RESTRICTED

WT/CTE/M/6

17 January 1996

(96-0156)

WORLD TRADE ORGANIZATION

Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 14 DECEMBER 1995

Note by the Secretariat

1. The Committee on Trade and Environment met on 14 December 1995 under the chairmanship of Ambassador Juan Carlos Sánchez Arnau of Argentina. The agenda contained in WTO/AIR/212 was adopted.

2. The Chairman announced informal consultations were continuing on the Committee's draft rules of procedure (WT/CTE/W/13).

3. It was agreed to invite the International Organization for Standardization (ISO) to participate on an *ad hoc* basis as an observer at formal and informal meetings of the Committee where issues related to Item 3 would be discussed and the Committee might benefit from input by the ISO, in view of the ISO's directly relevant work related to Item 3. In order to provide a better basis to consider the requests for observer status from the World Customs Organization and the United Nations Industrial Development Organization, the Secretariat was asked to obtain more information from these organizations on their interest in the Committee's work.

Schedule of work

4. The schedule of future Committee meetings was revised.

5. The next meeting (26-29 February) will be conducted as follows: Items 1 and 5 will be taken up in plenary on 26 February. An informal joint meeting with the TBT Committee will be held on 27 February. The Chairman welcomed Canada's offer to make a presentation on its eco-labelling scheme at that meeting, and invited other Members to follow Canada's lead in that regard. On 28 February, the Committee will take up Items 3 and 9. An informal meeting on Items 1, 3, 5 and 9 will be held on 29 February.

6. The following meeting will be held from 25-27 March to address Items 6 and 8.

7. The Chairman will hold informal consultations from 20-24 May on Items 2 and 4 and to evaluate the Committee's progress, and begin the process of preparing a work programme through to Singapore. This will be followed by a formal meeting from 28-30 May.

8. In response to the United States' request for clarification as to whether proposals on other Items could be raised during the informal meeting on 29 February, the Chairman said that flexibility should be used. In response to Egypt's question as to when an informal meeting on Item 7 would be held, the Chairman said, as had been agreed at the last meeting, any such informal meeting would be held back-to-

back with the formal meeting at which that Item was being addressed. Any requests to deal with an Item in the informal meeting would be taken up with flexibility.

9. The delegations of Australia and the European Communities agreed on the need for flexibility in informal meetings and considered that it was up to delegations to raise those issues which they considered appropriate. The delegation of Egypt, speaking on behalf of the African Group, reserved the right to take up Item 7 in an informal meeting in 1996.

Item 4

The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

10. The representative of Hong Kong supported the establishment of environmental enquiry points to supplement current WTO notification mechanisms and those in MEAs, but felt that their scope should be defined. Further action other than enquiry points was needed to address whether and where gaps in transparency existed. Given the relevance of transparency to other Items, an information base should be set up to deal with all measures taken for environmental purposes which were not currently covered by WTO notification mechanisms. The list of potential gaps in transparency provisions drawn up in the Group on Environmental Measures and International Trade (EMIT) was a useful reference (WT/CTE/W/5), but some gaps on that list had been filled by WTO notification provisions (e.g. measures relating to subsidies) and others could be made more specific (e.g. GATT Article III measures). A distinction should be made between coverage gaps and compliance gaps; the latter were a matter of enforcement, which was a general WTO issue rather than one for the Committee's attention. An information base could apply to gaps in the coverage of environment-related trade measures, which would be identified when Item 4 was discussed in May 1996. Parallel or earlier action was warranted under Items 1, 3 and 6, where gaps existed.

11. Hong Kong was flexible on the organization of an information base and did not intend to make a specific proposal at this time. It could be built on notifications and take the form of an open-ended inventory system which would be developed gradually. There should be flexible guidelines on the information to be provided, which could include: nature/type/title of measure; purpose of measure; product coverage; relevant WTO or MEA provisions; a description of how the measure operated; and comments on trade effects. Enquiry points worked on a largely bilateral, request-response basis, whereas an information base provided multilateral transparency.

12. The representative of Chile said transparency avoided trade distortions and instilled confidence in the trading system. Analysis should aim at identifying gaps in coverage of WTO provisions, specifically packaging, labelling, recycling and waste handling measures.

