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WORLD TRADE ORGANIZATION

Committee on Trade and Environment

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REPORT OF THE MEETING HELD ON 28-29 MAY 1996

Note by the Secretariat

1. The Committee on Trade and Environment met on 28 and 29 May 1996 under the chairmanship of Ambassador Juan Carlos Sánchez Arnau of Argentina. The agenda contained in WTO/AIR/327 was adopted.

Stocktaking

2. The CTE adopted the Chairman's proposal for a work programme through to the Ministerial Conference in Singapore which is contained in WT/CTE/W/33.

3. The representative of the European Communities said the work programme outlined a clear plan to prepare for the Ministerial Conference. The level of interest in CTE work was highlighted by the increasing number of submissions by delegations, to which the EC would add a number of documents in the future. He said it would be important to focus on matters which were the ripest for results at the Ministerial Conference, such as MEAs, eco-labelling, and DPGs, while not losing sight of all the Items on the CTE agenda. The CTE should submit results which went beyond a mere Report to Ministers at the Ministerial Conference ("the Report") in order that the CTE was in a position to prove its usefulness in settling problems between the multilateral trading system and the environment. Based on the work over the course of the past five years, the least the CTE could do was to arrive at draft Decisions for Ministers. September and October would be an essential period in the preparation of the Report.

4. The representative of India said his delegation was proceeding on the understanding that there would be flexibility in the timetable for submitting proposals and the Report would be presented as a whole for consideration and adoption in the CTE, not in two parts.

5. The representative of Brazil said the work programme was a useful framework for work until Singapore, bearing in mind that so far no conclusions had attained consensus. Acknowledging the Report's importance and that much work lay ahead in its preparation, he emphasized the need for a constructive dynamic. Recalling the goal of the CTE to promote free trade and combat protectionism while providing conditions for sustainable development, he said there was no room for extrajurisdictional trade measures or discriminatory practises. Brazil felt Article XX combined with Article III and the relevant provisions of the TBT and SPS Agreements provided sufficiently broad scope for the adoption of trade measures in pursuance of environmental objectives without harming basic WTO principles. The Report should concentrate on conclusions and recommendations which could also take into account the differences of opinion and issues that should be reflected in the post-Singapore CTE agenda. It was fundamental that deliberations drawn to a conclusion at the October meeting not be reopened in order to have the Report ready for adoption by Ministers.

6. The representative of Korea said, given the wide spectrum of issues encompassed by the CTE agenda and the effect of its work on Members and the WTO in general, the Report should reflect CTE

activities over the past two years in a well-balanced manner. Korea hoped discussion on all Items would be transparent and balanced, particularly in the informal setting.

7. The representative of Japan said discussion should be constructive and substantive in preparation for Singapore.

8. The representative of Mexico supported India and Brazil's statements. He shared the view that the current Articles XX and III sufficed to ensure an appropriate relationship between trade and environment.

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

9. The representative of the United States said there had been little opportunity to raise elements of environmental policy which were important in addressing trade-related environmental impacts, including concerns identified in WT/CTE/W/1, where trade occurred in the absence of the internalization of environmental costs. One response was for the WTO to endorse government actions to use environmental reviews, which could be developed to identify potential environmental impacts of trade agreements, and recommend options to enhance positive and reduce adverse impacts. The value of *ex post* environmental reviews was well recognized, including by the UN Commission on Sustainable Development, especially to promote informed decision-making and public involvement. The US experience with environmental reviews for previously negotiated trade agreements suggested they provided information to policy makers to address trade and environmental concerns. He reiterated the US suggestion that environmental reviews and their methodologies be provided to the Secretariat and made available on request.

10. The representative of India said this Item was important as it covered all trade-related environmental policies and measures and every other Item could be linked to it. It also had significance by itself. The CTE should use this Item to discuss general principles which should be applied to evaluate the appropriateness of environmental policies and measures from the WTO point of view. These principles should be enunciated in the Report to guide further CTE work. India would be submitting a proposal on these principles, which included MFN, national treatment and transparency, as well as necessity, effectiveness, least trade-restrictiveness and proportionality. These principles should keep in mind the environmental concept of common but differentiated responsibility, and the trade concept of special and differentiated treatment for developing countries. Sound scientific basis for environmental measures should be used as opposed to the precautionary principle. In this context, the CTE should recognize environmental objectives were better met by the use of positive measures, including access to environmentally-beneficial technologies, especially if it was warranted by an MEA or by environment standards in export markets. He supported Australia's statement, at the June 1995 meeting, on the appropriateness of environmental policies being judged against WTO rules to guard against protectionism and arbitrary or unjustifiable trade discrimination. It was difficult for countries with limited resources to keep track of the proliferation of trade-related environmental measures. The CTE should monitor these measures, especially unilateral measures with extra-territorial implications, for which Members should submit a list to the WTO. Then the CTE could discuss those measures not covered under other Items and test them against the general principles. This was similar to suggestions by the US and Switzerland in June 1995.

Item 4: The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

11. The representative of Hong Kong introduced his delegation's non-paper (dated 28 May 1996), which proposed a basis on which to further work on this Item, based on past work on transparency, including in the EMIT Group. Notification obligations should be clarified. Areas where potential information gaps had been identified should be reviewed. In many cases, these gaps might have been

filled. If and where gaps remained efforts should be made to regularize notifications and standardize procedures. This clarification process could be pursued along with the Secretariat's establishment of a database covering environment-related trade measures, outlined in paragraphs 8 and 9. Hong Kong's proposal aimed to enhance transparency based on available resources, at a moderate cost. The suggestions set out in paragraph 6 were: (i) for collective clarification by Members of their notification obligations; (ii) for an environmental database to be established by the Secretariat; (iii) simultaneously for national enquiry points to be set up; and (iv) for the TPRM to include reports on environmental-related trade measures. Hong Kong proposed to consolidate information on trade-related environmental measures to facilitate policy considerations and meet commercial needs through enquiry points. Hong Kong welcomed comments on its proposal and would consult with interested Members with a view to submitting a formal document for the June meeting, co-sponsored with other interested delegations if possible.

12. The representative of Norway said Hong Kong's non-paper reflected to a large extent his delegation's views. According to WT/CTE/W/28, notifications had been made by at least one Member under most of the categories of measures listed in the document's Annex. However, compliance was weak for trade-related environmental measures, possibly based on differing interpretations. Given the CTE's horizontal mandate, recommendations should be put forward on transparency, including a request to relevant WTO fora that measures in the area of trade and environment with significant trade effects be notified according to existing and possibly improved procedures. In this context, specific environmental measures could be cited, such as packaging, recycling, disposal, and deposit refund. The CTE should be provided with an overview of trade-related environmental measures which WTO Members had taken. Norway welcomed the suggestion in WT/CTE/W/28 to keep an up-dated compilation of existing notifications of trade-related environmental measures. This would clarify who had done what, and implicitly, which Members were lagging behind in observing notification obligations. Norway was not convinced environmental enquiry points should be set up and did not see a reason to change WTO practice which focused on the nature of the measure and not its purpose. As enquiries were made when exported products met with restrictions in the importing country, the exporter's main interest was whether the restrictions were WTO-compatible, not whether they had an environmental purpose.

13. Norway supported the general outline of the US proposal (WT/CTE/W/27) to increase participation by interested parties, which was an important aspect of the Nordic eco-labelling scheme. Transparency in criteria development, including draft criteria, should be documented and made available to interested parties. However, inviting input from "all interested parties" implied numerous and possibly conflicting proposals for changes. This might not be relevant and should not undermine the effectiveness of the schemes. Development of eco-labelling criteria was a dynamic process, ahead of the standard-setting process for which governments were responsible. Norway felt its suggestions were in line with the assumptions most delegations made on transparency: (i) transparency requirements for environmental measures should not be more onerous than those in other areas; (ii) duplication should be avoided; and (iii) as far as possible, new mechanisms should be avoided so transparency could be linked to compliance with existing WTO rules.

