professional training. Switzerland would need to study the relationship between the TRIPS Agreement and the CBD in depth before commenting further. As the US had noted, it was difficult to reconcile India's position on Item 1 with its proposal on Item 8 to amendment the TRIPS Agreement.

94. The representative of India asked that comments on his delegation's non-paper be submitted in writing. He reiterated India's position on Item 1 was that the provisions of GATT 1994 were adequate to deal with MEAs; India had not addressed WTO provisions. ASEAN's paper on Item 1 gave a wider perspective concerning WTO provisions.

95. The representative of Brazil drew attention to the statement of Brazil's Minister of External Relations, H.E. Ambassador Lampreia, on the state of CTE discussion which had been presented at the Lausanne Informal Ministerial Meeting on 1-2 July 1996. Brazil had circulated this statement (dated 22 July 1996) for Members' information.

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

96. The Chairman drew attention to three decisions adopted by the General Council at its meeting on 18 July 1996 concerning: (i) procedures for the circulation and derestriction of WTO documents contained in WT/L/160/Rev.1; (ii) guidelines on observer status for international intergovernmental organizations contained as an annex to the WTO rules of procedure in WT/L/161; and (iii) guidelines for arrangements on relations with non-governmental organizations pursuant to Article V:2 of the WTO Agreement contained in WT/L/162. He noted the latter two decisions were related to the CTE's discussion on Item 10. If it were agreed by the CTE, he said reference would be made to these decisions in the Report.

97. The representatives of India, Mexico and Nigeria said these decisions should be placed before the CTE in order to take a decision on how best to reflect them in the Report.

98. The representative of Australia said discussion in the CTE on these decisions would only serve to duplicate work in the General Council. Australia would not agree to anything different in any other Committee than that which had been already adopted by his Government in the General Council.

99. The representative of the United States recalled that CTE Members had agreed to suspend discussion of Item 10 pending results in the General Council. If delegations were willing to re-examine Item 10 to see if there were more that could be done, the US was willing to present its ideas, particularly with respect to arrangements with non-governmental organisations.

100. Following a proposal made by the Chairman, it was decided to discuss this matter at the September meeting.

Report on the results of the informal consultations

101. The Chairman reported on his informal consultations as had been agreed in the May stocktaking. He said that a number of consultations had been convened with delegations on several Items in order to help advance work. On Items 1 and 5, he had held an informal consultation with those delegations which had submitted written proposals, as well as Canada because of the effort this delegation had made in summarizing the common points of the different proposals in a single chart. The possibility was explored of consolidating the proposals, with a view to simplifying an analysis of their similarities and differences. It was decided instead to focus on preparing a list of the issues which had been covered in the proposals. This list would facilitate discussion and advance the CTE's work as a first step and taking into account that there were positions adopted by other delegations which were not reflected or fully reflected by the written proposals. The list had been prepared and distributed at an informal consultation held on 22 July 1996. Copies were available from the Secretariat. Considering the proposals which had recently been submitted, he intended to continue informal consultations on this Item.

102. Under Item 3(b), he had encouraged Canada and the United States, which had submitted written proposals related to eco-labelling programmes, to examine the possibility of consolidating their proposals. This had not proven to be possible. Canada had then submitted a draft Decision on eco-labelling programmes and the EC had submitted a proposal. These recent submissions would have to be considered in further consultations on this issue. On Item 4, the Chairman had been in contact with the ITC and UNCTAD to gather information on their existing databases on trade-related environmental measures. He had also consulted with Hong Kong which had submitted a proposal on this Item. On Item 6, he had decided to organize informal consultations once all the written proposals intended for this meeting had been received. In order to better understand the issues involved related to Item 7, he had convened an informal consultation with Nigeria, Egypt and the United States to discuss the matter in depth. This discussion had furthered an understanding of each of these delegations' positions. It was his intention to continue the dialogue in this area with a view to advancing work. On Items 8 and 9, he had met with various delegations to take stock of their opinions.

103. On 22 July, the Chairman had convened an informal meeting of 22 delegations at which suggestions had been made concerning how work should proceed in preparation of the Report. These suggestions had ranged from proposals to focus the discussion on a few issues in small groups to proposals for discussion to cover all issues in meetings open to all delegations wishing to participate. These differing suggestions reflected the complex nature of the issues, the differing positions with respect to certain elements of the CTE agenda, and differing views on whether to progress concurrently on all Items or on specific issues for which results could be achieved at the Singapore Ministerial Conference. As a result, it had been difficult to forge a consensus as to how to proceed. He reiterated that, as agreed at the May stocktaking, the Secretariat would circulate a draft of the introduction and Sections I and II of the Report on 31 July 1996, with the understanding that the final Report as a whole, including Section III, would be taken up once substantive work had been concluded. In view of the diverging views as to how to progress, the Chairman intended to analyse the situation with respect to each Item of the work programme and consult with delegations individually before convening another informal consultation in which any interested delegation could participate.

104. The representatives of the European Communities and Japan supported the Chairman and felt it was important to further a common understanding of the issues based on discussion to date in order to ensure concrete results were achieved at the Ministerial Conference.

105. The representative of Brazil expressed his delegation's willingness to contribute to the consultative process which would permit a consensus to adopt the Report at the October meeting. Brazil suggested that informal consultations be intensified as the October meeting approached. The representative of the European Communities said that the initial focus of these consultations should be on some of the issues

which had been the subject of lengthy discussions, although not to the exclusion of other issues. The representatives of Egypt and Nigeria agreed that informal consultations should be intensified, but that they should be balanced to deal with all Items of the work programme and that nothing should be agreed until everything was agreed. The representative of India said that the CTE's mandate was to adopt an integrated Report to forward to Ministers for their consideration.

106. The representative of Nigeria said discussion to date had clarified some issues, but others remained unclear or controversial. He said solutions or decisions proposed for adoption must not be presented as a *fait accompli*, but should be based on a representative process of consensus-building. Nigeria felt the CTE could achieve results at the Ministerial Conference, and would support efforts to this end which were balanced and reflected consensus. Results were needed not because there was external political pressure to have them, but because discussion indicated they were justified to clarify current WTO rules or to propose new rules if necessary.

107. The representative of Singapore, on behalf of ASEAN, said that in the haste to have results the CTE should not infringe on Members' rights and obligations undertaken with respect to WTO Agreements. The CTE could continue its work after the Ministerial Conference.

108. The representative of Mexico asked for clarification as to when and which delegations would be involved in further informal consultations. The fact that a delegation had not presented a written proposal on any given Item did not mean that it did not have a national position on this Item and that it should not be included in the process of informal consultations.

109. The representatives of Cuba, Egypt, Pakistan and Peru supported transparent and open-ended informal consultations. The representative of Australia said that experience indicated that most decisions in the context of the GATT/WTO had been facilitated, at least initially, in smaller groups.

110. The Chairman recalled an informal meeting would take place at the conclusion of this meeting at which Members would have an opportunity to continue the analysis of all Items of the work programme in order to further progress in preparing the Report. In response to comments by some delegations, he said the process of informal consultations would continue to be transparent and would take into account the views of any interested delegations, including those which felt that their views had not been fully reflected in the written proposals. He said that he would consult initially with delegations individually in the near future. He would then broaden the process of informal consultations in order to promote consensus and make as much progress as possible before the September meeting.