

WORLD TRADE ORGANIZATION

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Committee on Trade and Environment

REPORT OF THE MEETING HELD ON 25 AND 26 MARCH 1996

Note by the Secretariat

1. The Committee on Trade and Environment met on 25 and 26 March 1996 under the chairmanship of Ambassador Juan Carlos Sánchez Arnau of Argentina. The agenda contained in WTO/AIR/289 was adopted.

2. It was agreed to invite the United Nations Industrial Development Organization and the World Customs Organization to participate on an *ad hoc* basis as observers at formal meetings of the Committee.

3. It was agreed the Chairman, on behalf of the Committee, will request the Chairman of the General Council to continue informal consultations concerning relations with non-governmental organizations and derestriction of documents in the WTO in order that the General Council is, as soon as possible, in a position to adopt decisions which will assist the Committee in addressing Item 10 of its work programme.

4. It was agreed the next meeting of the Committee will be held on 20-21 and 23-24 May. For the period thereafter, the Chairman proposed a tentative calendar of meetings: 19-21 June; 10-12 July; 12-13 September; and 22-25 October, which along with a work programme will be decided at the May meeting. The Chairman will continue informal consultations on rules of procedure.

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

5. The representative of Argentina presented his delegation's paper (WT/CTE/W/24) and outlined its methodology. In accordance with Principle 16 of the Rio Declaration, commodity prices should reflect the full cost of production, including environmental costs. However, commodity prices were far from having achieved cost internalization. Two categories of problems hindered this objective: market failures and policy interventions. His delegation's paper concentrated on the latter, with an emphasis on subsidies and tariff escalation. Market failures could not be addressed unless policy intervention failures were dealt with first. Regarding the factual basis for the analysis, the paper referred to cases from various sources on the environmentally-damaging effects of distortions in agricultural trade. Environmental damages might be local to the country which applied the distorting measures or could extend to countries which were forced to take the internationally affected prices due to the other country's intervention failures. Concerning the possible solutions to the identified environmental problems, he summarized these as requiring more free trade and less distortionary practices. Argentina was not suggesting that the mere elimination of subsidies would be equivalent to the adoption of sustainable agricultural practices, but without this initial requirement the improvement of agricultural practices was not possible. The first step was to internalize environmental costs such that prices would be equivalent to private marginal costs of production. Although the paper referred to price distortions generated by high income countries, it was not his intention to frame this issue in terms of a North-South dimension. Argentina's proposals for

further action acknowledged there was a growing consciousness of the environmental damage caused by the irrational use of capital and agricultural support measures. The CTE should contribute to the ongoing debate, which was taking place particularly in the EC and the US. A balanced Report to Ministers at the Ministerial Conference (the "Report") should include a clear recognition of the negative environmental effects generated by distortionary agricultural practices, which were also negative for trade. It should also feed a continued process of reform in the agricultural sector, which had been started in the Uruguay Round. Argentina was not proposing any changes to existing rules, but that the CTE should contribute to the process of reform in the context of the Agreement on Agriculture. Argentina felt it would not be possible to analyze any proposals for further restrictions to obtain environmental benefits unless there was a clear commitment to eliminate the restrictions which already existed which were environmentally-harmful. As the WTO had as its goal to liberalize trade, this should be its main contribution to the environment.

6. The representative of Nigeria said significant environmental benefits would follow the elimination of trade restrictions. He supported Argentina's proposals for further action. Several factors related to market access and their effects on environmental protection merited examination. Argentina had dealt with agricultural subsidies and distortions. He noted that the environmental benefits of reducing poverty were crucial, but were being addressed in other fora. He focused on tariff escalation. He agreed with the analysis in paragraph 3 of WT/CTE/W/25 that market access improvements due to tariff reduction depended on the elasticity of import demand. He said paragraph 7 should be clarified. While agreeing export barriers restricted trade and were thus "similar" to the restriction of trade through tariff escalation in an importing country, he did not think their effects were "similar". Evidence suggested the effects might be "opposite" as the formal objective for such a restriction would be for a more efficient allocation of resources by creating domestic incentives for more value-added at higher levels of processing, which reduced pressures on the environment. While escalating tariffs entailed minimal environmental gains and losses, improved market access as a result of tariff de-escalation would further environmental protection. He suggested specific studies be undertaken with organizations, such as UNEP and UNCTAD, to provide data on the environmental effects of escalating tariffs on cocoa, rubber, groundnuts, timber, leather, and metals. Tariff escalation was a market access barrier and a disincentive to foreign goods' providers as it prevented value-added and diversification, reduced income, and intensified consumption of domestic resources. Environmental effects of tariff escalation were experienced through income and production effects. The net effect of reduced income and intensified natural resources consumption was environmentally harmful.

7. Environmental measures affected international trade, particularly market access. Although empirical evidence was inconclusive, there were strong grounds to believe environmental measures increased compliance costs and affected competitiveness. Eco-labels were proposed to distinguish products based on environmental quality, which would assist consumers to make environmentally-friendly choices. Yet, concerns had to be addressed that these were devices for protecting domestic markets. There was a need to monitor the operation of eco-labelling programmes based on a set of specified criteria over time to determine if they were trade promoting or restricting and protectionist. He supported the first three elements of Canada's proposal (WT/CTE/W/20) and the US proposal (WT/CTE/W/27), which contributed to addressing these concerns. Transparency was vital if eco-labelling programmes were to shed the stereotype of being protectionist tools. *Ex ante* transparency should be the rule. As well as concern over objectivity in the use of product requirements based on life cycle analysis, the absence of timely information created problems for market access. The TBT Agreement should function objectively, with all its provisions uniformly interpreted to avoid that environmental measures were trade restrictive or protectionist.

8. The representative of Japan said, in order to have results on this Item for Singapore, it was not appropriate to advance discussion on this sensitive issue based on abstract concepts. Given the variety of socio-economic and environmental conditions, environmental policies could be different and each country bore common but differentiated responsibilities for environmental protection. It was not clear environmental policies affected competitiveness. Differences between environmental policies, *per se*, were not the direct cause of the problem. Each country should ensure environmental measures were

not unnecessarily trade-restrictive, accounted for the context of the policy and enhanced transparency. To realize sustainable development, each country should internalize environmental costs. Developed countries should cooperate with developing countries so the latter could take the appropriate environmental policies, in accordance with their developmental stage. Disguised protectionism or WTO-inconsistent unilateralism should not be permitted and unilateral trade restrictions should not be taken based on differing environmental policies. He recalled the OECD Ministerial statement that in general trade liberalization had positive environmental effects, provided effective environmental policies were implemented. The environmental effects of trade liberalization could be either positive or negative, depending on the country, sector, and particular circumstance.

9. Analysis of the environmental effects of trade restrictions and distortions had not been well-developed and, at this stage, it was not appropriate to discuss a specific sector, such as agriculture, for which Article 20 of the Agreement on Agriculture should be followed. The environmental effects of agricultural policies depended on geographical conditions and production methods. Agricultural policies were implemented so various functions of agriculture could be demonstrated. The environmental effects when agriculture failed as a result of the decrease of domestic support should be studied; some domestic support helped maintain agriculture which had positive environmental effects. The relationship between increased market access as a result of the reduction of tariff escalation for processed exports and positive environmental effects was not clear. Even if it allowed the development of domestic industry, if appropriate domestic environmental policies were not in place, the burden on the environment might increase. He cited the example of an export restriction on logs, for environmental reasons, which did not necessarily lead to environmental protection. Deforestation might increase following an increase in the export of processed wood products. He supported the view in WT/CTE/W/1 that export restrictions could lead to an inefficient, economically and environmentally costly, relocation of production. He questioned the assertion in Argentina's paper that, in some developed countries, reduced domestic support in the agricultural sector would have a positive environmental impact. There were non-trade concerns in the agricultural sector, which domestic support sought to address. Concerning agricultural trade and the environment, empirical analysis needed to be accumulated by sector and country within a balanced analytical framework; at this point there was insufficient data. From this perspective, Japan could not support Argentina's proposal.

10. The representative of the European Communities made preliminary comments on Argentina's paper. Although this paper was characterized by a rigorous economic analysis that highlighted the potential negative effects of certain agricultural policies, the analysis fell short of inscribing the issue in the framework of the debate on Sustainable Agriculture and Rural Development (SARD) being developed by FAO, in co-operation with other bodies, and monitored by the Commission on Sustainable Development (CSD). The CSD decision on SARD, adopted in April 1995, recognized the importance of the implementation of the WTO Agreement on Agriculture. Reforms were on-going to achieve substantial and progressive reductions in the support of agriculture, covering internal regimes, market access and export subsidies. To promote sustainable agriculture, non-trade concerns such as the economic, social, food security and environmental impacts should be evaluated, taking into account their impact on net food importing developing countries. The CSD had called for an examination of agricultural policies through the use of indicators based on agri-environmental criteria, which were being developed, covering "environmental, economic, social and cultural dimensions". Argentina's analysis did not recognize that a continuous assessment of the environmental performance of agricultural production systems should include not only the negative environmental effects of certain agricultural policies, but also the positive effects, such as preservation of landscape and biodiversity. Analysis was needed on the impact of market regimes, rural development programmes and trade policies on sustainable agriculture to enable policy makers to progress towards sustainable agriculture. Argentina's paper neglected to note progress was on-going to revise national and regional agricultural policies in relation to, *inter alia*, trade, pricing policy, subsidies and taxes. Current reform of the EC's Common Agricultural Policy would result in a reduction of the general support price which was compensated by direct financial support to farmers. This was accompanied by other measures allowing for the remuneration of environmentally-favourable agricultural practices and activities safeguarding the hydrogeological balance. Agreeing with the need to promote discussion on these issues, he felt however all aspects which played a role in the definition of an

appropriate approach should be weighed to permit balanced results. He said the conclusions in WT/CTE/W/26 helped dispel misconceptions which had characterized the trade and environment debate since the outset. WT/CTE/W/25 demonstrated tariff escalation was not a North-South issue and provided useful statistical analysis.