14. The representative of Singapore, on behalf of ASEAN, said there was a need for extensive and uniform information on notifications of trade-related environmental measures and environment-related trade measures. The timely provision of such information facilitated the identification of possible protectionist measures and enabled industries and small and medium-sized enterprises in developing countries to adjust their exports accordingly. Existing transparency provisions should be consolidated and enhanced. ASEAN preferred *ex ante* notification of new environment-related trade measures and *ex post* notification of existing environment-related trade measures. In attempting to make the transparency mechanism more rigorous, burdensome notification requirements should not be imposed nor existing WTO provisions duplicated. However, this should not be an excuse not to facilitate greater transparency. ASEAN supported Hong Kong's proposals, which served to clarify notification obligations to have comprehensive, coherent and comparable information and have easy "one-stop" access to information on notifications. The proposal to establish an environmental database was attractive to

ASEAN. Hong Kong's suggestions and others on this Item could be listed and deliberated in order to achieve substantive results in Singapore.

15. The representative of Korea supported Hong Kong's proposals to enhance the transparency of environment-related trade measures. Hong Kong's proposals should be designed to complement each other. Although much work was needed for these proposals to be effectively implemented, the establishment of a transparency mechanism would serve as a basis for further CTE work. In this regard, the CTE should elaborate the details and modalities for enhancing transparency in the Report. Korea would comment on the proposals at the June meeting.

16. The representative of the United States gave preliminary comments on Hong Kong's non-paper. He cautioned it was not necessary or appropriate for the WTO to duplicate work elsewhere, such as UNCTAD, to develop a database on environmental measures. The US was unconvinced of the usefulness of environmental enquiry points as a special transparency mechanism for environmental measures, which would involve substantial financial commitments. In light of the Secretariat's response that the regular collation of notifications of trade-related environmental measures would not require further resources, the US supported the suggestion in WT/CTE/W/28 for the Secretariat to undertake such an exercise. He would consult with Norway on the US proposal on transparency (WT/CTE/W/27).

17. The representative of Mexico commented on Hong Kong's non-paper and WT/CTE/W/28, which together served to reflect his delegation's doubts. WTO Members had an obligation to notify any type of measures with trade effects, independent of the measure's purpose. Hong Kong's proposals would be useful if they identified measures which affected trade and were not already covered by WTO provisions. He felt the development of an environmental database might detract from WTO competence; the WTO should not become an environment Secretariat. He referred to Mexico's enquiry points under the TBT and SPS Agreements which dealt with any measures which affected trade, independent of the purpose being pursued. TPRMs should review trade policies and not environmental policies and focus attention on trade measures and not individual measures. As there was already an obligation to notify environmental measures with trade effects, Members could draw to the attention of the Member under review in the TPRM if certain environmental measures were impinging on trade. Mexico would consult with Hong Kong on its doubts as to whether new provisions were needed or existing ones would be sufficient.

18. The representative of Brazil recalled several points of understanding on this issue formulated by the EMIT Group in WT/CTE/W/5. He said WT/CTE/W/28 illustrated there had been notifications under all 15 categories of measures where gaps in transparency had been identified, although this did not mean all measures had been notified or the number of notifications of any particular measures reflected the number of countries applying them. WT/CTE/W/28 suggested that the measures identified could hardly escape the 215 different WTO notification requirements. It could be argued whether these requirements were fully effective, such as in the case of measures taken in pursuance of MEAs, since the number of notifications received was significantly less than the number of MEA Parties. Given notifications of trade-related environmental measures were scattered under existing WTO notification provisions, it might be difficult for Members to benefit from the transparency which these provisions had been designed to provide. Brazil supported Hong Kong's proposal on an environmental database to deal with all measures taken for environmental purposes not currently covered by WTO notification mechanisms. In this regard, he recalled Brazil's proposal set out at the March 1996 meeting to establish environmental enquiry points. As noted by Hong Kong, enquiry points worked on a bilateral, request-response basis, whereas an information base provided multilateral transparency. Both proposals should be seen as essentially complementary and mutually supportive. Brazil's proposed enquiry points would go beyond the competence of TBT and SPS enquiry points by providing information on environmental measures not subject to existing WTO notification procedures, such as domestic environmental taxes or waste management schemes. For that reason, it would be preferable if new disciplines were recommended in the Report.

19. The representative of Japan said his delegation would study Hong Kong's non-paper.

20. The representative of Nigeria said enhanced transparency provisions were vital to the functioning of the WTO and served as a source of knowledge for Members on what was consistent with WTO rules. Nigeria supported the US proposal on transparency of eco-labelling. Hong Kong's proposal presented some interesting options. However, the objectives of other WTO Agreements should be kept in mind when considering proposals. He recalled the TPRM was not intended to serve as a basis for the enforcement of specific obligations under WTO Agreements, or for dispute settlement procedures or to impose new policy commitments on Members. The function of the TPRM was to examine the impact of a Member's trade policies and practises on the multilateral trading system. The extent to which Hong Kong's proposal expanded these objectives would need to be addressed.

21. The representative of the European Communities said his delegation would reflect on Hong Kong's non-paper and WT/CTE/W/28. He said transparency had been referred to under other Items, such as Item 1, 3(b), and 7 and had been raised at the joint meeting of the TBT and SPS Agreements in November 1995 and in the Working Group on Notification Obligations and Requirements. For efficiency reasons, discussion on transparency obligations and procedures should be undertaken in the relevant WTO Bodies and under specific Items, notably Items 1 and 3(b). This did not mean the CTE could not address transparency in a general manner and make specific proposals designed to improve transparency mechanisms. There were different degrees of transparency. GATT Article X and the TBT Agreement covered a range of environmental measures affecting trade, interpreted by some Members as applying to environmental measures. Although certain doubts existed concerning certain specific measures, existing transparency provisions appeared to cover most of the 15 categories of environmental measures listed in the Annex to WT/CTE/W/28. There were a large number of transparency instruments and provisions. This led to dispersion of information and gave rise to confusion and contradictory interpretations by Members. WT/CTE/W/28 made it clear that only a limited number of Members abided by notification provisions and observance was not currently particularly satisfactory. This was beyond the remit of the CTE's objectives. The EC felt an effort should be made to improve existing transparency mechanisms by harmonizing them and making them more accessible and easily comprehensible to avoid differences in interpretation of transparency obligations. Problems regarding the large number of transparency instruments, interpretation and application of obligations were not specific to environmental measures, but were problems of a horizontal nature. The CTE's contribution could only supplement work in the Working Group on Notification Obligations. A range of measures could be contemplated to improve existing measures, some of which had already been proposed.

22. The TBT Agreement covered a high percentage of notifications of environmental measures. The question was if TBT enquiry points should be broadened to include environmental measures other than those establishing technical regulations or standards. The EC felt these measures were not likely to have more impact on trade than similar measures in other sectors. It would be difficult to define the coverage of environmental measures, i.e. whether the environment was the predominant reason for a measure. There was a definite need to clarify transparency obligations. G/SPS/W/32 clarified the distinction between SPS and TBT measures, and was designed so Members could better identify each Agreement's field of application and appropriate notification procedures. A similar exercise could be useful for environmental measures. Current confusion and disparity of interpretation necessitated a classification of measures and specification of Agreements concerned with these measures. This type of work was long and would involve consultation with the Working Group on Notification Obligations. The rationalization of notification procedures and the Central Registry would permit improvements. In the meantime, the EC suggested the Secretariat establish and up-date a list of notifications and information submitted on environmental measures. This could be repeated as identified in WT/CTE/W/28, but structured and with more detailed information on measures submitted by Members. This first step in improving transparency could be completed by other recommendations on transparency under Items 1 and 3(b). Based on *ex post,* centralized information, it would facilitate access to information and target existing problems.