13. The representative of Switzerland said issues connected with the establishment of environmental enquiry points were the role of a new enquiry point and the development of administrative measures. Potential gaps in transparency existed for eco-labelling, packaging and waste handling measures, intra-federal and private sector measures, taxes, subsidies and re-use. Transparency was a horizontal issue which was linked to the issue of technical barriers to trade. Switzerland supported Canada's proposal that the TBT Agreement's Code of Good Practice should apply to voluntary eco-labelling programmes. Given that there were nearly 200 different WTO notification formats, he asked how new obligations would add to transparency. The more numerous the notifications, the greater the risks of escaping such obligations. Although the role of enquiry points was closely defined in the TBT and SPS Agreements, many uncertainties remained in their operation. The enquiry points in the TBT and SPS Agreements should be examined in view of Canada's proposal and to avoid duplication.

14. The representative of the United States said that given current WTO notification requirements, particularly GATT Article X, it was difficult to imagine that gaps existed, especially for trade measures under Item 1. As had been realized after these requirements had entered into force, transparency was not without cost. He asked whether measures should be singled out for added transparency based on the policy purpose, rather than the nature of the measure; the cost of establishing them; and whether they would duplicate enquiry points under the TBT and SPS Agreements. WTO transparency provisions were based on the type of measure and not the policy purpose, which arose in the case of exceptions. Given that the trade implications of an environmental tax were not greater than those of a tax to raise revenue, the United States felt it was not appropriate to single out environmental measures for special transparency. He said a significant commitment of resources had been required to create enquiry points under the TBT and SPS Agreements. Whereas the TBT and SPS Agreements set out precise functions for enquiry points based on substantive obligations and the measures they covered were clearly defined, this was not the case for the concept of environmental measures. The United States did not feel the Committee should attempt to define the latter and Members who were interested in creating new enquiry points should explain their purpose. It should not become a mechanism to perform research projects on how other Members dealt with environmental issues as this would be a burden.

15. The representative of Norway said WTO transparency ensured discipline of the rules mainly through notification procedures; environment-related transparency requirements should not be more onerous than those in other areas of policymaking that affected trade. Discussions so far had centred on whether the trade and environment linkages were adequately covered by WTO rules and whether additions or modifications to these rules were necessary. As a transparency exercise was connected to compliance with rules that were already in place, he inquired as to whether it should be tied to establishing substantive WTO disciplines, or in its own right to provide information upon which to base an evaluation of whether rules or their modification were needed. Transparency discussions in May 1996 should focus on whether and where gaps existed and make a case-by-case analysis of each type of measure. Based on the Committee and the TBT Committee's analysis of eco-labelling, packaging and waste-handling measures, the focus should be on those areas where gaps existed. Since environmental measures were partly covered by enquiry points in the TBT and SPS Agreements, they could be supplemented by a code of conduct for private, voluntary eco-labelling programmes, similar to the TBT Agreement's Code of Good Practice. Norway felt Article XX measures should be notified. He noted environmental enquiry points would address the purpose of the measure and not the nature of the measure. He supported Switzerland's comment that the role of enquiry points would need to be clarified, starting with a review of the list of gaps in WT/CTE/W/5. Transparency obligations should be linked to specific areas, such as eco-labelling, since current WTO obligations were satisfactory, i.e. GATT Article X and the 1979 Understanding on Notification, Consultation, Dispute Settlement and Surveillance.

16. The representative of Japan said the WTO contained comprehensive notification mechanisms in the TBT and SPS Agreements; any environment-related trade-restrictive measures that were not yet covered needed to be identified. The use of environmental measures, such as eco-labelling, packaging or recycling requirements, should be based on fair, reasonable and scientifically-based criteria. Japan was concerned that the WTO did not have the competence to cover voluntary schemes. Although it was difficult to unify eco-labelling standards, which reflected the views of government bodies and private entities on trade and environment, the Committee should pursue their harmonization as much as possible, while ensuring that eco-labelling and other environmental measures did not go against national treatment and MFN, nor served to disguise protectionism. The establishment of environmental enquiry points within a government or a government-designated body, based on the unified format of the TBT and SPS Agreements, could provide importing countries with information on eco-labelling programmes, including private, or non-governmental voluntary programmes. In this regard, Japan encouraged the on-going cooperation and information exchange among eco-labelling executing bodies.