11. The representative of Korea said this Item was important for developing countries in terms of sustainable development. Environmental measures and economic instruments such as charges, taxes, product requirements, eco-labelling, packaging and recycling requirements would have significant effects on market access for developing countries. However such measures were also becoming useful tools for achieving environmental objectives. He identified several issues related to market access: (i) market access effects of environmental measures cut across other Items and should be dealt with in an holistic manner; (ii) environmental measures with significant trade effects should be WTO-compatible and should not be misused for protectionist purposes; (iii) maximum transparency of environmental measures should be provided; (iv) environmental measures based on PPM-related criteria were not legitimate; (v) unilateral measures taken to address environmental problems extra-territorially might not be justified and should be rejected; and (vi) the underlying causes affecting market access for developing countries, related to financial, technological and institutional capacity-building should be considered.

12. Although empirical evidence in WT/CTE/W/26 addressed issues of concern, it was insufficient to draw general conclusions on the market access effects of some environment measures. He had difficulty in supporting the conclusions in paragraph 52. Referring to unilateral trade restrictions with extraterritorial effects, the cases referred to in WT/CTE/W/26 might be only a small part of the evidence of the negative effects of unilateral trade restrictions. In the shrimp/sea turtle case, he asked whether compliance costs would be as insignificant as WT/CTE/W/26 indicated. Further case studies and analysis were needed. Trade liberalization had potential environmental benefits in the agricultural sector by contributing to the optimal allocation of natural resources and income growth. The removal of trade restrictions or trade distorting measures provided potential environmental benefits. However, in certain cases, liberalized trade was directly and indirectly responsible for environmental degradation as illustrated in WT/CTE/W/1; the absence of policy interventions in the agricultural sector would bring about a number of negative consequences, including environmental degradation and socio-economic setbacks, especially in developing countries. As the environmental impact of trade liberalization varied sector-by-sector and country-by-country, generalizations were dangerous. Unless the source of the problems and their effects were analyzed, taking into account heterogenic socio-economic conditions in each country and food security concerns, discussion would produce unnecessary side effects. Korea felt issues related to agriculture were best addressed in the Agreement on Agriculture, which envisaged the continuation of agricultural reform in spite of the political sensitivity in this area. Even though it was only in the process of implementation, it would contribute to agricultural policy reform, which included measures to reduce distortions, taking into account the specific conditions of countries, in particular developing countries, and the multi-dimensional role of the agricultural sector. Korea felt discussion on market access should not overemphasize any specific sector. He recommended an assessment of environmental quality with respect to agricultural policies in a balanced context. In general, each country maintained agricultural policies, including various types of subsidies to meet a variety of socio-economic conditions. It was not possible to conclude agricultural policies always had negative environmental effects. As stated at UNCED, environment and development issues should be dealt with together in the pursuit of sustainable development. For the time being, sustainable development, especially in developing countries, had not been fully recognized in the trade and environment debate. He recalled Agenda 21 emphasized the importance of increasing food production and enhancing food security. Stability in food supply was a prerequisites for sustainable development. Noting the decline of global grain supplies which had led to increased prices, he said attention should be given to the harmonization of food security, sustainable development and trade issues.

13. The representative of Egypt reiterated the importance of this Item as it examined the relationship between trade liberalization and environmental protection from a development perspective. The correlation between market access and a capacity to trade stimulated better environmental protection, which had been initially outlined in the 1987 Brundtland Report: "If developing countries are to

reconcile a need for rapid export growth with a need to conserve the resource base, it is imperative that they enjoy access to industrial country markets for non-traditional exports where they enjoy comparative advantage". From this perspective, Egypt had asked for additional information on tariff escalation as a trade-distorting measure and an impediment to market access for value-added raw materials. The request had been to study the impact on developing country exports due to increased tariff escalation in major developed countries in the post-Uruguay Round. Paragraph 11 of WT/CTE/W/25 noted the protectionist effects of tariff escalation. Tariff escalation forced developing countries to export raw materials to generate revenue for development, which risked over-exploiting natural resources and exacerbating environmental degradation. She felt the tariff tables could have been more specific and not only those of a few countries.

14. Commenting on WT/CTE/W/26, which treated this Item as cross-cutting, she said it correctly referred to increased environmental requirements emerging in sectors where developing countries had or were gaining a comparative advantage, primarily in labour-intensive, low value-added products. Developing countries were concerned the Uruguay Round gains in many sectors where tariffs had been reduced might be eroded if environmental and other standards increased production costs. A number of economic factors emphasized the significant effects of environmental measures on developing country competitiveness, which could be attributed to different levels of compliance costs. Although WT/CTE/W/26 referred to some of them, further work was needed. Based on the UNCTAD case studies, developing countries were more vulnerable to adverse competitiveness effects of environmental policies because: (i) developing country exporters normally were price-takers. Environmental requirements resulting in cost increases reduced their export competitiveness, although it depended on the level of price premiums, which were high in some sectors and made environmental changes feasible. For textiles and leather, the ability to adjust might be difficult given low value-added; (ii) adjustment problems were higher for small and medium enterprises (SMEs); (iii) variable costs of complying with environmental standards were higher in sectors of interest to developing countries, e.g. leather, footwear, textiles and clothing. The Indian UNCTAD case study illustrated the cost of chemicals required to meet international standards was three times that of conventional chemicals in the leather tanning sector; (iv) demand elasticity for developing country products and economic diversification were important. *Ex ante* transparency was crucial to ensure market access; early involvement of all parties in the formulation of standards should be assured. Also, mutual recognition and equivalency should be negotiated. She suggested technical assistance to developing countries be provided to develop certification and inspection bodies. She referred to the UNCTAD/Finland seminar *Environment, competitiveness and trade: a development perspective*, where the concept of proportionality between economic costs and environmental benefits had been discussed, particularly its effect on market access. Analysis was required to apply the principle of proportionality at the international level, which was necessary to weigh the economic costs of environmental measures on developing country exports against the environmental benefits for the developed countries which imposed them. This should take into account costs, timing of implementation, necessity, effectiveness and priority in the development process. Also, work was needed on how the *de minimis* approach related to environmental measures and in order to determine special and differential treatment for developing countries. To facilitate market access, the impact of such principles on market access should be examined in the CTE's future work programme or in the Committee on Technical Barriers to Trade (CTBT).

15. Argentina's paper contained elements with which her delegation could identify, but its scope was narrow. The CTE had not reached the stage of addressing the negative environmental consequences of trade restrictions and distortions. To have a balanced Report, paragraphs 30 and 31 should include the effects of trade restrictions and distortions on, not only agriculture, but also sectors of interest to developing countries, such as textiles and clothing, leather and footwear, and focus on more than subsidies as a distortive factor. She said this Item was cross-cutting and it should be dealt with in the Report considering: (i) trade restrictions and distortions, as reflected in tariff escalation and tariff peaks which had a negative impact on comparative advantage, and the possibility of further reductions of tariff escalation at Singapore; (ii) the effects of environmental policies and measures on developing country competitiveness, based on WT/CTE/W/26; and (iii) the principle of proportionality and cost-benefit

analysis and their impact on national treatment and least trade-restrictiveness. The latter should be studied with the Secretariat's assistance.

16. The representative of Brazil stressed the need for substantive recommendations on market access in the Report. The cross-cutting nature of this Item was clear in the papers prepared for this meeting. He supported Argentina's proposal to develop a work programme on the ways and means to reduce or eliminate environmental damage due to trade restrictions and distortions. Generally, Brazil shared the concerns of both Argentina and the Cairns Group concerning agricultural reform and felt Argentina's proposals would contribute to future negotiations in the Agreement on Agriculture. He recalled the conclusions in WT/CTE/W/26, which seemed to be incongruent with preceding findings. Discussion in the EMIT Group had shown, to different extents, these measures affected market access due to lack of transparency. Packaging and recycling requirements were obstacles to developing country exports as they implied additional transportation costs and technological adaptation. Economic instruments, such as eco-taxes also implied market restrictions on developing country products, particularly if applied in a discriminatory or ill-conceived way. He referred to the Brazilian UNCTAD case study, which illustrated that approximately 25 to 30 per cent of its exports were from sectors affected by emerging environmental requirements; this reinforced the need for the Report to contain recommendations on this Item. He said the figures in WT/CTE/W/25, which referred to bound and not applied tariffs, were not those applied by Brazil.

17. The representative of Hong Kong said, although a global market was emerging for environmental goods, services and technology, trade restrictions might result from environmental measures including packaging, labelling, product standards and economic instruments. WT/CTE/W/26 noted the balance between new trade opportunities and the potential costs of trade-related environmental measures. The fact some countries were more likely to reap the benefits and others bear the costs deserved reflection. Lack of information on environmental requirements created problems, which were not exclusive to developing countries, although they were more vulnerable and less equipped to overcome them. Suggestions had been made to harmonize national packaging schemes and to develop mutual recognition on eco-labelling and criteria for granting eco-labels. As WT/CTE/W/26 stated, it could not tackle the root problem as it did not propose to make any judgement on the necessity or effectiveness of particular trade-related environmental measures. Transparency was not an end in itself and further action entailed an assessment of the necessity, effectiveness, proportionality and equivalency of measures and their WTO conformity. He referred to the UNCTAD country case studies, which had found environmental regulations could increase developing country costs and the OECD Report which noted foreign suppliers, in particular developing countries, might face market access problems due to a proliferation of environmental measures. He inquired whether the observation in paragraph 52 was warranted, given the case studies revealed the opposite in some cases. He noted a similar observation made by the Secretariat, in the context of a survey of 5,000 TBT notifications made between 1980 and 1995, that environmental standards had not created difficulties. The possible proliferation of environmental requirements with adverse trade effects should be monitored.