23. The representative of Morocco said his delegation would study Hong Kong's non-paper. He said transparency was important as it was one way of assisting especially developing country importers in becoming aware of imports of products which were dangerous for human, animal or plant life or health. It also helped reinforce confidence in the multilateral trading system, and limit trade restrictions and distortions for environmental protection. Environmental enquiry points could be one way of achieving transparency and helping particularly developing countries to implement trade measures in MEAs, such as eco-labelling, packaging, recycling and waste handling measures, and environmental taxes. Enquiry points could supply information on available technical assistance to assist in observing international environmental standards. The TBT and SPS enquiry points could be completed by a code of conduct for private, voluntary eco-labelling programmes, similar to that included in the TBT Agreement. Possible transparency gaps should be identified on a case-by-case basis to see if it would be useful to have enquiry points. Cooperation between the WTO and MEA Secretariats and other intergovernmental organisations, such as UNCTAD, should be elaborated to ensure greater transparency and avoid duplication. He supported the suggestion in WT/CTE/W/28 for the Secretariat on a regular basis to collate all notifications of trade-related environmental measures.

24. The representative of Cuba expressed interest in Hong Kong's proposal to develop an environmental database.

25. The representative of India said market access capabilities of developing countries were largely dependent on the notifications made by developed countries of the requirements and conditions, including those of an environmental nature, which governed the entry of products in their markets. Whereas measures such as tariffs were specific and clearly identifiable, non-tariff measures, including environment-related rules or regulations, were difficult to determine and developing country exporters lacked current and precise information on which to establish their export markets. The need for greater transparency applied not only to border measures, but to internal governmental rules and regulations which might affect trade. Apart from the need to produce efficiently in accordance with importing market demands, exporters often had to meet non-trade criteria which had significant trade effects, including environmental requirements. To balance adverse trade effects of such requirements, an *ex ante* notification system should be put in place to foster transparency. In the CTE, developing countries had expressed concern that environmental measures placed an undue burden on their capacity to export and stressed the need for their comprehensive notification. WT/CTE/W/28 illustrated the complexity of notifications, which were spread across different WTO Agreements. Thus, India supported efforts to develop an environmental database accessible to all Members, as proposed by Hong Kong. India would comment on Hong Kong's non-paper at a later date. Noting that differences in interpretation of transparency obligations existed, he said the Working Group on Notification Obligations was discussing these and compliance issues. As this work would not specifically address notifications of environmental measures with trade effects, it should be carried out in the CTE. To assist in developing a database, the CTE could request Members to inform it of their environmental measures currently in place.

26. The concept of "significant trade effects" should be examined further. The objective of the transparency exercise was to make it less dependent on subjective interpretations of what was meant by "significant". One way was to formulate criteria to define "significant" to ensure environmental notifications on environment-related trade measures would automatically be registered in the database. This database could be serviced by national environmental enquiry points which could fill gaps in existing notifications. India said this proposal should be examined keeping in mind discussion to date. The CTE should consider the idea of encouraging *ex ante* notification of environmental measures, pooling notifications into a common database, as well as drafting criteria to define "significant trade effects" in a manner which ensured automatic notification of relevant environmental measures.

27. The representative of Turkey said a uniform definition of "transparency" and "significant trade effects" should be determined to avoid transparency mechanisms being duplicative or overburdening, especially for developing countries. Notification procedures should be explicit and feasible in application, as well as consolidated, standardized and non-discriminatory. *Ex ante* notification was essential for non-product related PPM-based measures to provide time to adapt. For voluntary eco-

labelling and life-cycle schemes, *ex ante* notification was valuable as exporters had to comply with requirements to avoid unfair competition due to consumer preferences for environmentally-friendly products.

28. The representative of Hong Kong appreciated the interest in his delegation's non-paper and would clarify the questions raised on its objectives and operational aspects, including concerning the TPRM, when refining the proposal. It had not been Hong Kong's intention to make transparency of trade measures for environmental purposes more onerous. The non-paper aimed to clarify notification requirements and rationalize information on these measures and not to advocate more stringent disciplines for them. Although he appreciated Norway's comment that trade measures were normally examined based on their nature and not their purpose, this was not a reason not to pursue Hong Kong's proposals. To some extent, the CTE had been considering trade measures for some time with regard to that purpose.

Item 6: The effects 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

29. The representative of Australia said the starting point for his delegation's non-paper (dated 21 May 1996), was the recognition, reflected in Agenda 21, that sustainable development required initiatives to strengthen trade liberalization and put in place environmental policies to promote environmental quality. The context of CTE work on trade and environment was how the WTO could contribute to the pursuit of sustainable development. The relationship between trade liberalization and the environment was a theme through much of the CTE's work. Given the increased public questioning of the value of trade liberalization, and concerns about a potential conflict between promoting environmental goals and trade liberalization, the CTE should contribute to informing this debate. The CTE should encourage a greater understanding of the contribution trade liberalization and a strong multilateral trading system could make to sustainable development. The Australian non-paper noted that in certain circumstances when appropriate environmental policies were not in place, trade liberalization might exacerbate existing environmental problems. It highlighted the role of complementary environmental policies in addressing environmental concerns raised by trade liberalization in specific situations. Agenda 21 pointed to the importance of dealing with the root causes of environmental and development problems, so as to avoid the adoption of environmental measures that had unjustified restrictions on trade. When appropriate environmental policies were in place, trade liberalization could make a direct contribution to promoting effective environmental management, including through more efficient resource use. Material on the issues involved here was contained in Secretariat background documents and Argentina's paper (WT/CTE/W/24).

30. Australia's non-paper examined particularly the role the WTO could play in addressing the concerns of low-income, commodity-dependent countries, and in facilitating the adoption of sustainable agricultural practices. Expansion and diversification of export opportunities could promote a more diversified economic structure in commodity-dependent countries, which could assist poverty reduction and environmental protection. The trading system's contribution in this area was only being partially realized and many countries were only marginal participants in world trade. The WTO could facilitate the adoption of more sustainable agricultural practices and provide efficient agricultural producers with a predictable trading framework which could assist them in adopting production practices directed at sustainability of the resource base. Agricultural trade could generate income earning opportunities for the rural poor and help to break the link between poverty and environmental degradation. The relationship between trade liberalization and the environment was complex and the CTE should avoid drawing simplistic conclusions about the potential environmental benefits of trade liberalization. Whether or not the environmental benefits of trade liberalization were realized often depended on other policies. For example, reduced tariff escalation in major export markets did not automatically lead to more diversified economic structures in commodity-dependent countries. Complementary environmental policies might be necessary if more diversified economic structures were to be accompanied by improved environmental management. A major conclusion of the Report should be

that trade liberalization was a necessary, but not sufficient condition for sustainable development. As recognized at the UNCED, and the World Summit on Social Development, sustainable development gave priority to promoting environmental quality and social equity, as well as economic growth.

31. Australia's non-paper proposed several themes which should be emphasized in the Report. The CTE should: (i) reject perceptions that a conflict existed between the objectives of trade liberalization and environmental protection. It should emphasize the complementarity between a strong multilateral trading system that advanced trade liberalization, and action at the national level, and in other international fora, to advance environmental goals; (ii) identify the potential for "win-win" reforms that contributed to a more open trading system and also facilitated environmental improvements. Both economic and environmental benefits could be achieved by removing price distorting policies that encouraged over-use of resources and promoted inappropriate activities at the expense of environmental values; and (iii) recommend that the CTE undertake a continuing work program on the environmental consequences of trade restrictions and distortions, including high tariffs, tariff escalation, subsidies and high internal taxes.

32. The Decision on Trade and Environment set out the objective to coordinate policies in the field of trade and environment, without exceeding WTO competence. The CTE should seek to identify problems of policy coordination in advancing the goal of sustainable development which could be appropriately addressed through trade policy reform. There were problems of policy coordination when, for example, trade and related agricultural policies contributed to environmental problems which environmental policies were then needed to address. Such inconsistencies led to resource waste and significant inefficiencies. Although development assistance policies were devoting attention to ecologically-sustainable development, problems of policy coordination existed when trade policies limited the role the trading system could play in creating opportunities for sustainable economic activities. These problems of policy coordination should be brought to Ministers' attention. Australia considered the CTE had a continuing role in the promotion of sustainable development.