17. The representative of the European Communities referred to his delegation's proposal in April 1995 for a case-by-case approach which would review environmental measures covered under Items 1 and 3. This would require a significant amount of work and might not yield concrete results by

December 1996. In order to improve the efficiency of work with other WTO Bodies, the results of the Working Party on Notification Procedures should be incorporated and the results of the Committee's discussions on this issue should be transmitted to it. Under Item 1, the issue was whether MEA-related trade measures should be notified to the WTO, which might duplicate notification mechanisms in MEAs. However, notifications covered under MEAs did not always reach non-parties. The Committee should clarify whether such measures were already subject to WTO transparency provisions. Any related trade measure which was not subject to WTO transparency provisions should be subject to at least *ex post* publication and notification under GATT Article X and the 1979 Understanding. In view of the broad formulation of these two mechanisms, all measures covered by trade agreements, including import bans and quantitative restrictions, should be covered. By clarifying the transparency provisions in multilateral agreements, the Working Party on Notification Procedures' work should enable the Committee to better assess the implementation of multilateral transparency provisions and whether environmental measures were sufficiently covered.

18. He recalled his delegation's statement at the October 1995 meeting, which considered that eco-labelling programmes were only partially covered by the TBT Agreement, inasmuch as the criteria which applied to production and processing methods (PPMs) did not affect the characteristics of the product and, therefore, were not covered by it. Since this was not sufficient to permit a satisfactory solution, two options had been suggested: (i) full coverage of the TBT Agreement for eco-labelling; or (ii) the establishment of a specific instrument for eco-labelling, such as the TBT Agreement's Code of Good Practice. The results of the joint informal meeting with the TBT Committee should be considered before continuing discussions. The transparency of environmental taxes and charges was a substantive issue and dealing with them differently from other types of taxes was not justified. Also, some taxes often were related to several objectives at the same time. Regarding packaging, deposit refund and waste handling measures, there had not yet been an indepth analysis of these schemes to assess their trade impact and whether they were covered by the TBT Agreement or other WTO provisions. The Secretariat could carry out such a study for, *inter alia*, deposit refund and recycling measures. An alternative to environmental enquiry points would be to extend the competence of enquiry points under the TBT and SPS Agreements. Given the horizontal nature of environmental measures, and the vagueness of the definition of the term *environment*, the risk of juxtaposing the competence of enquiry points and the confusion on the part of users should be considered. If the coverage of existing enquiry points was extended, this should not result in extending the area of application to other provisions of the TBT and SPS Agreements.

19. The representative of Malaysia, on behalf of ASEAN, said the Committee should address the list of potential gaps in transparency (WT/CTE/W/5) in order to progress. In this regard, ASEAN welcomed Hong Kong's suggestions as transparency furthered an understanding of the issue and permitted an assessment of compliance. Concerning the United States' comment on the costs involved, existing resources should be utilized as it would be difficult to put into place mechanisms which would entail administrative burdens or additional financial expenditures. A transparency mechanism was necessary and environmental enquiry points, with clearly specified guidelines, would further transparency and supplement exiting WTO notification mechanisms.

20. The representative of India said Hong Kong's suggestion should be discussed in detail, as it sought further transparency for environment-related trade measures and trade-related environmental measures that had significant trade effects. Given that the list of potential gaps in transparency provisions (WT/CTE/W/5) did not take into account the conclusion of the Uruguay Round and progress in the TBT Committee, it was time to build on this work and, with the Secretariat's help, take stock of how gaps had been addressed. Transparency was related to Items 1 and 3(b). India felt if progress was made on the establishment and functioning of environmental enquiry points, developing country exporters could better address transparency requirements for trade measures included in MEAs and environmental product requirements, including standards and technical regulations, packaging, labelling and recycling. India felt there was a need for further transparency and strengthening disciplines in this area.

21. The representative of Canada recalled his delegation's statement at the April 1995 meeting that eco-labelling was covered by the TBT Agreement.

22. The representative of New Zealand said a focused examination would permit a decision on which transparency gaps existed and the extent to which the establishment of environmental enquiry points would address these gaps. He supported the suggestion that the list of potential gaps identified by the EMIT Group be reviewed, now that the Uruguay Round notification procedures were in place and to focus work in this area.