18. The focus of WT/CTE/W/25 could have been on the top four markets and information could have provided on applied, rather than bound tariff rates. The bound rates for developing countries did not have a bearing on the present discussion and might be misleading as applied rates were often substantially lower than bound rates. Rates applied to processed products could be 5 to 10 times higher than on unprocessed products. Data on tariff escalation should be supplemented by information on non-tariff barriers; work should be targeted on products at the higher stages of production, in major markets and taking into account outward processing trade. Although he agreed agricultural subsidies were a key issue, a broader perspective than that in Argentina's paper should be adopted, covering tariffs, quantitative restrictions and anti-dumping actions. Reduction in agricultural subsidies rendered immediate environmental benefits and this analysis should be extended to other sectors. Impeding exports of labour-intensive products such as textiles through artificial trade barriers extended environmental pressures to developing countries by forcing them to intensify exports of primary commodities. Consequently, employment and foreign exchange earnings were restrained such that poverty-related environmental problems persisted and environmental technology could not be used. A

horizontal approach was required to examine how trade distortions could be reduced or eliminated, which would also contribute to environmental goals. Argentina had proposed an appropriate modality for action and he supported the development of a work programme to identify ways to reduce environmental damage due to trade distortions which impeded market access.

19. The representative of Switzerland made preliminary comments on Argentina's proposal. He said the scope should be broadened under this Item to include trade policy aspects which had an equally important environmental impact, such as energy input subsidies. Given agricultural trade had been considerably reformed since the implementation of the Uruguay Round, Switzerland did not share Argentina's view on this matter. The implementation of the Agreement on Agriculture would bring about far-reaching agricultural reform, which required constant adjustment in the agricultural sector. As had been recognized by Argentina, trade liberalization alone would not ensure the internalization of environmental costs and other necessary measures needed to be elaborated. The Agreement on Agriculture clearly referred to non-trade concerns which were an integral component of agricultural policies in many countries. The fact that the Agreement on Agriculture made it possible to distinguish between price support policies promoted lasting agricultural reform to the extent that an effort was being made to diminish price support through decoupled, direct payments. In this context, he felt at present and as a priority the Agreement on Agriculture should be implemented to reduce existing distortions in the agricultural sector. He said in Switzerland the focus was on providing incentives to promote sustainable development, exploited according to biological cultivation and integrated production on the basis of a system of direct payments linked to environmental services. He recalled the CTE's work on this issue must be placed in a broader, balanced context and should not be focused solely on trade liberalization in the agricultural sector.

20. The delegation of India, referring to WT/CTE/W/26, said the lack of systematic evidence made it difficult to draw general conclusions. Paragraphs 7 to 12 revealed the important disadvantages of packaging, including significantly higher costs for foreign suppliers compared to domestic suppliers, import restrictions on materials which were more competitive for producers and lack of transparency and harmonization. Noting observations on product standards used statistics which were more relevant for the past than the future, he suggested further analysis was needed on the recent increase in technical regulations and on which new products had entered the market. Paragraph 26 cited OECD evidence that competitiveness was only minimally affected by environmental costs and competitiveness benefits for developing countries were not clear. On the tariff table of India in WT/CTE/W/25, the maximum applied tariff for any product should be 50 per cent; the applied rather than the bound rate indicated the actual level of market access restriction and tariff escalation. He said tariff reduction should consider the following: (i) the effective rate of tariff protection was relatively high in developed countries, even if the nominal rate of tariffs were low, specially for products where inputs were a high proportion of their total value and tariffs were high for inputs which required a subsequent stage of processing in the developed countries; (ii) the import elasticity of demand and the size of the market played a crucial role in determining the benefits of tariff reduction. In developing countries with large markets and where import elasticities of demand were relatively high, even a small tariff reduction could result in much higher volumes of sales and be of immense benefit; (iii) some sectors, such as textiles, faced higher level of nominal tariffs than others; and (iv) developing countries had bound a significant number of their tariff lines and were committed to progressive liberalization.

21. Argentina's proposals could usefully be examined. He noted the broad spectrum of environmental measures which had significant effects on market access, especially for developing countries. Positive effects were not easy to exploit and required expertise, technology and resources not always available to developing countries. Negative effects related to the costs incurred to adapt to new standards, to acquire the necessary technology and expertise, to non-availability of materials for meeting packaging requirements and the administrative apparatus required in the exporting country. Negative effects could be mitigated if measures were based on multilaterally-agreed and equitable criteria and were WTO-compatible. Referring to the concept of *like* product, he noted PPM-based criteria for environmental measures were potentially trade-restrictive and had implications for market access. Empirical analysis had demonstrated trade measures were not necessarily the best way to address

environmental issues; by enhancing equitable competition among potential users of the same resource, trade liberalization could create efficiency. He recalled GATT Article XX contained environment-related exceptions to WTO rules. Positive, trade liberalizing measures were more effective to achieve environmental objectives. Schedules of concessions under GATT Article II, the Agreement on Import Licensing Procedures and the Agreement on Agriculture could be considered in this context. Environment-related trade measures had the following objectives: (i) to pursue defined environmental objectives; (ii) to persuade other governments to change their environmental behaviour; (iii) to protect domestic industry; or (iv) to enforce international environmental commitments.

22. Trade restrictions could be used to enforce domestic product standards or to prohibit trade where it threatened the environment, such as in the case of DPGs. On the former category, any trade restriction should uphold WTO provisions. Even for Article XX exceptions, the principle of necessity was crucial and measures should not be applied in arbitrary or discriminatory manner or as a disguised trade restriction. Referring to the TBT Agreement, he said Article 2.2 provided for technical regulations for fulfilling legitimate environmental objectives. In assessing risks of non-fulfilment, relevant elements of consideration were available scientific and technical information, related processing technology or intended end-uses of products. The CTE could examine the impact of environmental objectives on the mandatory nature of technical regulations. Article 2.10 provided for relaxing notification provisions where technical contents of proposed regulations were not based on international standards for urgent problems like environmental protection. He suggested examining if such a relaxation of notification provisions needed criteria to avoid potential misuse which restricted market access. Article 5.4 provided for procedures for relaxing the use of internationally-accepted technical regulations and standards for environmental protection. He suggested the CTE assess the impact of these procedures on the exemption given for environmental reasons on the "positive assurance" requirement for Central Government Bodies, especially as they played a significant role in many countries. An assessment could examine how these provisions helped provide transparency of regulations and standards, which would help overcome market access problems. A joint informal session with the SPS Committee could examine the preamble of the SPS Agreement which referred to the impact of SPS measures on developing country market access. Of relevance to developing countries was Article 4, which provided for equivalence of different SPS measures. Developing countries could face market access problems if Article 5.2 "relevant ecological and environmental conditions" for risk assessment were invoked without objective criteria. It might be worthwhile to examine the necessity of formulating criteria in this context.

23. The preamble to the Agreement on Agriculture referred to environmental protection, with special and differential treatment for developing countries. Paragraphs 2(a) and 12 of Annex II exempted expenditure on environmental protection programmes from domestic support reduction commitments. While domestic support measures should be least trade-distorting, government conservation programmes qualified for exemption. This could impede the removal of trade restrictions and distortions and should be discussed to ensure a competitive and equitable market access regime was in place. A similar provision was contained in the Agreement on Subsidies and Countervailing Measures. Article 8.2(a) classified the rendering of assistance to adapt facilities to new domestic environmental requirements as a non-actionable subsidy, which had to be notified to the Subsidies Committee and scrutinized for a determination, which could be submitted for binding arbitration. The CTE could examine the effect of such disputes on the objectives of using environmental grounds to make such subsidies non-actionable. Similarly, Article 27.2 of the TRIPS Agreement allowed Members to exclude inventions from patentability to avoid serious prejudice to the environment. Article 27.3(b) allowed Members to provide for protection to plant varieties through patents or an effective *sui generis* system, or a combination thereof. This could be dealt with under Item 8. The above examples illustrated Item 6 was cross-cutting and would be a significant part of the Report. Discussion on creating new disciplines for environmental protection should take into account that obstacles to market access were likely to arise in the process. More time was needed to analyze these issues.

24. Trade measures to persuade other countries to modify their environmental policies were not justified. Apart from the political consequences of such unilateral actions, there were economic consequences associated with PPM-based standards. A distinction was needed between local and global

environmental problems. The former should not concern international trade, and the latter were best tackled through MEAs. He supported those Members who had voiced concern over the action by a major trading entity to impose an import embargo on wild shrimps on the basis of its national environmental objectives. This involved the concepts of extra-territoriality and discrimination, and *prima facie* was WTO-inconsistent. The CTE should ensure environmental arguments could not be used by protectionists to justify the exclusion of imports. The only exception could be where special and differential treatment was required for economic growth in developing countries. When discussing the relationship between WTO provisions and MEAs, market access concerns should also be addressed. Although environmental protection was not within WTO jurisdiction, when discussing environment-related trade measures certain transparency disciplines had to be put in place where necessary. Market access should not be hindered because of environmental protection. Discussions of other Items should ensure there were no obstacles to market access. Further, all WTO Agreements related to market access could be reviewed to incorporate positive measures, especially for developing countries.

25. The representative of New Zealand said a balanced approach should be pursued to ensure the implications of all Items were examined and to progress where consensus was possible. This Item provided a basis for making trade and environment policies mutually supportive and should form a substantive part of the Report. There was a general consensus on the environmental benefits of trade liberalization, as stated in Chapter 2 of Agenda 21 and recently by OECD Environment Ministers. These benefits improved efficiency of resource use, which lessened demands on the environment; generated resources to address poverty and environmental problems; facilitated exports of environmentally-friendly goods and services; and helped developing countries diversify their economies. If any negative environmental effects arose, they should be addressed through domestic environmental policies targeted at the source of a problem, and not through policies aimed at securing non-environmental objectives, which might contain only incidental environmental benefits. The conclusions in WT/CTE/W/1 noted there was no emphatic evidence from empirical studies that trade liberalization had systematically harmed the environment and there was evidence that agricultural trade liberalization was particularly environmentally-beneficial and that production-boosting subsidies, border protection and tariff escalation could result in negative environmental outcomes. Production-related subsidies had negative impacts on agriculture as they increased the intensity of use of fixed factors of production; discouraged agricultural diversification; resulted in over-grazing and extension of farming to marginal land; led to intensive use of agri-chemicals; and reduced farm incomes by suppressing world prices, which created poverty in many developing countries. Impacts were not confined to the countries employing the restrictions and distortions, but affected other producers who could be forced to adopt unsustainable practices. Tariff escalation and border protection also had negative environment implications in some cases.