33. The representative of Hong Kong supported the thrust of Australia's paper. There were significant environmental benefits of removing trade restrictions and distortions and this should feature prominently in the Report. The Report should identify "win-win" opportunities for both trade and environment. The sectoral tariff measures and subsidies identified by Australia were relevant. In addition, an area which was subject to high tariffs and quotas was textiles and clothing. Certain trade measures which were sanctioned by the WTO, such as anti-dumping, also created trade distortions which should be examined. Any unfinished discussion on this Item should be taken up in future CTE work. Also, he suggested an examination of trade restrictions could be extended to all relevant WTO Bodies in order to take steps to remove them.

34. The representative of the United States said many aspects of Australia's non-paper contributed to discussion on this Item and his delegation would study them in detail. In the agricultural sector, trade distortions arose from both domestic and trade policies, which were difficult to separate, as trade goals were often achieved through domestic policy instruments or vice versa. To understand how distorting policies affected the environment and to assess how environmental quality was affected by trade reform, the effects of policies on crop mix, input use, technological change, and investment in the agricultural sector should be clarified. Trade and agricultural policies could be divided into broad classes: pricing policies, income policies, marketing subsidies, and structural policies. Pricing policies, used to raise or lower producer returns to farming, also affected crop mix, the location of production, and input use directly and indirectly affected environmental quality. For example, pricing policies, predominantly found in higher-income countries, raised domestic prices relative to world prices. These higher prices might encourage chemical overuse, mechanization, and land conversion, which harmed the environment. In contrast, some low-income countries protected consumers through low food prices that effectively taxed farmers and discouraged production. Artificially low agricultural prices discouraged sustainable farming practices and encouraged migration to urban centres placing further environmental stress on heavily populated areas.

35. Pricing policies and income supports had other, less obvious effects. For example, commodity price supports were capitalized into land values, which resulted in input intensification as land prices increased relative to the price of other inputs such as fertilizers and pesticides. Substituting lower priced chemicals for land could contribute to water and soil degradation and increase concerns about food and worker safety, although degradation due to extensification might be reduced. Input intensification also occurred when land was constrained by commodity programme requirements to be set aside. Set-asides induced scarcity of land, which increased land prices relative to the price of other inputs; relatively higher land prices also acted to slow natural exit from the sector. Consequently, government intervention increased the use of inputs and natural resources. Input subsidies, which reduced the cost of chemicals, irrigation, or credit, could also have negative environmental effects. Subsidized chemical prices could encourage chemical overuse, which could lead to surface and groundwater pollution, soil contamination, eutrophication, reduced soil fertility, food contamination, and human exposure to chemicals. Overuse or improper use of irrigation could lead to salinization of water and soil, increased nitrate pollution of ground water, depletion of water supplies and contribute to water logging, soil erosion, and landscape degradation. When there was a market failure to internalize environmental externalities, non-production linked subsidies could serve as an environmental policy instrument. Non-production linked subsidies that provided compensation to employ environmentally-friendly technologies, such as payments to farmers to engage in soil conservation, particularly of highly erodible land, and water-quality improving practices, represented a "pay to conserve" approach used in some developed regions. These subsidies compensated producers for adopting environmentally-preferred practices which might be higher-cost technologies.

36. Excessively high tariffs existed when the final price of a commodity was significantly affected by a tariff to the extent trade in the commodity was restricted. Some existing tariff rates could be considered excessively high and could alter relative prices and act as a trade barrier. Methods of increasing agricultural production included increased use of agricultural chemicals, fertilizers and pesticides on existing agricultural land and increasing agricultural acreage by ploughing under marginal and virgin lands, clear cutting forests, and draining wetlands. Tariff escalation occurred when a higher degree of protection (through tariffs) existed for intermediate and finished goods than existed for primary commodities. Raw commodities might be imported at zero or low tariffs, yet the nominal rate of tariff increased at each stage of production. Some tariffs applied to agricultural products were a form of reverse tariff escalation: tariffs on unprocessed commodities were higher than tariffs on processed goods. Such protection impeded market access for foreign exporters of raw commodities, and affected the use of resources in the country imposing the tariff, which could place pressure on domestic agricultural and natural resources to meet demand (since imports of raw commodities in the case of reverse tariff escalation are reduced). Conversely, tariff escalation encouraged raw commodity exports from other countries which could lead to resource exploitation.

37. State trading enterprises (STEs) existed in most major agricultural trading countries. Statutory powers allowed some STEs to operate as monopsonists and monopolists, with exclusive rights to purchase and sell commodities for domestic or export markets, which allowed them to extract rents not otherwise available to competing firms. Certain policies of STEs might alter the patterns of agricultural production. Direct or indirect subsidies to STEs, such as secured loans at below market rates of interest, subsidies paid out by governments to cover deficits on payment guarantees made by STEs to producers, tax benefits, and transportation subsidies might affect relative prices and distort production. STEs with exclusive import rights might limit market access from foreign competition affecting internal prices and create a misallocation of resources. Like subsidies and tariffs, these distortions could result in pricing that did not reflect private market conditions and shifted productive resources leading to detrimental environmental effects. Removing agricultural distortions that affected the relative price of food products and farm input prices, along with sound environmental policies that internalized environmental externalities, changed current economic incentives and mitigated their potential environmental damage.

38. The representative of Bangladesh recalled that all countries were not at the same level to deal with environmental issues. LLDCs in most cases became aware of trade-related environmental measures only after restrictions were imposed on their exports, by which time it was too late. As

environmental measures were already adversely affecting LLDCs, a mechanism to protect their interests needed to be found. While environmental measures might have many virtues, these needed to be demonstrated through, for example, cost benefit analysis. LLDCs were unable to bear the additional burden of environmental conditionalities. Noting there was no clear evidence that LLDCs were benefitting from the Uruguay Round, any additional responsibilities would compound their difficulties. Bangladesh needed to be convinced of the "win-win" situation of environmental measures. Environmental measures might be taken on the basis of consensus, *per* principle 12 of the Rio Declaration.

39. The representative of Singapore, on behalf of ASEAN, underlined the essence of Agenda 21 was the concept of common and differentiated responsibility and that countries had a sovereign right to determine their own environmental policies. ASEAN found the Australian non-paper interesting, particularly its attempt to highlight the inextricable relationship between trade liberalization, environment and sustainable development, and would comment on the paper at a later occasion. The following points on market access were essential to deliberation on this Item: (i) safeguarding existing trading opportunities and market access from the unwarranted trade effects of environmental policies; (ii) obtaining additional market access through reduction of tariff peaks and tariff escalation; and (iii) removing trade restrictions and distortions so trade liberalization could provide for environmental protection. The adverse effects of environmental measures on market access were likely to be differentially felt by developing and developed countries; developing countries would likely face the brunt of such measures due to lack of infrastructural and monitoring facilities, limited technology choices, and inadequate access and relatively more expensive environmentally-friendly raw materials. He drew a link between the issues of market access and eco-labelling. Eco-labelling could impose onerous obligations for SMEs in developing countries. SMEs would find it difficult to adapt to eco-labelling requirements. To safeguard market access, ASEAN suggested a discussion of transparency; proportionality and least trade restrictiveness; and equivalency and mutual recognition.

40. The representative of New Zealand gave preliminary comments on Australia's non-paper, which usefully considered the contribution of trade liberalization to the environment, particularly its immediate and direct agricultural impact. It provided compelling arguments on how the CTE could contribute to sustainable development, particularly in developing, commodity-dependent countries. It noted direct environmental benefits would be secured from trade liberalization when effective environmental policies were in place. However, the possibility also existed that the benefits of trade liberalization could arise without accompanying policies and could be positive and neutral. Any negative effects would be mitigated by domestic environmental policies. The CTE should reject the perception that there was a conflict between trade and environment and should illustrate this case by identifying the "win-win" reforms referred to in Australia's non-paper. Of the growing number of proposals in the CTE, this was one which could lead to a mutually supportive outcome.