23. The representative of Korea said current WTO provisions were not sufficiently transparent for environment-related trade measures. He supported Hong Kong's statement and noted the relevance of transparency to Items 1, 3 and 6. He noted Article 2.10 of the TBT Agreement, which permitted the omission of Article 2.9 obligations in cases of urgent problems of, *inter alia*, health or environmental protection. Korea felt that transparency provisions were prejudiced by Article 2.10, which lacked appropriate steps for *ex ante* transparency. The scope of technical regulations subject to notification should also include any measures that had potential trade effects. Article 2.9 criteria, concerning what constituted *significant trade effects* of technical regulations, were open to arbitrary interpretation and should be studied. Environmental product requirements, such as packaging and labelling, could give rise to direct or indirect barriers for exporting countries with lower environmental standards. Therefore, a new mechanism, such as an *advance notice system* could be considered for the prior notification of new environment-related trade measures, which would allow Members to take up the necessary consultations. The joint discussions with the TBT Committee in February 1996 should examine environmental requirements with significant trade effects which were enforced by local or non-governmental bodies and central government bodies and were not mandatory for WTO notification; Korea felt these measures should be notified, at least on a voluntary basis, as they were trade barriers.

24. The representative of Brazil recalled his delegation's proposal for environmental enquiry points to provide information on environment-related trade measures and trade-related environmental measures, including those not subject to WTO notification requirements. An environmental enquiry point should go a step further than those in the TBT and SPS Agreements to provide information on environmental measures, such as environmental taxes, and waste handling measures. Given compliance problems, information on notified measures, such as quotas, licensing or prohibitions, should also be included. Although, in principle, eco-taxes did not discriminate between domestic and foreign producers, exemptions and different tax levels could penalize similar imported products; unjustifiably discriminate among foreign suppliers; and, in the absence of internationally-accepted, scientifically-based criteria, be construed with a protectionist objective or be designed for domestic environmental problems. An enquiry point should also inform exporters of the benefits of environmental measures, such as information on government incentives for consumption of certain products (in absolute terms relative to other penalized products), government procurement regulations that gave a preference to products that fulfilled voluntary environmental standards and non-governmental programmes for environmentally-friendly products. Enquiry points could provide information on technical assistance for developing countries. Hong Kong's suggestion should be developed to determine whether its implementation would require new disciplines.

25. The representative of Australia said transparency would be an issue in the Committee and the TBT Committee's examination of the TBT Agreement's applicability to eco-labelling. There was scope for work on other environmental measures, including packaging and waste handling requirements, to clarify whether, and the extent to which, they were covered by WTO transparency provisions. Although environmental enquiry points had received support, he had concerns about the precedent of establishing a mechanism that covered a measure's policy purpose, rather than its characteristics. A clearer understanding was required of which measures caused concern and were not covered by the TBT and SPS Agreements. The focus should be on ensuring compliance with current provisions rather than on developing new mechanisms. After work on eco-labelling had been advanced and taking into account

work in the Working Party on Notification Procedures, the adequacy of current WTO provisions could be assessed.

26. The Chairman said the issue was whether environmental enquiry points were justified for areas not covered by WTO Agreements. Several delegations considered gaps in transparency existed for which environmental enquiry points were necessary. Others had said there should not be a proliferation of enquiry points or additional transparency mechanisms. The United States had mentioned budgetary justifications for this and others had referred to the need to avoid creating additional administrative burdens. He proposed the Secretariat review the list of potential gaps in transparency provisions in WT/CTE/W/5. As Hong Kong and Brazil had noted, since this list had been drawn up in February 1993, it included a number of elements which had been resolved by the Uruguay Round and excluded others which had been identified in the Committee's discussions. The February 1996 joint meeting with the TBT Committee would enable the Committee to consider these issues under Item 3, including the issues linked to eco-labelling, such as non-product related PPMs, recycling standards, and waste handling requirements.

27. The representative of Mexico supported the Chairman's proposal for a review of the list of potential gaps, however, was concerned this could imply interpreting the coverage of environmental measures by certain WTO Agreements, particularly eco-labelling. A list of gaps could only be a basis for discussion as, even if no coverage gaps were identified, this might not be sufficient with respect to transparency. Referring to handling requirements, as long as measures were applied as technical regulations or standards, there were no gaps.

28. The representative of Argentina said a review of potential gaps should occur after the February 1996 meeting, when it would have been established whether the TBT Agreement covered all the issues under Item 3 or whether additional disciplines were required. If these were covered by current disciplines then it would have to be determined whether additional transparency was necessary.