26. In considering ways to address the environmental impacts of trade restrictions and distortions, New Zealand had proposed a distinction be made between approaches which yielded environmental benefits and were WTO-consistent and approaches which yielded environmental benefits but were WTO-inconsistent. Here, trade measures were not a first-best policy tool and any negative environmental impacts should be addressed at their source. WT/CTE/W/1 noted trade liberalization could provide incentives for unsustainable levels of production in countries which did not pursue restrictive or distortive trade policies. Similar concerns related to the extent to which liberalization would automatically lead to environmental benefits. In response, New Zealand agreed analysis was required, but considered the absence of trade liberalization also had environmental implications and domestic environmental regulation provided the best safeguard against any possible environmental costs. This issue should be considered in light of the overall economic benefits from liberalized trade and investment. The Report should state that the adverse environmental impacts of trade distortions meant their reduction or elimination provided the basis for a *win-win* situation for both trade and the environment.

27. The representative of Australia said discussion in September 1995 had suggested four main areas of focus on the environmental benefits of removing trade restrictions: (i) tariff escalation, especially in the forestry, mining, fisheries and agricultural sectors, and increased tariff escalation in some sectors following the Uruguay Round; (ii) high tariffs for products including processed and agricultural

commodities subject to tariffication in the Uruguay Round; (iii) subsidies, especially for agricultural products; (iv) high internal taxes on tropical commodities. He felt concerns were misplaced that discussion of these areas would divert the CTE from a results-oriented focus. In many countries, the value of trade liberalization was being questioned due to the effects it might have on the environment. Issues should not be ignored because they raised difficult problems or immediate results could not be achieved. Recommendations to Ministers should concern the concrete initiatives which could be identified under this Item. Trade liberalization was not in conflict with the goal of improved environmental protection, as recognized in Agenda 21. The critical issue was that environmental policies accompanying trade policies should ensure trade liberalization contributed to improved environmental performance, which was a conclusion that could be drawn from the UNCTAD case studies. Import liberalization could improve access to inputs and products which were environmentally-friendly and assist in the introduction of environmentally-sound technologies.

28. A key issue was the failure of markets to adequately value environmental costs and benefits and policy action was needed to ensure sustainable management of natural resources and promote environmental quality. The Report should acknowledge that a strong multilateral trading system that contributed to sustainable development needed complementary action at the national level and in other international fora to promote environmental protection. Environmental damage due to market failure was often made worse by inappropriate government interventions, including trade and trade-related policies which distorted markets, unfairly affected the economic opportunities of producers in other countries and promoted depletion of resources. The CTE had a responsibility to identify these policies and encourage action at the national level and in the WTO to reform them and promote trade liberalizing initiatives that supported sustainable development. This should be another major element of the Report. He noted the commodity-dependence of some countries, which made it difficult for them to ensure sustainable resource management. Here, efforts to improve the environment faced income constraints. Policies aimed at internalizing environmental costs might be unsuccessful if they reduced the income of already poor producers. Export expansion and diversification into higher value-added products could assist in poverty reduction and environmental protection. Overcoming problems faced by commodity-dependent countries required appropriate domestic policies and financial and technical assistance, including reduction of tariff escalation. The Report should address the problems of commodity-dependent countries which differed from those of other countries. The Report should emphasize the need for the WTO to address tariff escalation and high tariffs for processed commodities and other industrial products, and the need for complementary action related to commodity-dependency, including technical assistance.

29. Agricultural subsidies and high tariffs for many agricultural products should also figure prominently in the Report. OECD agricultural support policies imposed high environmental costs by encouraging inappropriate resource use, which intensified land use to maximize production, led to increased applications of fertilizers and chemical pesticides, promoted monoculture agriculture and contributed to loss of biodiversity. Instead of promoting better environment management, agricultural policies often shielded farmers from market signals and the environmental impacts of agricultural practices. These agricultural policies had contributed to an international trading system which hampered more efficient agricultural producers from sustainably managing resources. Agricultural trade distorting policies had combined with other factors to limit the contribution which trade could play in promoting sustainable agriculture. From 1970 to 1994, the share of world trade in agricultural products held by developing countries had fallen from 33 to under 28 per cent, while the share held by developed countries had risen from 58 to 70 per cent. Total transfers associated with agricultural policies in OECD countries, which was an important factor in explaining these trends, had increased from US\$ 24 billion in 1970 to \$200 billion in the 1980's to over \$330 billion in the 1990's. This had occurred between the 1972 Stockholm Conference on the Human Environment and UNCED in 1992. Agriculture accounted for 3 per cent of the workforce in high-income economies, 18 per cent in middle-income economies and 44 per cent in low-income economies. Given 80 per cent of the world's poor lived in rural areas, the relationship between poverty and environmental degradation was most direct in agriculture. Issues raised by agricultural protection should be a key part of the Report. Although, the Uruguay Round had taken the first steps towards a more sustainable framework for agricultural trade, work was needed to promote

sustainable agriculture. Further reform should build on reductions in trade-distorting policies being complemented by actions to ensure sustainable agriculture, including adoption of domestic policies to secure sustainable resource management and to spread the benefits to poorer farmers. Agricultural protection highlighted problems involved in using trade-distorting measures to achieve non-trade objectives that were more efficiently achieved by other policy instruments, which was a lesson that should be considered for all trade and environment issues. Australia expected to circulate a paper before the next meeting on the issues under Item 6 which should be brought to Ministers' attention.

30. The representative of Norway prioritized three issues under this Item: (i) the evaluation of the environmental consequences of the multilateral trading system, including trade liberalization and trade restriction; (ii) how WTO rules and their modifications might contribute positively to environmental and resource-management policies; and (iii) how potentially negative consequences of trade liberalization, especially for least-developed countries, could be avoided taking into account the problems of putting into place necessary domestic environmental policy (e.g. longer implementation periods for liberalization, and financial and technical assistance). Removing trade restrictions in certain cases might play a role from an environmental policy perspective as it contributed to internalizing environmental costs. Trade liberalization might yield a double dividend, with economic and environmental gains. By removing trade barriers and distortions, the WTO could contribute to environmental policy. As the link between trade liberalization and environmental protection was not automatic, analysis should proceed product-by-product. Priority should be given to removing barriers in sectors with a potential double dividend. As agriculture had already been mentioned in this regard, she noted the removal of barriers in the energy sector could yield a significant double dividend. Energy was a key factor for global economic development and the global environment. Measures to enhance efficiency in energy production and utilization and to internalize environmental costs were central to growth and sustainable development. She noted the challenge to reduce the use of fossil fuels (coal, oil and gas) to minimize polluting emissions. It was rational to have incentives for the use of environmentally-benign resources and disincentives for unfriendly ones. Currently, the opposite was the case; coal production could be subsidized, whereas the use of oil, and gas was heavily taxed. Studies had shown the elimination of energy subsidies led to higher economic growth and a cleaner environment. Noting the Subsidies Agreement prohibited subsidies contingent upon the use of domestic over imported goods, she said it was paradoxical that subsidies were allowed to promote adaption to new environmental requirements, but not to qualify the use of subsidies to environmentally-damaging products where more benign products were substitutable. The conclusion might be reached that WTO rules should include, at least, policy statements on how the trading system could promote the use of environmentally-friendly products. Here, modifications to WTO rules might be needed. Although the WTO was not a substitute for an MEA on climate change, it should be ensured it did not facilitate the maintenance of policies detrimental to sustainable development. The Report should note that further trade liberalization negotiations should seek increased market access in sectors and for products where negative environmental effects of trade restrictions existed. Products directly linked to MEAs could be examined to find consensus as to which products, in their end-use or production, were environmentally-friendly and should be given priority for increased market access. To further work on tariffs and non-tariff barriers, Norway would examine the energy sector and share the results.

31. The representative of Mexico said this Item was broad and should be treated horizontally. She was open to proposals on how to analyze the market access effects of environmental measures for developing countries. The important issue under this Item was the need to safeguard exiting market access from the adverse effects of environmental measures, rather than the need for additional market access. On WT/CTE/W/26, she did not agree with the conclusions given in paragraph 52. The analysis of unilateral measures in paragraph 48 was limited and did not refer to discussion in the CTE and the EMIT Group. She referred to the linkages between this Item and Item 3. Although discussion on Item 3 had focused on eco-labelling, this did not mean other issues included under Item 3 were not important, such as eco-packaging. In order to clarify WTO rules on packaging and labelling requirements, discussion in the TBT Committee should be reviewed. In terms of the applicability of the rules to these new types of measures, transparency should be ensured in the development of criteria. Transparency was a horizontal issue and its effective implementation should be reviewed. Eco-packaging requirements

generally were based on conditions which reflected the national priorities in the country which imposed them. Applying these measures to imports might not only be environmentally-inappropriate, but might have a negative impact on market access. Importers were also subject to disproportionate costs. Packaging requirements favoured the use of local materials. In depth discussion was necessary on effectiveness to ensure non-discrimination and national treatment were respected for packaging requirements, including in the TBT Agreement. These requirements might lead to significant *de facto* trade barriers. She noted the need to ensure equality of opportunity to compete in this regard. The effective application of the concept of necessity would ensure an objective balance.

32. The delegation of the United States agreed with the observation in paragraph 5 of WT/CTE/W/26, which tracked conclusions in other fora, particularly that environmental measures had generally small effects on competitiveness and market access. These conclusions supported her delegation's views that environmental measures did not require greater scrutiny than other measures that might affect trade. She noted in particular the conclusion that the degree of openness of a country's economy influenced its capacity to adjust to environmental standards due to better access to information, inputs and technology. She agreed with the EC that environmental awareness was creating new markets for environmental goods, services and technologies. While she shared some of the concerns mentioned in paragraph 14 on eco-labelling, she said there was no current basis for the suggestion that eco-labelling might force firms to abandon markets. Examples in paragraphs 40 and 42 did not support such a strong statement, which assumed eco-labelling had a level of impact on the market that had yet to be seen. She expressed uncertainty that paragraph 15 was factually correct in its assertion most eco-labelling was life-cycle based. She noted the many examples of product-specific claims, such as those governed by Federal Trade Commission guidelines. She agreed with paragraph 15 that transparency in eco-labelling was essential, as had been recognized in the US proposal for work in this area. Noting delegations to UNCTAD had not had an opportunity to analyze the case studies in depth, she recalled some of the limitations her delegation had mentioned at UNCTAD meetings. A distinction should be drawn between empirical analysis and raw data. Most of the case studies involved *ex ante* analysis, where firms were asked what the impact of various environmental measures might be in the future. This approach did not always yield accurate information; she recalled the difference between what US industry had argued was possible before new domestic laws had come into effect and what they had accomplished thereafter. The US was not prepared to draw general conclusions from the case studies as they, in large part, were anecdotal and targeted sectors where potential problems seemed likely. Although it was valuable to report on work in other fora, it should not be endorsed by the Secretariat. She agreed with paragraph 52.