41. The representative of India said market access was the core issue before the CTE and it should not be sidelined. As outlined in Australia's non-paper, which India would analyse, there was no conflict between trade and environment, although it was simplistic to assume trade liberalization, *per se*, would contribute to environmental improvement. India recognized Australia's point that there should be supporting domestic environmental policies, if trade liberalization was to promote development and environment. He said poverty was the greatest global pollutant.

42. The representative of the European Communities said his delegation would study the contributions of Australia and Argentina. He recalled the EC's efforts to improve market access for developing countries. He said a more open discussion than that which the CTE currently was having would be useful. The CTE should be mindful of all factors concerning sustainable development, without becoming a market access committee.

43. The representative of Canada said Australia's non-paper could serve as the basis for drafting language for the Report.

44. The representative of Korea said trade liberalization would bring about potential environmental benefits by contributing to the optimal allocation of natural resources and income growth. Under certain conditions, trade liberalization could exacerbate existing environmental problems if adequate environmental protection policies were not in place. The effectiveness of environmental policies should be judged by each country according to its development priorities and based on country-specific conditions. As the environmental impact of the elimination of trade restricting or distorting measures was hardly measurable, proposals had analyzed them on the basis of income effects. For this reason, proposals related to agricultural subsidies in particular failed to demonstrate proper evidence in drawing general conclusions on the negative environmental effects of their removal. In this regard, he asked whether production subsidies in developing countries which were price takers and did not export agricultural commodities had negative environmental effects on grain exporting developing countries; if so, what the transmission mechanism of this externality was; and whether it was possible to quantify or estimate the negative effects. Korea was still studying the proposals on this Item.

45. The representative of Norway said his delegation would study Australia's non-paper, which placed the contribution of trade in the broader context of sustainable development. Many delegations had referred to subsidization in the context of market access. In that respect, he said the energy sector should be scrutinized to see whether changes to the WTO were warranted. The WTO allowed subsidies to environmentally-damaging production like coal, which prevented environmental cost internalization. The CTE should examine this issue after Singapore. However, in Singapore it should be possible to arrive at a general recommendation that the trading system should not encompass incentives for production and use of environmentally-damaging products. It could be recommended that the WTO offer scope for incentives, such as eco-labelling, for the use of environmentally-friendly products.

46. The representative of Mexico shared Australia's view that the Report should highlight that there was no inherent conflict between trade liberalization and environmental protection. He said market access and trade liberalization had intrinsic worth, which did not depend on environmental factors, therefore negotiations should be trade against trade and not trade against environment or vice versa. He also said the environment should not be used as an excuse to replace subsidies with other kinds of support which distort trade.

47. The representative of Japan gave preliminary comments on Australia's non-paper. Japan was concerned discussion on this Item tended to focus on specific sectors, such as agriculture, which might lead to re-opening the Agricultural Agreement, prejudge future negotiations or impede Members from implementing the Agreement. Discussion should be based on analysis of empirical data covering the social and economic conditions which existed in each country. He noted the 1995 OECD Ministerial Report which stated the effect of trade liberalization on the environment might vary either positively or negatively depending on the country, sector and particular circumstances. Noting Australia's non-paper focused on trade distorting measures for exporters, such as high tariffs and subsidies, he said export taxes and restrictions were more trade distorting from an importers' view and their environmental effects should be measured. Australia's non-paper outlined that output-related policies encouraged intensified land-use and increased fertilizer and chemical use; however, he recalled increased exports which accompanied trade liberalization also created output-oriented and resource intensive farming practices. The importance of domestic policies to encourage sustainable agriculture and international cooperation with developing countries should be recognized. From this perspective, Japan supported Australia in emphasizing more environmentally-sustainable production was a key requirement for poverty alleviation and environmental protection. Agricultural policies which had positive effects should be distinguished from those which had negative effects. In considering further "win-win" policy reforms, attention should be given to promoting incentives for environmentally-friendly practices, including environmentally-friendly agricultural policies.

48. The representative of Nigeria said Australia's non-paper contributed to broadening discussion on this Item. Nigeria identified with Argentina's proposal and many elements of Australia's non-paper. He agreed with India's statement that this Item was horizontal in nature. These contributions helped define the parameters for recommendations on this Item for the Report. Nigeria was interested in the details

of Norway's intention to propose a recommendation on how the WTO should treat energy subsidies, particularly from energy sources which were environmentally-damaging. Agreeing with the principle that the WTO should offer scope for the use of environment-friendly products, he said any proposal should take into account the complexities of the relationship between the generation of energy and environmental protection. National decision-making on the choice of energy source was mediated by many factors, including efficiency in production, availability of energy sources, economic costs for users and social consequences for the local population, as well as environmental consequences. While production subsidies for any product or commodity were not desirable in principle, it was also not desirable to take *a priori* positions. Given the complexity of the relationship, account should be taken of different circumstances, relative choices of energy sources, and the need for an analysis which enabled a judgement on the preference for one energy source over another.

49. The representative of Cuba gave preliminary comments on Australia's non-paper, which contained elements which should be included in the Report. Generally, environmental problems were not a direct result of trade, but resulted indirectly through models of production and consumption imposed by developed countries. He referred to Agenda 21 which stated that responsibility for environmental problems should be common but differentiated. Thus, developing countries should receive the required support to implement environmental policies so environmental protection did not become a burden they could not bear.

50. The representative of Sierra Leone gave preliminary comments on Australia's non-paper. The Decision on Trade and Environment mandated the CTE to analyse the relationship between trade and environment to promote sustainable development. Although no legal, as opposed to economic or social definition, had been elaborated for sustainable development, it involved a process of integration of various elements recognized as essential requirements by Agenda 21 for promoting the concept. One requirement was an open, fair equitable multilateral system and appropriate environmental policies based on national conditions. The process of integration involved policies, as well as national and international institutional aspects. Australia's non-paper outlined several developing country concerns. Sierra Leone supported Australia's proposed future work programme on how to make the WTO more supportive of efforts to promote sustainable agriculture, particularly in relation to food security. She would discuss with Australia the kinds of "win-win" reforms to facilitate an opening of the trading system which would in turn facilitate environmental improvements. She inquired if the failure outlined in paragraph 6 applied at the international or domestic level. Some domestic markets were not sufficiently advanced to stand the shock of policies to internalize environmental costs. In some cases, efforts should be made to raise living standards and real income and promote full employment before internalizing environmental costs. In other cases, pure market policies might be inappropriate for sustainable management of natural resources.

51. The representative of Morocco said the reference to complementary environmental policies and environmental benefits of removing trade restrictions and distortions in Australia's non-paper should be included in the Report. Australia's non-paper reflected the concern that standards applied in certain countries, particularly developed countries, represented an unjustifiable social and economic cost for developing countries. Morocco supported improvements in the environment which were viable and equitable; cost internalization on the basis of polluter pays, as noted in Agenda 21; and the principle of common but differentiated responsibility raised by India and Singapore. The latter principle was contained in international legal texts, such as the Conventions on Climate Change and Desertification. Morocco shared Australia's view that the Report should highlight the need to address the problems of low-income, commodity-dependent countries and other countries which were marginal participants in international trade.

52. The representative of Argentina said his delegation was interested in exploring the potential for "win-win" reforms set out in Australia's non-paper. In response to Korea's question on agricultural policies in developing country food importers, he said the problems faced were two-fold. Price formation systems might be affected by intervention policies and market failures, such as externalities which were not taken into account in the production process. If either a developed or developing country

was not a food exporter, it could not affect prices by acting on supply. However, it could affect prices from the demand side, for instance by withdrawing its domestic market from aggregate world demand. Even though it was impossible to prove that the subtraction of a market from the world market had no price effect, the effect could be irrelevant as compared to other sources of distortions, such as support measures related to production or exports in other countries which were major exporters and consumers of agricultural products. The CTE should not attempt to identify all those cases where the elimination of trade distortions might have environmentally-beneficial effects, but should focus only on those cases which were relevant to the issue.