29. It was agreed that the Secretariat would revise the list of potential gaps in transparency provisions in WT/CTE/W/5 for the May 1996 meeting.

Item 7

The issue of the export of domestically prohibited goods

30. The representative of Egypt, on behalf of the African Group, introduced Nigeria's proposal on domestically prohibited goods (DPGs) (WT/CTE/W/14). She said work on this issue had continued since the 1991 draft Decision on Products Banned or Severely Restricted in the Domestic Market. Discussions were ripe for action and informal consultations were needed to pave the way for a consensus decision on DPGs at Singapore. She said it was relevant to discuss DPGs in the WTO framework as: (i) there was no international agreement, other than the 1991 draft Decision, that dealt with domestically prohibited consumer products; (ii) the WTO was a mechanism of rights and obligations with wide membership and apt to impose binding obligations on both exporting and importing countries; (iii) the WTO should fill gaps in existing international mechanisms. The Committee's work could draw on past experiences, especially if they had acquired international legality and had a broad, geographically-diverse membership. At this stage, the African Group's aim was not to establish an agreement or convention, but to agree on multilaterally-defined WTO rules and disciplines to deal with trade in DPGs. Building on GATT work on DPGs, these disciplines should be WTO-consistent, i.e. non-discriminatory, least-trade restrictive and primarily aimed at increasing transparency, without leading to the extraterritorial application of national measures, and cover the export of products which were banned or severely restricted in the domestic market. Special emphasis should be placed on pharmaceuticals, consumer goods, chemicals, cosmetics, and foodstuffs. The WTO could cover: (i) products not permitted to be sold in the domestic market because approval for sale had not been obtained or had expired (e.g. pharmaceutical and processed agricultural products); and (ii) plants and capital goods for which the

exporting country only permitted their use in manufacturing processes subject to strict security rules due to a risk to public health or safety. Products categories should be distinguished and their legal regimes identified to avoid duplication. Product coverage would have to be worked out with the involvement of other competent agencies, which would be agreed upon by consensus, such as WHO, FAO, UNCTAD, or UNEP. UNCTAD's empirical work on DPGs should be considered in determining the coverage and sufficiency of current instruments.

31. At a minimum, DPG-related disciplines should aim at transparency through a notification system with clear guidelines and binding obligations, including full compensation and liability coverage, as well as specific interim measures for exported goods which were prohibited or severely restricted for domestic use and for which no equivalent action had been taken for exports. The minimum request was to examine whether exporting countries should apply domestic measures to their exports. Hence, notification procedures and guidelines were important to notify domestic legislation which banned or restricted a product, stating the reasons why such products constituted a danger to human, animal, plant life or health. Also, exporting countries should establish enquiry points to provide, on request, information on notified products. Technical assistance would help developing countries strengthen their risk assessment capabilities, allow them to make informed decisions about imports and develop national means to control DPG trade. Importing countries should be able to make decisions based on clear information on the reasons for the prohibition or severe restriction of goods in the domestic market and the effects on present and future generations. The WTO should not be solely responsible for technical assistance. She proposed a trust fund or the use of UNDP or extra budgetary resources, since additional financial resources, as well as technical assistance was needed. The WTO should cooperate with other organizations to put together a programme to develop national means to control DPG trade in developing countries. The Council for Trade in Goods could be entrusted with monitoring and reviewing a DPG decision.

32. The representative of the United States welcomed Nigeria's proposal as it was helpful for Members to provide the Committee with their ideas, outlining perceived problems and possible solutions. Nigeria's proposal suggested that a DPG agreement apply, *inter alia*, to chemicals and dangerous wastes, which seemed contradictory as these substances were covered by the London Guidelines (and on-going negotiations on a binding Prior Informed Consent (PIC) Convention) and the Basel Convention and work should not duplicate areas covered by other international instruments. Work was also on-going on expired pharmaceuticals and consumer products. While capacity building was important, the United States had concerns about the scope of technical assistance as this did not fall within WTO-competence and was covered by related agreements, such as the London Guidelines and the Basel Convention, which had the competence and technical expertise. Moreover, it was premature to discuss institutional aspects such as calling for the Council for Trade in Goods to monitor and review the implementation of a DPG agreement. Although Egypt had provided a partial response, he asked for further clarification of what was meant by "at a minimum" an agreement should provide for improved transparency through a notification system, in order to understand which disciplines were being sought. Also, clarification was requested as to why there was a need for an instrument extending beyond what was already dealt with by current WTO provisions or in other fora. For instance, many restrictions on consumer goods which were technical regulations were covered by the TBT Agreement, and restrictions on foodstuffs could fall under the TBT or SPS Agreements. Referring to Egypt's statement, he inquired as to what was meant by compensation, liability and interim measures in the proposed agreement. If this was to be a transparency instrument which included notification, he asked whether and on what basis compensation would be required if a country failed to notify.