33. She supported progress towards increased agricultural trade liberalization and internalization of environmental costs, which would lead to environmental improvements. Recognizing trade restrictions and distortions could cause environmental problems, she felt this issue would play a constructive role in furthering both trade and environmental objectives. As such, she supported Argentina's proposals for further action. Since there was a common objective in promoting this issue, from an environmental perspective she was disappointed the paper limited its focus to developed country practices, thereby presenting it as North-South issue, which it was not. Developed countries could be harmed by the practices of other developed countries, and developing countries could be harmed by the practices of other developing countries. For example, export taxes and high tariffs were practices employed by LDCs. Since many of the adverse environmental consequences of trade distorting agricultural policies were experienced domestically, the distorting policies of a country could have adverse environmental consequences for that country, regardless of its development status. Although Argentina's paper focused on agricultural subsidies, the same analysis should be applied to other trade distortions, such as tariff escalation, state trading, and excessively high tariffs. Export taxes led to similar results as import barriers. She expressed concern with paragraph 7 that market failures could only be addressed after intervention failures were removed, as market and intervention failures impacted on one another and should be dealt with together, not sequentially. The United States had recognized the potential environmental problems with some of its agricultural policies and was in the process of changing them. To the quote from Krissoff in paragraph 17 should be added the text which noted the US had been moving away from the practice under criticism.

34. She said the tables in WT/CTE/W/26 indicated tariff escalation was not limited to developed or developing countries; this was important as developing countries were also major consumers of unprocessed goods. As the analysis was on potential environmental benefits of reducing tariff escalation based on their impact on the generation of wealth, it presented an incomplete picture. Trade liberalization did not automatically lead to improved environmental protection; many environmental benefits were likely indirect, and their realization depended on appropriate environmental policies being in place. Environmental impact of shifting processing depended on: (i) relative environmental sensitivities; (ii) regulatory infrastructure in place to avoid resulting environmental degradation; and (iii) the relative success of achieving full cost internalization. Whether there was an environmental benefit to an exporting country depended on the balance between removing pressure to over-exploit natural resources versus any additional environmental stress caused by newly generated processing activities. For example, taking marginal land out of cotton production in favour of increased textile manufacturing in the exporting country could lead to greater air and water pollution absent adequate environmental controls on the production processes. Policy linkages could be drawn between tariff escalation and export taxes and restrictions, which distorted market signals and could lead to inefficient resource allocation. It would be more useful if the tables provided information on applied tariff rates. The tables suggested that at least one country had ceiling bindings, so any actual tariff escalation was not evident. She inquired as to how the EC base rates and final rates on agricultural products such as grains had been determined as the numbers were considerably lower than her delegation understood them to be.

35. The representative of Canada referred to the potential for trade promotion effects resulting from environmental concern and the new global market for environmental goods, services and technology, which was noted in WT/CTE/W/26. Analysis was required on how developing countries could benefit from these market opportunities. Another point illustrated in WT/CTE/W/26 was the need to distinguish between competitiveness impacts of domestic environmental regulations and product requirements. The latter were relevant to the CTE's work. A distinction was needed between health and environmental requirements. He noted the potential trade effects of the recent Basel Convention amendment for developing country recycling industries. It was precisely such effects that had led Canada to oppose, unsuccessfully, the ban on trade in recyclables. The conclusions in WT/CTE/W/26 on market access and competitiveness, while necessarily tentative in view of the difficulty of making generalizations in this area, were noteworthy. He sought clarification from the EC on its proposal in September 1995 that the CTE examine how to allow developing countries to comply with environmental obligations which had an impact on market access, subject to the environmental goal not being undermined. Also, an environmental *de minimis* clause had been suggested, whereby if a product from a developing country contributed only minimally to the environmental damage attributable to the product in question, then its market access opportunities could be preserved.

36. This issue focused on synergies to achieve both trade and environmental benefits. He noted the point in Argentina's paper that the environmental benefits from the removal of trade restrictions and distortions frequently occurred not only in the territory of the country removing the distortive measure, but also in that of its trading partners, which might have been pushed to implement environmentally-damaging policies by the measure in question. Canada agreed identifying and eliminating intervention or policy failures was essential to correct deficiencies in the price formation system. Canada's approach to sustainable development was based on the recognition that a first step was to ensure economic and environmental policy signals were similar. Canada felt agricultural trade liberalization was an important achievement of the Uruguay Round and the reform process should be continued, primarily in the Agriculture Agreement. Potential for a positive relationship between reduced support and environmental benefits was not related solely to agriculture and should be considered in all sectors, such as the unfinished zero-for-zero in sectors such as wood. He noted Canada's "baseline study" which was a review of the federal government's policies to identify barriers and disincentives to sound environmental practices. Also, OECD Environment Ministers had called for analysis of the effects of subsidies and tax disincentives to sound environmental practices in various economic sectors, and the costs and benefits of their elimination or reform. These initiatives offered "multiple-win" opportunities and led to policy actions which were good for the environment and the economy, in both the country taking the measure

and its trading partners. In the case of subsidies, it might also lead to fiscal benefits. The analysis in WT/CTE/W/25 solved the difficulty of being definitive about the environmental impacts of any given set of tariffs. This was a general issue as the links between trade liberalization and higher environmental standards were not automatic. However, to the extent tariff escalation impeded efficient resource allocation, it could also impede the environmental benefits of reducing tariff escalation for products covered in the tables. Concerning subsidies and tariff escalation, Canada envisaged the Report might remind Members of the desirability of investigating the potential for achieving both trade and environment objectives by reviewing domestic policies.

37. The representative of Argentina, responding to the US comment, acknowledged the continuation of the Krissoff reference stated that the US had moved away from the practice which had been mentioned.

Item 8: Relevant provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights

38. The delegation of India introduced her delegation's non-paper of 22 March. As this contribution covered only some basic ideas, India would be grateful for suggestions for improvement. She recalled the CTE's mandate on this Item and the statement made by India when this Item had initially been discussed in June 1995. While nothing in the TRIPs Agreement prevented a government or an international financial mechanism from providing financial assistance to enable transfer of privately-held proprietary technology on concessional terms, she suggested there was also nothing in the TRIPs Agreement which provided specific mechanisms for achieving the objectives of sustainable development and environmental protection. The CTE should ensure intellectual property (IP) rules in the WTO were not in contradiction with the promotion of sustainable development. The link between IP and the environment arose because technologies existed which were covered by IP that directly affected the environment. Effects could cause serious prejudice to the environment or be environmentally-beneficial. The CTE should discourage the global use of injurious technologies and encourage the use of beneficial technologies.

39. She suggested sub-categories of environment-affecting technologies: those related directly or indirectly to an existing MEA and those which were not; those which were covered by current IP and those which were eligible for coverage in future; and, as discussed in WT/CTE/W/22, those which were easily copied and those which were not. The non-paper referred to patents, plant variety protection or plant breeders' rights, circuit-layout designs and undisclosed information. Referring to patents for technologies causing serious prejudice to the environment, she said exclusion from patentability or ban on use or commercial exploitation would appear to be *prima facie* necessary. The TRIPs Agreement recognized such exclusions could be used to discourage the generation of environmentally-injurious technologies, subject to safeguards against unwarranted dilution of IP protection. Referring to the safeguard provisions in Article 27.2, she said a similar solution, which safeguarded the environment and provided IP protection, should be sought for other areas of conflict between IP objectives and sustainable development. The TRIPs Agreement did not clarify whether Members could ban the commercial exploitation of environmentally-injurious technologies while granting patent protection or whether this would give rise to non-violation-type of complaints. Although such complaints would not be valid for the first five years of the TRIPs Agreement, this should be discussed to reach an understanding to assist the TRIPs Council. Environmentally-beneficial technologies were of concern to developing countries in relation to the TRIPs Agreement. While developing countries would adhere to the international consensus in phasing out certain environmentally-injurious substances in MEAs, substitute technologies were not transferred by multinational enterprises (MNEs) on "fair and most favourable terms", as stated in Article 16 of the Biodiversity Convention and Article 10A of the Montreal Protocol, or on reasonable terms. Under the Montreal Protocol, certain projects were not being cleared under the financial mechanism as they involved very high payments. They were not judged to be unreasonable or unfavourable terms for technology transfer as these technologies were in the "commercial domain" and not the "public domain". Moreover, R&D projects were not being cleared unless the developing country concerned gave an undertaking technology transfer would not later be sought. No country could guarantee indigenous R&D would be successful. She disagreed with paragraph 35 of WT/CTE/W/22

that there was no evidence of impediments to the flow of technology under the Montreal Protocol, which was based on one study and was inconclusive. She asked how a developing country could acquire the necessary technologies to phase out environmentally-injurious substances.

40. In light of the above, India had suggested amendments to the TRIPs Agreement be considered, which were recommended to achieve the larger objective of implementing MEAs in a feasible manner. There was a fine balance between IP protection, environmental protection and the promotion of sustainable development, especially in the case of technologies directly or indirectly related to an MEA. Concerning financial subsidies to private IP owners, she said there might be a need to incorporate easier compulsory licensing, shortening of the term of protection or revocation or exclusion from protection. The TRIPs Agreement needed to be flexible to deal with such contingencies. Although in cases where technologies were not easily copied, the cooperation of the IP right owner was required, Members should be allowed to relax protection of trade secrets under Article 39 so compulsory licensing or revocation or reduction of the IP term and dilution of IP for trade secrets could aid voluntary technology transfer on fair and favourable terms. The points made in WT/CTE/W/22 on patents engendering full disclosure and reducing transaction costs should be weighted against the larger issues raised in India's non-paper. Referring to the empirical evidence on the direct link between foreign direct investment (FDI) and IP protection in paragraph 22, she said other studies showed there was no evidence of such a link. Paragraphs 21 and 22 of India's non-paper noted countries could incorporate plant variety protection and biotechnological inventions as necessary to protect the environment, provided these measures did not detract from the effectiveness of protection. It was possible to reconcile IP protection and environmental concerns as illustrated by Article 27.2.