53. The representative of Australia looked forward to receiving further comments on his delegation's non-paper.

Item 8:TRIPS and the environment

54. The representative of India commented on points raised during the March meeting on her delegation's non-paper (dated 22 March 1996). Many delegations, particularly from technology-exporting countries, had refuted that there was any conflict between intellectual property (IP) protection and environmental protection; they felt the TRIPS Agreement provided incentives for the generation of environmentally-sound technologies (ESTs) and thus IP and environmental protection were compatible. The issue addressed was not whether, as provided for in the TRIPS Agreement, IP protection constituted an incentive for the generation of technologies, but whether the TRIPS Agreement facilitated easy transfer of ESTs. India's view was it did not. Several aspects were taken into account by individuals and companies in deciding to do technological R&D, particularly for ESTs which had to comply with a complex regulatory system. In the context of MEAs, substitute technologies might exist although these could be improved or even replaced. While it was obvious ESTs must exist before they could be transferred, the CTE had to address the utility of EST generation if ESTs were not widely disseminated and used worldwide. When ESTs were closely held by only a few multinational companies who demanded unreasonably high commercial terms for their transfer, then the transfer did not take place on fair and most favourable terms as mandated in MEAs.

55. While it was true that IP was only one of many factors which influenced the transfer of technology, India was addressing the situation where, in spite of all other factors being favourable, ESTs required under MEAs were not available under fair and most favourable terms and IP protection stood in the way of their use. Multinational companies considered the more industrialized of the developing countries as competitors and would rather hold technologies secret forcing them to import the final products. This was the problem the CTE should address to fulfil its mandate on this Item. Some delegations had difficulty in accepting India's examples of problems faced in the transfer of ESTs under a specific MEA, arguing that these problems should be taken up in the appropriate MEA. This position was difficult to reconcile with that taken by the same delegations on Item 1. India's non-paper sought to reconcile the provisions on technology transfer incorporated in existing MEAs with the TRIPS Agreement's provisions. Examples cited were only illustrative of a generic problem faced in meeting obligations under existing and future MEAs. An EST under one MEA might be determined to be environmentally-harmful under another. Obtaining the transfer of new substitute technologies in the commercial domain at prohibitive terms was an enormous burden on poorer countries, especially taking into account the large number of SMEs involved in their phasing-in under MEAs.

56. One delegation had noted India's point that the adverse environmental impact of patented technologies was an important issue, but felt this was adequately dealt with under the TRIPS Agreement. While India also recognized the TRIPS Agreement had dealt with this issue, questions remained on whether revocation could be used without resort to compulsory licensing or whether a ban on use could lead to non-violation type complaints which should be discussed by the CTE. If the TRIPS Agreement could address the issue of discouraging environmentally-harmful inventions, why not that of encouraging the wide use of ESTs? Although one delegation had suggested Article 7 of the TRIPS Agreement was a sufficient solution, it did not appear to have any operational significance. Even assuming it did, Article 7 only contained a general principle under which measures could be taken for transfer and dissemination

of technologies which were otherwise compatible with other provisions of the TRIPS Agreement. This made it possible to use compulsory licensing or revocation of patents, subject to the conditions laid down under the TRIPS Agreement, for wider dissemination of ESTs. The CTE should discuss whether, in the limited case of ESTs specifically mandated under an MEA, other measures such as relaxation of some conditions of compulsory licensing, shortening of the patent term or exclusion from patentability could be considered as they might be more effective.

57. Some delegations believed WTO and/or WIPO should have technical cooperation programmes to assist developing countries in instituting effective IP regimes. Technical cooperation could not be the solution to the specific question as to how to have easy access to ESTs mandated by MEAs, if the TRIPS Agreement came in the way of easy access. Technical cooperation could not go beyond the provisions of the TRIPS Agreement. Many delegations had stressed the importance of the relationship between the Biodiversity Convention and the TRIPS Agreement; some of them added that the commercial exchange of patented products was best supported by IP protection as agreed in the WTO, WIPO and UPOV. India, supported the former, but saw a contradiction in the latter. Given the Biodiversity Convention's objectives, mechanisms to ensure an equitable approach to the issue of rights over biological resources and the sharing of benefits from their exploitation posed a challenge to the international community. The CTE should contribute to this debate and prepare negotiators of the TRIPS Agreement for the review of Article 27.3(b) in 1999. India had signed the TRIPS Agreement and was committed to its implementation. After consulting with interested delegations, India would submit a formal proposal on this Item.

58. The representative of Canada referred to India's non-paper. Evidently, there had been problems with obtaining particular ESTs under MEAs. Canada felt it appropriate that the Report note these concerns. While Canada recognized the difficulties facing India and others, the solution should not be found in the TRIPS Agreement, but in the MEAs that called for the use of new ESTs. The WTO should not be put in a position of having to find solutions for issues that were properly addressed in an MEA. Aggrieved Parties should return to the Conference of the Parties of the MEA for a solution. Canada did not support reopening the issue of compulsory licensing, which it had been agreed would not be on a sectoral basis. For this reason, Canada had amended its legislation for pharmaceuticals. Compulsory licensing for ESTs required under an MEA would reopen this debate. Canada said the TRIPS Agreement and IPRs enhanced environmental protection and sustainable development by encouraging innovation; its amendment to address environmental concerns was not necessary. As the Biodiversity Convention did not define either "indigenous" or "traditional" knowledge, there was scope for differences in interpretation. Traditional knowledge represented the knowledge, innovations and practices of indigenous peoples in their current form. How this knowledge was protected and rewarded should be the subject of further discussion.

59. The representative of Korea said his delegation was also studying whether specific provisions of the TRIPS Agreement were sufficient to disseminate ESTs and thus contribute to better environmental protection. Korea was considering preparing a paper on this Item for the June meeting, in consultation with other delegations.

60. The representative of the United States said an evaluation of any proposal related to the TRIPS Agreement should recognize the role the Agreement played in fostering the creation and dissemination of ESTs by providing adequate and effective IP protection. The US was monitoring the levels of protection afforded under the TRIPS Agreement. He said a contradiction in India's non-paper was that it recognized the importance of EST development, while calling for changes which had the effect of diminishing incentives to develop and disseminate ESTs. The US found it difficult to understand why it would be desirable to change the TRIPS Agreement's protection for ESTs to provide less incentive for developing ESTs than for other technologies. Although nothing in the TRIPS Agreement said commercial exploitation of a particular product or process could not be prohibited to avoid serious environmental prejudice, any ban on a product's exploitation must be done in a WTO-consistent manner. Denial of patent protection otherwise permitted under the TRIPS Agreement would be inconsistent with the Agreement and would not serve either IP protection or environmental objectives, and might

undermine both. Denial of patent protection would increase the number of firms able to use a particular environmentally-harmful technology, which would not serve environmental objectives. Often, it was not known if a technology was environmentally-harmful until it was used. The US felt India's non-paper failed to recognize the commercial reality that, in the absence of protection, trade secrets would not be shared. The US had concerns about many of the proposals in India's non-paper as it reiterated issues resolved during the TRIPS negotiation. Given the TRIPS Agreement was in the implementation stage, there might be a need for education on its obligations, but India's suggestions were not useful in this regard. While the US did not agree with India's interpretation of obligations under the TRIPS Agreement, discussion on technical issues were best left to each country's TRIPS experts.