33. The representative of Japan said Nigeria's proposal provided a guideline for further work on DPGs. To overcome difficulties in controlling DPGs, which were mainly due to a lack of information and technical knowledge, developing countries should cooperate with DPG exporters and develop an effective notification mechanism. Appropriate technical assistance required information on the problems encountered by DPG importers, as well as the obstacles to establishing notification mechanisms. The WTO role should be to fill any gaps in coverage of DPGs by related existing MEAs,

such as the Basel Convention, the Montreal Protocol, and the London Guidelines, in order to strengthen and avoid duplicating their work. Once this had been completed, if necessary, the Committee could consider any reform of WTO notification procedures. The definition of DPGs in the 1991 draft Decision should be reconsidered, as products which were banned on the domestic market could present other problems; for instance, a secondhand vehicle which did not meet a newly-introduced domestic gas emission regulation had not been categorised as a DPG in the 1991 draft Decision, but it could have a negative effect on environment and safety in the importing market. If a DPG agreement was established, attention should be given to discussions on Item 1 and should ensure WTO-consistency. If an importing country adopted a trade-restrictive measure on a DPG to protect animal or plant life within its territory, this could be justified by GATT Article XX(b). However, the issue of whether countries were allowed to take measures to restrict their DPG exports to protect the environment beyond their territory should be considered. An examination of whether it was appropriate to take measures which were not covered by GATT Article XX was necessary.

34. The representative of Korea said the converging views on this issue were: (i) the WTO should compliment and avoid duplicating current mechanisms in other fora; (ii) disciplines on trade in DPGs should be non-discriminatory, and least-trade restrictive, and not allow the extraterritorial application of the exporting country's national measures; (iii) WTO disciplines should increase transparency through a notification mechanism; and (iv) technical assistance should be provided to build capacity in importing countries. The primary task was to define the scope of product coverage, including input from relevant organizations and the WTO role for any potential gaps should be identified. Most DPGs, such as toxic chemicals, hazardous wastes and pharmaceuticals, were already controlled by other international instruments. Korea preferred a stricter scope of coverage, in order to avoid unnecessary disputes and to strengthen WTO disciplines, taking into account: (i) the scope of existing mechanisms for hazardous wastes, toxic chemicals and dangerous goods, which were not precisely defined and for which there were practical and technical problems in controlling trade. In the Basel Convention, Parties had the right to define hazardous wastes, and the list of controlled wastes had not been fully codified under the Harmonized System. The Basel Convention's Technical Working Group was defining hazard characteristics by applying *de minimus* criteria; (ii) related international instruments were not always legally binding as some were drafted as guidelines or codes of conduct. Although the 1991 draft Decision had shortcomings, if a consensus emerged to use it as the basis for discussion, Korea would not object. However, the focus should be on the contents of the draft Decision and not on modalities, such as whether it should take the form of a decision. Given the amount of work which was needed to reach an agreement, Korea did not feel that the Committee would be in a position to present results by Singapore.

35. The representative of the European Communities thanked the delegations of Nigeria and Egypt (on behalf of the African Group), for their proposal, which enabled objectives to be better defined for Singapore. The WTO role should be to fill any gaps by acting as a *safety net*, which had been proposed by his delegation in February 1995. He said Nigeria's proposal was a step towards defining the scope of coverage. Concerning the coverage of an agreement to products that were not within WTO-competence, i.e. cosmetics, food additives and consumer goods, which did not necessarily have an environmental impact, an indication should be given of the practices with which importing countries would need to deal. Progress should take into account gaps in international instruments, the PIC Convention's coverage, and work on Items 1 and 4. The European Commission intended to organise seminars in 1996 on the possible risks posed by toxic chemicals and substances, and provide financial assistance to UNITAR's work on defining risk evaluation of hazardous substances in developing countries. Also, he noted a report on the July 1995 Conference on Hazardous Wastes was available from the Secretariat. He shared the doubts expressed by the United States concerning compensation and liability in the DPG context.