41. Concerning IP rights of traditional communities, which arose in the Biodiversity Convention and for patents, she cited the case of the "neem seed", from which an MNE had patented a process to make a pesticide. Whether such a process or product was "novel" in terms of criteria for patentability was under discussion. Sharing the benefits with traditional communities which preserved such knowledge and maintained genetic resources also needed to be addressed. She referred to the environmental effect of integrated circuits of layout design, mentioned in paragraph 52 of WT/CTE/W/8. For environmentally-injurious technologies, solutions would be the same as those advocated for patents, the difference being that while in the case of patents, the TRIPs Agreement made an explicit provision for exclusion, this was not done for layout designs. Here, there was no reason for differential treatment, and the use of measures such as exclusion from and revocation of existing protection must be provided for in addition to the ban of their commercial exploitation. Similarly, when the use or commercial exploitation of layout designs or products incorporating such designs was environmentally-beneficial, Members might revoke existing protection or use compulsory licensing, the difference being that under the TRIPs Agreement, compulsory licensing for semi-conductor technology was restricted on two grounds: public non-commercial use or to remedy an adjudicated anti-competitive practice. This prohibited Members from granting a compulsory licence on the grounds that voluntary transfer of environmentally-sound technologies (ESTs) was not taking place on fair and most favourable terms. The restrictions and unnecessarily burdensome conditions should be removed to make Article 31 applicable to this IP area. Turning to protection of undisclosed information, she noted this was crucial for developing countries. Members should be flexible to lower IP standards for trade secrets to increase accessibility to ESTs. The TRIPs Agreement had strict disciplines on breach of contract and confidence, inducement to such breach and acquisition of undisclosed information by third parties. As no exceptions to such protection existed, the CTE should examine a limited environmental exception. On test or other data submitted for obtaining marketing approval of pharmaceutical or agricultural chemical products which used new chemicals, Members had an obligation to protect the public. The CTE needed only to interpret the term "protect the public" to include the environment.

42. She said WT/CTE/W/22 was an analysis of the transfer of technology under commercial conditions, and it did not address the exceptional situation raised by India where developing countries had problems with the transfer of technology required to meet MEA obligations. For technologies which could be copied, IP was a legal obstacle to copying and transferring technology, as IP laws in the TRIPs Agreement would not allow this. For technologies which could not easily be copied, cooperation of the

technology supplier was required. It was relevant to examine existing disciplines under trade secrets in the WTO to seek a solution to transfer of ESTs with global benefit as decided by an existing MEA. On paragraph 7, she said copying would be hindered by IP technology, which would be relevant only to 'copiable' technologies, except, as noted in paragraph 28, where compulsory licences were granted. Compulsory licences enabled EST use even without the cooperation of the right owner. She said Article 31(k) of the TRIPs Agreement was a useful starting point for discussion. It was for non 'copiable' technology where the government of the home country (in terms of FDI) would have to convince the MNEs who held such technologies that it would be in their interest or in the global interest to transfer such technologies on reasonable terms. In return, that country or the MNE would gain publicity that they had taken this step in the interests of the global environment. The scope of India's non-paper was limited to technologies which were not in the public domain, which were covered by IP protection or trade secret protection, for which there was no time limit on the protection.

43. Paragraph 18 referred to public financial assistance where technology was privately-owned, for which the TRIPs Agreement did not impede public financing of voluntary transfer on concessional terms. Even though she said this was not feasible, India was open to be convinced that such financial assistance would be forthcoming. On paragraph 20, the likelihood of such technology being made available on reasonable terms or at all was greater if adequate and effective IP protection was provided. Although this was normally the case, she had referred to technology transfer that was urgently required to be widely disseminated as mandated in an MEA. She cited the example of an MEA-related substance where a country obliged to phase it out was not getting technology transfer and thousands of SMEs required it at a reasonable cost. Here, cost was the primary concern. WT/CTE/W/22 noted the importance of a functioning IP regime, particularly for patents which encouraged inventors to disclose new technologies. However, only some parts of technological know-how were disclosed in the patent applications process. Based on studies of which she was aware, it was a generalization to state FDI would not take place without IP protection. She cited a study which revealed that there was no link between IP protection and FDI. Studies based on surveys and questionnaires were not decisive evidence. She cited paragraph 28 which stated that for 'copiable' technologies, costs would be lower if they were not subject to patents. This proved that IPRs were not an obstacle to 'copiable' technology and compulsory licensing would be a way out in areas where ESTs were required pursuant to an MEA. She said it was clear Article 31 of the TRIPs Agreement did not specify any grounds for compulsory licensing, so Members were free to prescribe any grounds including meeting a national or international objective. So presumably transfer of ESTs was permitted under Article 31, subject to various conditions. She cited the case of anti-competitive practices in Article 31(k), which gave a certain flexibility to the conditions that applied. The idea in paragraph 29 could be extended to cover ESTs through the use of Article 31(k), to include ESTs required pursuant to an MEA. Although there was not much empirical evidence on the effect of IPRs on the transfer of ESTs, this issue should be studied. Concerning the suggestion that a solution would be to implement Article 67 of the TRIPs Agreement, on technical assistance, she said this did not cover technology transfer. Although India had no intention of undermining the TRIPs Agreement, solutions for transfer of ESTs were needed. India was prepared to be convinced that no problem existed or there were more feasible solutions.

44. The representative of Chile said the TRIPs Agreement did not refer to, or promote incentives for the transfer of ESTs. From an environmental perspective, the TRIPs Agreement contained a cautionary principle in Article 8.1, whereby Members were granted the authority to limit R&D activities or approval of technology on grounds of environmental protection. The rights of the IP owner of ESTs were not affected, but the possibility to apply the technology in a given jurisdiction was restricted. Measures for environmental protection had to be WTO-consistent. It could not be disregarded that environmental standards would be established that regulated technology transfer. In this case, a group of countries or a country unilaterally could establish criteria regarding R&D which would regulate the transfer of ESTs. The development of such standards, which were not based on international consensus, would create trade distortions and impede technology transfer to developing countries. Chile's preliminary analysis suggested there could be at least two situations which were negative for developing countries. LDC products which did not respect these standards could be discriminated against compared with similar products from industrialized countries which had incorporated ESTs. Also, there

was the risk of restricting the capacity of developing countries to acquire technology which was the most adequate for their environmental conditions.

45. The representative of Switzerland said he would comment on India's proposal at the next meeting. Among the positive measures in MEAs which would contribute to environmental measures, reference had been made to technology transfer. In order for technology to be transferred, it had to exist. An effective IPR regime would support the development of new ESTs. As stated in Article 7, one of the objectives of the TRIPs Agreement was to contribute to the promotion of technological innovation. He agreed with paragraphs 19-22 of WT/CTE/W/22. There was little practical evidence, and to the extent conclusions could be drawn from practice, the existence of an IPR regime increased the security of enterprises involved in technology transfer. He said that the existence of an IP system was only one of the factors which supported technology transfer. Other factors such as economic and political stability in the country of destination and infrastructure, access to financial resources and vocational training had a greater influence. There were other rules which figured in the WTO Agreements on investment, market access and trade in services which supported technology transfer. Strengthening the legal certainty of the TRIPs Agreement for enterprises operating abroad would contribute to technology transfer in general, particularly for ESTs. Also, technical cooperation should be considered. Paragraph 18 distinguished between private and public sector technologies. Even in the case of private technology, it was possible to envisage public financing for voluntary technology transfer. If the technology concerned was particularly important for the enterprise, an adequate legal framework was important in the decision-making process of an enterprise. He welcomed contact between the Secretariats of the WTO and the Biodiversity Convention, which would contribute to work in both. There should be a process of mutual education and the derestriction of WT/CTE/W/8 was a step in the right direction. This document did not, however, answer all the questions which the Biodiversity Convention had directed to the WTO. It was important that the objectives of both agreements were fully realized and a synergy created between them. In this respect, the CTE should further examine the TRIPs Agreement's impact on biodiversity.

46. The representative of Egypt said India's non-paper was a good basis on which to guide further discussion on this Item. Although the TRIPs Agreement, particularly for patents, provided incentives for the generation of new technology, including ESTs, transfer of such technology was expensive and cumbersome. This did not conform with Agenda 21, which regarded access to, and transfer of EST on concessional terms as essential for sustainable development. IPRs were only one factor, usually not the most important one, which affected technology transfer. However, IPRs should not obstruct the transfer of technology, which should be made affordable to developing countries, particularly SMEs, to help them adapt to new environmental measures. As India's non-paper exemplified, Articles 7, 27, 31 and 33 of the TRIPs Agreement should be examined to determine their effect on the transfer of ESTs. This might lead to an examination of the relevant articles in MEAs which contained IPR-related obligations, notably Articles 1, 15 and 16 of the Biodiversity Convention. Generally, the TRIPs Agreement was felt to be flexible concerning the environment; it did not hinder any action to address the adverse environmental effects. She asked if the TRIPs Agreement put ESTs beyond the reach of developing countries, which would have a negative impact on the environment and on their efforts to cope with MEA requirements. Such concerns would be compounded where the result of an IPR regime was that payment had to be made to use technology that would otherwise be available at no, or little cost, as noted in paragraph 19 of WT/CTE/W/22. She noted the relationship between the transfer of biotechnology essential to the Biodiversity Convention and Article 33 of the TRIPs Agreement. The extent to which Article 31 on compulsory licensing was applicable was relevant to the distinction made in WT/CTE/W/22 on easily and non-easily 'copiable' technology. The effectiveness of Article 31 might become obsolete for non-easily 'copiable' technology. It would be worthwhile to examine Article 27.2 exceptions, and whether they should be narrowly interpreted, placing the burden of proof mainly on developing countries to prove the link between exclusion from patentability of certain inventions and the protection of human, animal or plant life or health or to avoid serious prejudice to the environment. Or, should exceptions be interpreted broadly, in a manner consistent with the precautionary principle, a guiding principle in the Biodiversity Convention. She noted questions for a future work programme: whether the TRIPs Agreement was compatible with sustainable development, i.e. did it help environmental

conservation; whether the TRIPs Agreement struck a balance between the producer of technology and the welfare of society, in terms of preservation of genetic resources and access to, and transfer of biotechnology; and whether the TRIPs Agreement set the framework for conservation and development of biodiversity.