61. From a legal standpoint, "traditional" or "indigenous" knowledge as it had been described was not an "IP" and could not be treated as such. By definition, IP must involve a "creative" or "inventive" step. Subject matter that was widely known, or in the public domain, could not be granted an IPR and legally could not be considered subject matter covered by internationally-recognized systems for IP protection, including the TRIPS Agreement. US experience with this issue elsewhere also suggested the underlying subject matter of indigenous rights was not properly cast as an IPR. In FAO discussions on revising the International Undertaking on Plant Genetic Resources, the issue of "farmers rights" was cast in terms of a justification for an effort to establish a mechanism to support on-farm conservation and plant breeding efforts and not to create a legal instrument that shared characteristics with IP instruments. Similarly, in the Biodiversity Convention, to which the US was not a Party, the issue was not cast as a mandate to create a legal instrument to protect indigenous innovation or knowledge. The US felt traditional and indigenous subject matter could be recognized and rewarded. Benefit-sharing, which entailed voluntary, contractual arrangements on mutually-agreed terms, provided an effective means for compensating traditional knowledge not subject to IP protection. Numerous such agreements involving diverse parties, including US firms, foreign governments and indigenous people, included provisions to provide benefits to information providers and fostered technological cooperation. Such private contractual arrangements did not require multilateral disciplines, nor would an international *sui generis* system need to be established to protect or grant some right of compensation for this type of subject matter. If those delegations interested in indigenous rights could make a connection between this matter and IPRs, the US would review such proposals. However, it would not appear this issue fell within the CTE's purview. To assist the US to better understand this issue, those countries that had established systems for recognizing and protecting indigenous rights could share their experiences.

62. The representative of Canada, supported by Brazil, recalled the need to take a decision to provide information to the Biodiversity Convention's Secretariat.

63. The representative of the United States had no objection to derestricting the relevant documents for submission to the Biodiversity Convention as long as the record of the discussion on Item 8 at this meeting could also be provided.

64. It was agreed to derestrict the Secretariat background document on "factors affecting the transfer of environmentally-sound technology" (WT/CTE/W/22) and the relevant excerpt of the Report of the meeting at which this document had been discussed (WT/CTE/M/8 + Corr.1). These documents will be submitted to the Biodiversity Convention's Secretariat.

Presentation of other proposals

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

65. The representative of Japan introduced his delegation's submission (WT/CTE/W/31). Japan felt the relationship between trade measures pursuant to MEAs and the WTO Agreement was the most fundamental issue on the CTE agenda, but did not intend to challenge other delegations, which each had a view on which Items were important. Items 3(b) and 4 were also important. This Item attempted to make an interface between trade law and environmental law, which was difficult. Japan's paper proposed

non-binding, interpretative guidelines to make trade measures pursuant to MEAs compatible with the WTO, with the possibility of making these guidelines legally-binding. These guidelines were not meant to challenge the legitimacy of existing MEAs, nor to dictate the negotiation of future MEAs. Although there had not been any conflict in this area, as trade expanded and public interest in environmental protection increased, the trade and environment interface would become more prominent. Therefore, it would be useful to have disciplines which guided the two legal systems and constrained disguised protectionism and unilateral measures in the name of environmental protection. Japan was concerned that the credibility and effectiveness of the trade measures taken pursuant to MEAs might be undermined if there was no assurance these measures would be considered WTO-compatible. From this perspective, criteria were proposed to ensure trade measures pursuant to MEAs would be assured WTO-compatible. He reiterated the criteria for the guidelines contained in paragraph 11 of WT/CTE/W/31, which would contribute to predictability and enhance WTO credibility. Japan hoped its submission provided a basis for substantive results in Singapore. Japan would take into account other delegations' views, including on the nature of the guidelines and the criteria. Given the guidelines were not legally-binding, if a trade measure did not meet one of the requirements, this would not automatically mean that it conflicted with the WTO. Although, it would be up to WTO panellists to judge the compatibility of the measure, Japan hoped panellists would refer to the guidelines. Japan's paper also proposed, in paragraphs 12-15, an expansion of the CTE's terms of reference to promote dialogue and coordination between the WTO and MEAs.

66. The representative of Switzerland introduced his delegation's non-paper (dated 20 May 1996). Switzerland attached particular importance to a coherent relationship between WTO rules and trade measures taken pursuant to MEAs. Just as other delegations, such as the EC, Switzerland felt the best way of dealing with the issue was a two phase approach, the *ex ante* phase to prevent disputes and the *ex post* phase to settle disputes if they arose. This approach, along with other delegations' submissions, served as the basis for Switzerland's non-paper. MEA Parties should retain the competence to judge the legitimacy of environmental objectives and to select the appropriate means for their achievement. The WTO should focus on the functioning of the trading system and on countering protectionist abuse of trade measures. Many conflicts between trade measures pursuant to MEAs and WTO rules could be prevented if cooperation and coordination was reinforced between trade and environment officials at the national and international level. Nevertheless, if a dispute arose, an approach should be developed which, under strictly-defined conditions, allowed for the accommodation of the use of specific trade measures pursuant to an MEA, while preventing the risk that the MEA be misused.

67. To strengthen cooperation between the WTO and MEAs, Switzerland proposed a cooperation mechanism to conclude formal agreements between the WTO and competent MEA Bodies, which should specify the modalities for cooperation, such as in the "Draft Decision on Cooperation" in Annex I of the non-paper. The relationship between the WTO and MEAs should be based on reciprocity, which applied to, *inter alia*, observer status and information exchange. A limited competence would be granted to the WTO Secretariat to respond to requests from MEA Parties or MEA Secretariats relating to factual information on the operation of relevant WTO provisions. Although, the General Council would approve each cooperation agreement, this mechanism would not require formal amendment of WTO rules and could be included in a decision of the Ministerial Conference.

68. Even if the establishment of a cooperation mechanism reduced the risk of contradictions between WTO rules and trade measures taken pursuant to MEAs, the possibility could not be excluded that these trade measures could give rise to disputes on WTO-conformity. If a dispute was brought to the WTO, Switzerland proposed a coherence clause, which would limit the scrutiny of a panel to whether the measure had been applied "in a manner which constitutes a means of arbitrary discrimination between countries where the same conditions prevail or with a view to achieving trade advantages". The panel would only examine whether the manner in which the measure had been applied constituted an abuse of its environmental objective. Inspired by the first Appellate Body Report, Switzerland felt the objective of the coherence clause was to avoid abuse of MEAs to achieve a trade advantage. Only specific trade measures unambiguously provided for in an MEA would be subject to the coherence clause. A general MEA provision, which provided that Parties might take trade measures to implement the MEA, would

not qualify for the coherence clause. This should reduce the risk of an MEA being unilaterally abused. Switzerland also proposed the establishment of a list which explicitly set forth those MEAs subject to the coherence clause, which had the advantage of clarity and predictability. There were two approaches to developing this list: the first required a General Council decision for the inclusion of each MEA; the second was more automatic, as each MEA notified by its Depositary to the WTO Director-General would be included, and the General Council would only take a decision if a WTO Member objected. Switzerland welcomed comments on this point. Like New Zealand, Switzerland believed any accommodation of trade measures for environmental purposes should apply across WTO Agreements and proposed the coherence clause be included in an "Understanding on the Agreements in Annex I of the Agreement establishing the WTO" in Annex II of the non-paper. Switzerland was prepared to discuss any aspects of the non-paper with interested delegations.

69. The representative of New Zealand attached importance to clarifying the relationship between WTO provisions and trade measures for environmental purposes, particularly those taken to solve transboundary or global problems. The tabling of four papers on this Item was an opportunity to refine the CTE's thinking in preparation of the Report. Solutions under this Item depended on the diagnosis of the problem. The CTE's task was to make trade and environment mutually supportive of sustainable development, against a backdrop of uncertainty as to the precise reach of WTO provisions in this regard. While the term "*status quo*" was used frequently in relation to Item 1, New Zealand was unable to detect a unified view as to what that meant. The CTE was also working against a backdrop of governments already responding to environmental concerns by undertaking commitments which had implications for trade rules. An outcome should respond to these realities and should allow for legitimate measures to protect the environment, while safeguarding the multilateral trading system. New Zealand's submission (WT/CTE/W/20) proposed a legal Understanding which defined circumstances in which certain trade measures for environmental purposes could be accommodated in the WTO. This solution would make more explicit the extent to which the WTO could accommodate trade measures for environmental purposes by providing a structured approach to the various contexts in which trade measures were used. It provided a basis for dispute settlement and furthered sound decision-making in the trade and environment area, so the trading community could have greater confidence trade measures would be used for environmental purposes only where necessary. The environmental community could also have greater confidence in using such measures. It provided an incentive to devise multilateral solutions to transboundary and global problems. Apart from balance, clarity, certainty and durability, a critical consideration in the New Zealand approach was comprehensiveness. With these considerations in mind, New Zealand had drafted its proposal and against them it would examine other proposals.