36. The representative of Morocco said WT/CTE/W/6 provided an exhaustive list of international instruments concerning trade in DPGs. He supported the statement of Egypt, on behalf of the African Group, and said the 1991 draft Decision should be revised in light of relevant international developments and should not contradict WTO rules on non-discrimination. International legal instruments on DPGs should be harmonized, and WTO provisions, particularly Article XX(b), the TRIPs and SPS

Agreements, should not be separated from other agreements such as the Basel Convention, Montreal Protocol and the Biodiversity Convention. In this regard, he recalled Decisions II/12 and III/1 of the Basel Convention, which banned the export of hazardous wastes from OECD to non-OECD countries, and that an *Ad hoc* Group of Experts was redefining the list of hazardous wastes. Also, a decision had been taken under the Biodiversity Convention to draft a bio-safety protocol by 1998 on the transfer and use of genetically-modified organisms, and a workshop would be held to identify and harmonize common points in the Biodiversity Convention with other relevant agreements. Countries which exported DPGs should respect the concept of prior informed consent and the concerns of developing countries in accordance with Chapter 19 of Agenda 21.

37. The representative of India referred to his previous statements on DPGs and supported the points made by Egypt, on behalf of the African Group. Work on DPGs should not overlap with the activities of other fora, which could be used as an input, specifically when considering product coverage. Discussion of the scope, rules and disciplines to deal with DPG trade should build on the 1991 draft Decision.

38. The representative of New Zealand said the process of identifying gaps in transparency should continue. Nigeria's proposal endorsed the view that any disciplines on DPGs should complement relevant international instruments and the notification procedures they contained, as well as proposed amendments to them and future instruments, such as the PIC Convention. If gaps were identified, then it would have to be determined whether this was a matter for the Committee. Given that the Secretariat did not have the necessary expertise to identify gaps, he supported Egypt's comment that WHO, UNCTAD and other relevant organisations should be involved in the definition of product coverage. New Zealand endorsed Nigeria's proposal that any DPG disciplines should be non-discriminatory, least-trade-restrictive and increase transparency, without leading to the extraterritorial application of national measures. He asked for clarification of how the extraterritorial aspect would affect the proposed disciplines and what was meant by "at a minimum" WTO disciplines should aim at increasing transparency. He understood from Egypt's intervention that the importing country should determine which products it imported based on knowledge of whether they were prohibited in the exporting country. He asked what was required beyond transparency to enable countries to make informed decisions.

39. The representative of Mexico said Nigeria's proposal was a step to identifying possible further WTO action, such as notification, and technical assistance for DPGs. The first step was to clarify the coverage of DPGs. Although the Committee had considered information on the London Guidelines and the Basel Convention, other fora's work should be explored for which information was lacking (i.e. for pharmaceuticals and consumer goods).

40. The representative of Cuba supported Nigeria's proposal, presented by the African Group, and said it should be the starting point for further work.

41. The representative of Canada recalled the position of her delegation at the February 1995 meeting. Canada considered the DPG issue might be of decreasing importance. The Basel Convention, the London Guidelines and the negotiations in 1996 to develop a legally-binding instrument for the application of the PIC in banned and severely restricted chemicals were developments since DPGs had been discussed in the GATT in 1991. Canada had reviewed Nigeria's proposal on DPGs and was sympathetic to its concerns to protect public health and the environment. Moreover, Canada did not allow the export of chemicals prohibited for use in Canada for environmental or health reasons. She supported further analytical work on potential gaps in the coverage of DPGs by UNCTAD, such as that proposed at the November 1995 meeting of UNCTAD's *Ad hoc* Working Group on trade, environment and development, as this would help to inform the Committee's discussions. Canada supported assisting developing countries to establish effective domestic inspection and control procedures, rather than developing new WTO disciplines. As proper enforcement of domestic standards and technical regulations played a large part in addressing DPGs, increased technical assistance might be a solution. However, assistance to national administrations should not serve to promote trade-restrictive measures.