47. The representative of Korea felt India's non-paper had merit since its was confined to technologies related to MEAs. Commenting on WT/CTE/W/22, he said paragraph 6 stated factors affecting technology transfer were essentially the same regardless of the area of technology and suggested there were no special incentives for facilitating access to, and transfer of ESTs. Since the paper's focus was on factors affecting the transfer of ESTs, it should have explored the promotion of EST transfer. Regarding the distinction between readily 'copiable' and non-easily 'copiable' technologies, he said although the degree of 'copiability' differed between countries based on differing capacities, this was a useful analytical tool. He agreed with paragraph 29 that touched on issues related to the compulsory licensing of different types of technologies. In the case of anti-competitive practices or if access to technologies was not being provided in a reasonable period by IPR owners, it was clear such technologies should be available through compulsory licensing. However, he asked whether Articles 31 and 40 of the TRIPs Agreement were sufficient for access to, and transfer of ESTs required to meet MEA obligations. As noted by India, some elements of Article 31 of the TRIPs Agreement were considered to be possible impediments to the transfer of ESTs. The concept of "*ex ante* licensing and *ex post* compensation" should be studied to promote the efficient transfer of ESTs that replaced restricted technologies under MEAs which were not accessible even on reasonable commercial terms. For non-easily 'copiable' technologies, arrangements to complement the existing compulsory licensing regime should be devised for securing access to ESTs. He noted the importance of striking a balance between rights and obligations of IPR holders and users, and between the need to promote inventions and prevent abuse of IPRs for the promotion of access to and transfer of ESTs.

48. The representative of Brazil recalled the request (reproduced in WT/CTE/W/18) by the Conference of the Parties to the Biodiversity Convention Secretariat to its Secretariat to liaise with and invite the WTO Secretariat to provide input in the preparation of a paper that identified the synergies and relationship between the objectives of the Biodiversity Convention and the TRIPs Agreement. The CTE's decision to derestrict WT/CTE/W/8 and the Report of the CTE meeting at which this document had been discussed could be the basis for a dialogue between the WTO and the Biodiversity Convention Secretariats. Discussion on this Item would result in more substantive inputs to the Biodiversity Secretariat to assist in preparing its paper. Brazil hoped the dialogue with the Biodiversity Convention could serve as a model for cooperation between the WTO and MEAs. In this regard, he supported Argentina's proposal in June 1995 to identify possible areas of cooperation between the TRIPs Agreement and MEAs which contained IPR-related obligations. The implementation of IPR-related obligations in MEAs should be notified to the TRIPs Agreement under Articles 63.1 and 63.2, which would be a substantive input to the debate on the synergies between the TRIPs Agreement and relevant MEAs.

49. Referring to protection of traditional knowledge, he noted that Articles 8(j) and 15 of the Biodiversity Convention and negotiations on "farmer rights" in the FAO Global System for Plant Genetic Resources might develop in a way in which accommodation to TRIPs obligations might be sought through the built-in review system in Article 27.3 of the TRIPs Agreement. He quoted from a Biodiversity Secretariat document (E/CN.17/IPF/1996/9) to the Second Session of the CSD Intergovernmental Panel on Forests (IPF) on *Traditional forest-related knowledge*, which stated: "one way to forge effective links with local communities could be through the development of *sui generis* systems to protect indigenous and local communities and ensure benefit-sharing from the wider use and application of their knowledge about forest use and management, as well as of biogenetic resources conserved on their lands and territories. Adequate and effective protection and benefit-sharing mechanisms would inevitably require a shift from economic or ecologically determined legal and political frameworks to rights-driven systems. Adopting such a course would, however, enable commitments made by countries under human rights conventions, covenants and agreements to be harmonized at the national level with international commitments on environment, development and trade. It should also enable the provisions of the Convention on Biological Diversity to generate options for stimulating the equitable use and application

of the traditional knowledge, innovations and practices of forest-dwellers." This would be further examined at the next IPF session when a "report for substantive discussion [...] contain[ing] well-defined proposals for action, including an exploration of the need for and feasibility of mechanisms in the field of traditional forest-related knowledge and forest management practices, and its relationship to biological diversity, that can be recognized, protected and compensated for" should be produced. Relevant issues were being dealt with in the context of the Biodiversity Convention and the CSD, in light of the General Assembly's special session to review Agenda 21 implementation in 1997. Recalling Chapters 26 and 34 of Agenda 21 which addressed issues related to traditional knowledge and technology transfer, he said the CTE should consider contributing to discussions held at the CSD and the Conference of the Parties of relevant MEAs. As a recommendation to Ministers, Brazil would like this issue to be given full consideration in future WTO activities, particularly if joint sessions of the CTE and the TRIPs Council were to be convened after Singapore. Concerning the conclusions in WT/CTE/W/22 related to the consequences of IPR protection to access to, and transfer of ESTs not in the public domain, he said they were based on preliminary empirical evidence and were speculative. Further study was needed on availability of financial resources, the role of governments in facilitating access to technology, and lack of capacity to absorb advanced technologies as an impediment for their use. He recalled Article 67 of the TRIPs Agreement contained commitments on technical cooperation which required developed countries to provide, on request and on mutually-agreed terms, technical and financial cooperation for developing countries. Capacity-building was fundamental so the recipient could identify and have access to technology most suitable to its needs. The TRIPs Council should monitor implementation of this obligation, specifically for ESTs. Brazil welcomed India's contribution to addressing problems posed by the implementation of the TRIPs Agreement in relation to access to, and transfer of ESTs.

50. The representative of Norway said issues related to the TRIPs Agreement illustrated how trade issues interlinked with other important areas, such as conservation and sustainable use of genetic resources. She noted that the implementation of the TRIPs Agreement could have implications for the Biodiversity Convention and vice versa. Links between the Biodiversity Convention and the TRIPs Agreement concerned protection and transfer of, and access to technology subject to IPRs. Article 16.5 of the Biodiversity Convention stated Parties should cooperate, subject to national and international law, to ensure IPRs were supportive of, and did not run counter to the Convention's objectives; Article 8(j) stated Parties should maintain knowledge, innovations and practices of indigenous and local communities and encourage the equitable sharing of benefits which arose therefrom. The latter task was influenced by how IPR-systems would be developed and implemented. She recalled Resolution 3 of the Nairobi Final Act, which had concluded the Biodiversity Convention's negotiation, recognized the need to seek solutions to outstanding matters including the question of farmers' rights, which was linked to the renegotiation of the International Undertaking on Plant Genetic Resources for Food and Agriculture, a process which dealt with IPR-related issues. The CTE's challenge was to give guidance to prevent the objectives of the TRIPs Agreement and the Biodiversity Convention from being undermined. IPR regimes should be developed in a way that was supportive of the Biodiversity Convention's objectives. This related in particular to the implementation of the *sui generis* principle. Benefits arising from informal knowledge, innovations and practices of indigenous and local communities should not be derestricted. An important element was how to develop adequate and effective *sui generis* systems which did not undermine the UPOV Convention regarding rights of farmers to save seeds from one growing season to another. She felt the CTE and the WTO Secretariat should respond positively to the request from the Parties to the Biodiversity Convention to cooperate with the WTO Secretariat in the preparation of a paper on the relationship between the objectives of the Convention and the TRIPs Agreement. Members should encourage meetings of experts on the Convention to support coordination in capitals, which would encourage mutually supportive interpretations of the TRIPs Agreement and the Biodiversity Convention, acceptable to members of both instruments.

51. The representative of Japan said environmental protection and IPR protection were basically compatible; the latter led to technical innovation which contributed to the former. Both issues were new fields and Japan was prepared to fully consider developing countries' views. Experience in implementing the TRIPs Agreement and the Biodiversity Convention would permit analysis based on empirical data.

At this stage, a cautious approach should be taken concerning the relationship between the two agreements.

52. The representative of the United States said the development of technology, which was one of the principle aims of the TRIPs Agreement, must precede its transfer. Paragraph 5 of WT/CTE/W/22 correctly observed IP was only one of the factors that determined whether technology transfer took place. Paragraphs 5 and 21 accurately noted effective IP protection facilitated technology transfer by improving the willingness of the IP owner to place products on the market based on the IP, to share technological information and know-how, and to provide FDI related to technology transfer. Paragraphs 21-29 noted several factors that could affect technology transfer, including the identity of the participants and whether the technology was susceptible to easy misappropriation. She addressed a few issues that were not completely or accurately addressed in the paper. A comprehensive TRIPs-based IP regime was essential to technological development, which fostered technology transfer. While WT/CTE/W/22 focused primarily on the value of protecting patents and trade secrets, the analysis was also valid for other IP forms, such as copyright protection for computer software and layout designs for integrated circuits. On paragraph 28, the United States did not agree with the idea that the TRIPs Agreement was unlikely to be important where technology was not transferred, but was embodied in a product that was sold. Many entities would be reluctant to sell products that might be reverse engineered in a market that did not provide effective IP protection. In categorizing the types of technology transfer, WT/CTE/W/22 failed to note that a third party might exploit technology without the voluntary participation of its owner, but such efforts were inefficient and resulted in lower quality or even harmful products. WT/CTE/W/22 incorrectly noted higher IPR standards would implicitly lead to higher prices for some technology. This was not the case for technology that was subject to IPRs. She recalled technology might not have been created at all without the incentives offered by effective IP systems, and improved products or processes, developed due to these incentives, might be more cost effective than predecessors, e.g. new pharmaceuticals might be cheaper than earlier therapies such as surgery.