70. New Zealand had reservations on the status of guidelines as they might not provide the desirable degree of certainty. In this regard, New Zealand welcomed an elaboration from Japan as to the precise status of its proposed guidelines and welcomed further discussion on Japan's reference to the possibility of making the guidelines legally-binding. While not objecting to the development of guidelines, *per se*, which might help broaden the information base and would not preclude the development of a formal Understanding, or vice versa, any solution should be a complete roadmap to the circumstances where trade measures might be used. Guidance to trade and environment negotiators should comprehend the range of situations where trade measures might be used. On proposals to elaborate various coordination mechanisms between the WTO and MEAs, New Zealand supported such contact, keeping in mind that dialogue fundamentally needed to happen in capitals and that the WTO and MEAs should respect their areas of competence. He noted the risk that the CTE would seek a process-oriented solution to a problem of substance. An outcome clarifying where the WTO stood on the use of trade measures was a more effective route to better decision-making in this area.

71. The representative of Korea said his delegation would submit for the June meeting a proposal on Item 1, which had benefitted from the proposals already submitted.

72. The representative of the European Communities said written proposals on this Item contributed to the debate and his delegation was in the process of analysing them. Certain elements of Switzerland and Japan's proposals were interesting. In particular, common ground existed between the EC approach

and Switzerland's proposal. Although it was important to create a sense of progress which should be reflected in the Report, he cautioned that, while pursuing the goal of clarifying the relationship between the WTO and MEAs, the CTE should be aware of the risk that this exercise might result in a situation which might be more restrictive than the *status quo* regarding the use of trade provisions in MEAs. The EC felt this would be difficult to reconcile with the analysis and original spirit of the CTE and risked penalizing and not, as it was originally intended, supporting the use of multilateral approaches.

73. The representative of India gave preliminary comments on Switzerland's non-paper. He said it was his understanding that there was no such general understanding in the CTE as referred to in paragraph 7. Also, India had serious concerns with the proposed coherency clause.

74. The representative of Hong Kong said his delegation was considering the possibility of submitting a proposal on Item 1.

75. The representative of the United States associated his delegation with the EC's note of caution. The need for cooperation and coordination between trade and environment officials addressed by Switzerland's non-paper was a point which had been made by the US. However, he had strong doubts as to the need to authorize the Secretariat to provide factual information to MEAs as it already had this authority. This authority should not be put in question by making special provisions for MEAs. Also, the US had strong reservations as to the appropriateness of the CTE discussing activities of other international organisations. If governments coordinated properly among their trade and environmental authorities, this would be redundant. If this was not occurring, the issue was best addressed in capitals. The US supported informal contact among trade and environment officials to build awareness of work in the WTO and MEAs.

76. The representative of Canada said his delegation had alluded to a guidelines approach in a previous intervention which was similar to Japan's proposal but with different guidelines. He referred to Switzerland's proposal for cooperation between the WTO and MEAs and also noted this was common to Japan's proposal. This was the issue which in many respects had motivated Canada to attempt a guidelines approach and for which agreement could be reached in the CTE. Canada was considering submitting a proposal based on the guidelines approach. Arrangements to establish a regular flow of information between the WTO and MEAs which contained trade measures should be encouraged. He noted situations had arisen where MEAs had sought information which they were not able to obtain on a formal basis from the WTO Secretariat. He said the idea that MEAs could submit to the CTE proposals for trade measures under consideration in the MEA could encourage trade and environmental experts in capitals to cooperate further, and thus facilitate national coordination.

77. The representative of Nigeria said Item 1 was an important Item for many delegations, not only those delegation which had submitted proposals on it, as the use of trade measures to achieve MEA objectives was an issue of crosscutting importance. He agreed with the suggestion that Item 1 was one of the "ripe" issues, which would require wide-ranging, broad-based, representative and transparent consultations. Any definition of an MEA, such as that in paragraph 11 of Japan's proposal, should also meet broad-based agreement. He inquired as to whether the criteria in paragraph 11(a)(ii) of Japan's proposal applied to MEAs or plurilateral agreements and asked for clarification of the meaning of "irreplaceable part of the natural system of the earth" in 11(b)(i). He shared India's view on paragraph 7 of Switzerland's non-paper.

78. The representative of Morocco said his delegation wished to participate in any informal consultations on this Item.

Item 7: The issue of the export of domestically prohibited goods

79. The representative of Nigeria presented his delegation's proposal for a draft Decision on Certain Products Whose Sale is Banned or Severely Restricted in the Domestic Market (WT/CTE/W/32). He said the issue of DPG exports was a problem which the WTO should address. Commenting on the outline of the draft Decision, he noted Article 3 represented a minimum responsibility for exporters, i.e.

notification of what was defined as a DPG in their own country. He responded to comments which had been raised at the December 1995 meeting. Although a broad corpus of international instruments and agreements related to DPG trade existed, as listed in Annex II of the draft Decision, surveys he had conducted and discussion with the Secretariats of relevant international agreements indicated gaps existed and some products were not subject to existing notification disciplines. Nigeria felt gaps existed in the scope of product coverage related to food additives, cosmetics and consumer products. There was also the non-membership issue. In this light, there was scope for stop-gap action which did not duplicate or undermine existing agreements. Concerning the point that consumer goods were covered by the TBT Agreement, he said the TBT and SPS Agreements addressed standards with which imported goods must comply, and not the status of these products in the exporting country. Concerning an illustrative list of DPGs, he felt this was not a worthwhile exercise, as technological progress was continuous, and there were an infinite number of DPGs. After having consulted widely, he felt the proposal for the draft Decision was a practical and feasible solution under this Item. Nigeria's proposal in WT/CTE/W/32 replaced previous proposals in WT/CTE/W/11 and WT/CTE/W/14.

80. The representative of Egypt said her delegation would continue to cooperate with Nigeria in order to have an outcome in Singapore which met the high expectations in this area. Egypt felt the 1991 GATT draft Decision should serve as the basis for a decision. This issue was not only an environmental issue, but a matter of moral and core human rights. The CTE should carefully consider any decision it took on DPGs so as not to trigger the opposite effect from that which was intended, i.e. that the WTO was trying to facilitate or legitimize DPG trade. Notifications in this area should not be merely for information purposes, but should have clear objectives and consequences in order to serve as a preventative tool. She inquired as to what would occur if notifications were not met; whether DPG trade would then be considered as illegal traffic; whether WTO law applied to Nigeria's draft Decision; and whether mandatory labelling of DPGs which were exported was possible.

81. The representative of the United States said WT/CTE/W/29 showed there was broad coverage of DPGs in international instruments and agreements which existed or were being negotiated. It was difficult for the WTO with its limited technical expertise to identify gaps in DPG coverage, such as for the potentially unlimited field of consumer products or for products which required assessing chemical risk. Instruments which already dealt with DPGs had used considerable expertise to define their scope and to ensure substantive obligations made sense and were not prone to abuse. He said Nigeria and Egypt had not yet responded to the US request at the December 1995 meeting for further information on problems experienced in areas not already covered by other international agreements. He supported Article 5 of Nigeria's draft Decision. Referring to paragraph 8 of Nigeria's submission, he said a ban on domestic sale of a product would be subject to notification under the SPS Agreement if it had a significant trade effect. Article 4 was not within WTO competence. He noted products banned for sale could be produced for R&D. Although the objective of Article 2 was commendable, the WTO did not have the expertise to provide technical assistance for capacity building in the DPG area. This was already being done in the London Guidelines and the Basel Convention. He raised concerns about the proposed Trust Fund.

82. The representative of Ecuador said Nigeria's submission could serve as a basis for a consensus Decision on DPGs.