42. A DPG decision should cover trade between developing countries, as well as trade between developed countries, where regulatory requirements, combined with liability considerations, might preclude the sale of products in the home market. Given that companies manufactured products for different national standards, exports occurred in compliance with the requirements of the export market. For example, Canadian automobile manufacturers produced vehicles to both Canadian and US specifications and certain Canadian standards were more stringent than US standards, such as for child restraint requirements, daylight running lights and bumpers. The US required airbags, which Canada did not given the higher use of safety belts. Although US emission standards were higher than Canadian, the automotive industry was integrated and Canada did not regulate what product to what standard was produced where. It was the manufact+urer's responsibility to meet the standards where the product was sold and not the government's role to enforce, extraterritorialy, another country's standards. Also, she noted the administrative burden that a notification scheme could create. Given that cosmetics, foodstuffs and pharmaceuticals did not easily fall into the DPG category and did not, *per se*, pose an environmental risk, these issues might need to be referred to other fora which had a clearer mandate in this area. Canada shared the concerns expressed by the United States and the European Communities on compensation and liability.

43. The representative of Switzerland supported Nigeria's proposal and said work on DPGs should address potential gaps in coverage. He asked for clarification of the scope of coverage of an agreement on DPGs. Also, importing countries' practical problems would be a useful basis for further work.

44. The representative of Norway said gaps in coverage between MEAs and the WTO needed to be identified to arrive at substantive conclusions in the area of DPGs. He supported Canada's statement that potential gaps were diminishing as DPG-related instruments were developed and more countries acceded to them. The role of related MEAs should be strengthened. He said Nigeria's proposal noted DPG product categories, such as pharmaceuticals, consumer goods, cosmetics and foodstuff, which were not related to the environment. The handling of DPGs was also linked to the capability of importing countries to effectively control imports of hazardous goods in accordance with the current trade rules. As Japan had mentioned, such trade measures were justified under Article XX. He said WTO technical assistance could contribute to a solution to the DPG issue.

45. The representative of Hong Kong said product coverage should be clarified before any DPG disciplines were developed and he understood that re-exports had not been included in Nigeria's proposal.

46. The representative of Malaysia, on behalf of ASEAN, supported Nigeria's proposal and Egypt's statement, on behalf of the African Group, and said duplication of related international instruments should be avoided, the extraterritorial aspect should not become a means for protectionism and technical assistance should be considered.

47. The representative of Egypt addressed the comments concerning Nigeria's proposal and future work on DPGs. She felt WTO-competence extended to the DPG area. In response to the European Communities' comment that the DPG issue was an important item for Singapore, she said this was the purpose of Nigeria's proposal and it could be strengthened or weakened depending on further information. The African Group had a flexible position as to the basis for further work and the 1991 draft Decision could be drawn on if necessary. A step-by-step approach was preferable. An objective for Singapore on DPGs was to identify current notification procedures and potential gaps in their coverage. Although the African Group hoped to have a comprehensive agreement on DPGs which would entail some compensation and liability, this was not linked to notification and transparency and could be taken up outside the WTO. In response to New Zealand's question as to what was being sought in addition to information, she said building capacity to control DPGs in developing countries was needed, such as training customs officers, as well as information and additional financing, and further WTO disciplines.

48. The observer from UNCTAD said copies of the report from the November 1995 meeting of the UNCTAD *Ad hoc* Working Group of experts on trade, environment and development, at which Canada had requested an examination of the coverage of DPG-related instruments, were available.

49. The Chairman said the DPG issue was evolving rapidly in the multilateral system with the negotiation of new international instruments, which limited the issue for the WTO in terms of product coverage. Although this did not mean the issue would no longer require attention, the Committee would have to identify the scope of products for which potential gaps existed. Reference had been made to product categories which went beyond those that had an environmental impact and which, consequently, did not fall within the Committee's mandate. As such, it would need to be determined if discussions should include such products. Several delegations had emphasized the need to extend technical assistance to countries which decided to restrict DPG imports and the Secretariat could be requested to channel this assistance. Based on Nigeria's proposal, work could begin on DPGs when Item 7 was re-examined in February 1996.

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

50. The representative of the United States said there should be full transparency, which entailed the range of obligations in the TBT Agreement on notice and comment, on: (i) the design of eco-labelling programmes, their statutory or regulatory basis and procedures for input from interested parties; (ii) the selection of products being considered for an eco-label;
(iii) the life-cycle assessments used to develop criteria; (iv) draft criteria for new or revised product groups; and (v) documentation on how the criteria were to be implemented.

51. The representative of Hong Kong referred to the relevance of his statement under Item 4 to Items 1 and 3.