53. The representative of Canada said an examination of the relationship between IP and WTO rules was necessary. IPRs were concerned with the right to information. An IPR had two aspects: a right to prevent the relevant information's unauthorized use and the right to authorize its use via licensing or assignment. Every IP law was a special regime of rights with respect to an information category which was authoritatively defined, for example, by the statutory criteria determining a work's eligibility for copyright protection. IPRs ensured publication of new knowledge, provided R&D returns and provided an incentive for technological diffusion. IPRs meant copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights. Most of these recognized some form of innovation and granted the innovator the right to prevent unauthorized persons from exploiting the information, usually for a set period. IPRs were constructed on national laws and bilateral and multilateral agreements, with almost every country having some form of IPR protection.

54. The CTE should determine whether IPRs or other instruments were an effective means of encouraging biodiversity conservation and the fair and equitable use of genetic resources. Rather than being an obstacle to environmental protection, the TRIPs Agreement provided an incentive to EST development. Effective IPR systems encouraged innovation by ensuring adequate protection for the innovator and generally supported access to, and transfer of technology. Where there was considerable demand for ESTs, the competition to improve know-how and products would compel innovation. Other factors were cited more often than IPRs as crucial in the acquisition of technologies, including a suitable investment environment, availability of natural resources and skilled labour, availability of financing and domestic technological capacities in the customer country. An IPR regime in any country enhanced the willingness of a technology supplier to transfer it. Canada supported efforts in the WTO and WIPO to assist developing countries to develop effective IPR regimes. Information sharing on IPR practices, technology transfer and capacity-building should be encouraged. An important issue was how technology that might have adverse environmental effects should be treated under IPR regimes. Article 27.2 of the TRIPs Agreement permitted the exclusion from patentability inventions which could be prejudicial to the environment. Canada questioned the need for further provisions to the TRIPs

Agreement to deal with environmentally-unfriendly inventions. While the granting of a patent for an invention recognized the patent holder's right to exclude third parties from manufacturing and selling it, it did not guarantee a permit for marketing by the patent holder; national health, safety and environmental agreements were sufficient protection from environmentally-unfriendly inventions. Canada felt the Biodiversity Convention was not inconsistent with the TRIPs Agreement. Referring to the request from the Biodiversity Convention to the WTO Secretariat to assist in the preparation of a paper on the relationship between the objectives of the Biodiversity Convention and the TRIPs Agreement, he said this work should be undertaken to better define the role of IPRs, if any, with respect to the environment. The Biodiversity Convention was also studying the impact of IPR systems on the conservation and sustainable use of biodiversity. These studies would help determine the extent, if any, IPR systems obstructed EST transfer and biodiversity preservation. Any conclusions should be developed by the Biodiversity Convention, the WTO and WIPO.

55. Traditional ecological knowledge was relevant to conserving forest ecosystems. In Canada, several initiatives related to traditional forest knowledge and practices, measures taken to protect them and ways to share in their benefits were underway. Priority areas for action were: the identification of principles, guidelines and mechanisms to develop systems like traditional resource rights; the provision of advice on the acquisition, evaluation, and analysis of traditional technologies (the storage, retrieval, and dissemination of information; identification of stakeholders, users and beneficiaries); development of new approaches to resource management and benefit sharing (such as co-management with government and the private sector; community forests; watershed protection, remediation and restoration; model forests, including international cooperation through establishment of aboriginal networks; conservation and protection measures). Of importance also were sources of funding for indigenous and local communities to finance forest and biodiversity conservation efforts, for studies and wider application of traditional knowledge, including education and training, and to determine which traditional knowledge was reflected in current policies, regulations and legislation. The use and protection of traditional knowledge was related to a range of issues, for example land tenure. Application of IPRs to plant genetic material had also been raised in the Biodiversity Convention and FAO. Canada felt that unrestricted and unpaid access to plant genetic resources for food and agriculture needed to be maintained and was to the advantage of all countries and that an open exchange of such genetic material led to better research, improved knowledge, more productive crop cultivars and, more and better food. Free movement of plant genetic resources for research and breeding facilitated gene conservation, including the improvement of crop gene banks. Terms of access to samples of these genetic resources had to be negotiated by governments at the FAO Commission on Genetic Resources for Food and Agriculture, in the context of revising the International Undertaking of Plant Genetic Resources. However, the commercial exchange of plant products was best supported by IPRs as agreed in the WTO, WIPO and UPOV. Canada felt the TRIPs Agreement enhanced environmental protection. Feasible ways in which benefits could be shared were important, without assuming new IPRs were necessarily the best solution. Joint work of the Secretariats of the Biodiversity Convention and the WTO would help define these issues further.

56. The representative of the European Communities said, given the complexity of the issue and the lack of experience in the implementation of the TRIPs Agreement and the Biodiversity Convention, it was understandable that a comprehensive analysis of all TRIPs-related issues had not yet been achieved. Adequate IPR protection should be considered as supporting environmental protection and as necessary to promote ESTs, without which it was not possible to meet the challenge of rapidly generating technologies for sustainable development and to achieve their transfer on a large scale. Without adequate rules, EST transfer would be impeded by the fear of piracy. Correct and timely implementation of the TRIPs Agreement was crucial. However, the TRIPs Agreement did not prevent the control of potentially detrimental effects of inventions on the environment. Certain provisions of the TRIPs Agreement took into account environmental concerns and provided a certain flexibility. Article 27 allowed Members to exclude, in certain cases, technologies from patentability, and specifically mentioned the environment. Interlinkages between the TRIPs Agreement and the Biodiversity Convention deserved attention to ensure their mutual supportiveness and effective implementation. The achievement of the MEA objectives, such as the Biodiversity Convention, should not conflict with effective

IPR protection. The EC felt effective IPR protection in relation to access and transfer of technology was achievable. One of the means for ensuring technology transfer was financial assistance, e.g. through the Global Environment Facility. The EC recalled its suggestion to encourage cooperation between the Secretariats of the WTO and the Biodiversity Convention through regular exchange of information. He welcomed Decision II/12 of the Parties to the Biodiversity Convention to liaise with the WTO in the preparation of its paper on the relationship between the objectives of the two agreements. He said there was no contradiction between effective IPR protection and the pursuit of environmental policies. The EC encouraged further examination of this Item in a cooperative spirit, which should be reflected in the Report in the context of a balanced package.

57. The representative of India recognized technology must exist in order for it to be transferred. He agreed the TRIPs Agreement provided appropriate incentives for technological development. However, India was not convinced the current TRIPs Agreement necessarily promoted technology transfer in areas of environmental concern. Concerning the US comment that no problems existed between sustainable development and the TRIPs Agreement, he said this had been identified as an issue which needed to be addressed. Although India's non-paper was not a proposal, it examined possible solutions to the concerns of many developing countries in this area.

58. The Chairman said informal consultations would be conducted on the issue of derestriction of documentation in the context of the request from the Parties to the Biodiversity Convention.

Other Items

Item 1: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements

59. The representative of Japan recalled the guideline approach which his delegation had proposed. Although he agreed Items 6 and 8 were important for developing countries, the worst result would be if there were no substantial results on the core issues under Items 1, 3 and 5, and only general comments on other Items. Although the EC non-paper contributed to the discussion, it was too close to a blank cheque approach. Nevertheless, it would not be constructive to do nothing under this Item. Japan would have to explore further whether it was best to have an *ex post* or *ex ante* approach.

60. The representative of India said there should not be any value judgements on which Item was the most important.

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

61. The representative of the United States introduced her delegation's proposal on transparency and eco-labelling (WT/CTE/W/27), which she requested be derestricted. At the last CTE meeting, her delegation had noted divergent views on the interpretation of the TBT Agreement vis-a-vis eco-labelling. Nevertheless, there was useful work to be done, which would not prejudice any delegation's views of the coverage of the TBT Agreement. As such, the US proposed the CTE/CTBT determine the adequacy of the TBT Agreement's transparency requirements with respect to eco-labelling. As a starting point, the paper set out a framework of critical points in the creation and implementation of eco-labelling programmes and proposed an exchange of views on the extent to which each of these points was covered by the TBT Agreement. She looked forward to hearing other delegations' views.

62. The representative of Canada commented on discussion of his delegation's proposal (WT/CTE/W/21), which had been derestricted upon Canada's request at the CTBT meeting of 1 March. Information was needed on work in other fora and equivalency and mutual recognition. He presented a paper prepared by the Canadian Environmental Choice programme. Referring to concerns

raised regarding the ISO as the possible source for multilateral guidelines for unincorporated PPMs, he recognized the need for intergovernmental review of non-governmental fora's work on developing guidelines. In the context of the pre-conference text for UNCTAD IX, Canada would be proposing the following: "a meeting of trade policy and eco-labelling experts should be held to discuss the work underway in other relevant governmental and non-governmental organizations on the issue of multilateral guidelines for eco-labelling programmes with a view to taking into account the interests of all parties, including the developing countries and countries with economies in transition. On the basis of that meeting, it might be determined by UNCTAD member countries that specific further work was required on this issue." He said the US proposal contributed to work on transparency of eco-labelling. Given the large degree of consensus in the CTE/CTBT in favour of increased transparency, discussion should continue in joint meetings with the CTBT. He felt that the May stocktaking would help define possible recommendations on this issue in the context of a balanced package.

63. The representative of Japan said his delegation would study the US proposal further.

64. The representative of Argentina, commenting on the US proposal, said it would be useful to identify critical stages in the development of eco-labelling criteria to focus work on those separate stages. However, there were issues other than transparency which should be examined. As such, Canada's proposal for UNCTAD IX was appropriate.

65. The representative of Switzerland said the US proposal was a useful contribution. He felt this issue was eligible to be part of the recommendations to Ministers. Transparency contributed to preventing trade disputes concerning not only eco-labelling but all labelling schemes and should be encouraged. Thus, he welcomed the US proposal for further work on transparency of eco-labelling and would comment on this paper at a later stage.

66. It was agreed to derestrict the proposal of the United States (WT/CTE/W/27).