Let me confirm in recalling that EFTA contracting parties have already asked in a letter sent to Director-General Dunkel on 4 February 1991 that the 1971 Working Group be convened "at the earliest appropriate date", that EFTA contracting parties stand firm on the convening of the 1971 Working Group not later than the second half of September of this calendar year but we would of course welcome any earlier convening.

In sum, the existence of the Working Group is not contested, it has a designated chairman, it has a mandate, EFTA contracting parties have requested its convening. Therefore the airgram just has to be sent out in time by the GATT secretariat.

Let me underline, that we have supported and will support the consultation process under the able chairmanship of Ambassador Ricupero, to whom we would like to pay tribute also in this forum for seeking a constructive solution to the issues raised by our initiative. His consultations are not finished yet and we even see the chances for reaching consensus on an updated mandate arising. We support the proposal made today by the ASEAN countries in document L/6859 to get background reports by the GATT secretariat as well as a special report of the role of international trade in the preparatory process of UNCED as put forward in the informal consultations by the various delegations. All these papers can be useful inputs in the ongoing process without delaying it.

However, it is our conviction that we have now reached the point where a decision has to be taken without further delay:

- The issue of international trade and environment is as topical as before, one might even argue that it has gained topicality since December of last year.

- Other organizations are taking up the trade issue, because the GATT so far has failed to do so in this context - until today we spent our time mainly on discussing whether we should discuss.

- The 1992 Conference is approaching rapidly and the second PREPCOM meeting of UNCED has shown clearly that the economic and trade aspects were not dealt with adequately in the preparatory process, but we are looking forward to the before-mentioned progress report by the secretariat.
Finally and above all, GATT as an institution is losing credibility if it continues to be unable to find a commonly accepted and acceptable institutional solution to discuss one of the most pressing issues internationally debated. As contracting parties we all ought to feel responsible to remedy this situation.

In turning now to the outline for the structured discussion, I would like to recall that EFTA contracting parties have always urged to set an analytical process in motion, which attempts to clarify the interrelationship between international trade and the environment with reference to the relevant GATT rules. We want to engage in a dialogue, we see problems, we want to discuss them, but we do not have ready-made solutions.

Therefore, we have chosen to highlight problems and raise questions where more clarification is needed and not to attempt to answer them at this stage. We all should try to find these answers together.

1. Basic principles

We would like to start in highlighting from the beginning some basic principles which underline our thinking:

* International trade is essential for the whole world economy i.e. for developing and developed countries alike.

* International trade plays an important part in the development process.

* Free trade is not an end in itself, but it has to contribute - and now I quote from the Preamble of the General Agreement - to "raising the standard of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods". To these goals have to be added those outlined in Article XXXVI recognizing the special needs of developing and least-developed countries.

One has to add to all those that in today's understanding a sound and viable environment is part of the standard of living and development.

Furthermore, sustainable development for all and especially the sustainable management of resources, renewable and not renewable alike, are other important additions not only to the concepts of the standard of living and development but especially to the goal of, and I quote again from the Preamble, "developing the full use of the resources of the world").
* Environmental concerns should neither lead to unnecessary barriers or non-tariff barriers to international trade, nor to a new excuse for protectionism in the modern form of "eco-protectionism".

* If environmental measures taken have a bearing on international trade, the least trade-distorting ones should be chosen.

* If trade measures taken have a bearing on the environment, the ones with the least impact on the environment should be chosen.

* All measures envisaged should be checked against the principles of necessity and proportionality.

* Trade measures are in general only second best solutions for an environmental problem, one should aim at the root of the problem directly.

* Thus, trade measures may primarily serve as a complementary means for achieving environmental goals; GATT allows domestic restriction or the ban of certain production or process activities but normally outlaws a ban on the trading of the goods resulting from those activities.

* The aim of a partnership between trade and the environment can only be realized through co-operation on the national, regional and global level, depending on the nature of the problem.

* The establishment of the outlined partnership between international trade and the environment implies that impairing the environment cannot be recognized as a legitimate comparative advantage because the degradation of the environment and its pollution do not change its detrimental nature due to its origin.

2. Definition of environment

Allow me one more general observation, before starting the discussion of concrete policy measures:

We all constantly talk about "environment", are we all talking about the same thing?

We are all aware that the General Agreement itself does not refer to environment explicitly, in contrast to the Standards Code.

Can the reference in Article XX to "human, animal or plant life and health" and to "the conservation of exhaustible natural resources" be understood to mean "environment"?

The definition of environment is of importance in the GATT context and therefore warrants a thorough discussion.
3. **International character of the problem: need for international co-operation**

This leads directly to another characteristic of the modern discussion of environment.

Unlike in former times, many environmental problems ask not only for national but for regional or world-wide solutions and co-operation. Let me just quote changes in the climate or the depletion of the ozone layer as two examples.

This need for co-operation does however not only create new obligations for developing countries, but brings as a counterweight also new obligations for industrialized countries under the concept of international burden sharing. It is clear, that international co-operation in every field, including the one of environment, cannot be a one-way street.

4. **The regulatory approach, internalization of environmental costs**

Turning now to the systems used to protect the environment, one has to recognize, that at present, the regulatory approach to environment is still dominating. This is due to the fact that environment has not yet an agreed price which is reflected in the production costs and in the price of the final product. The internalization of environmental costs into product prices should be a common policy objective. Although the public awareness is increasing rapidly, the necessary process to establish environmental concerns as an accepted factor in calculating the price for a product, is far from being completed. The education of the general public will be one important feature of this process.

As a consequence, we should be aware that the more environmental costs are taken into account nationally, the greater becomes the potential for international trade frictions and the more urgent the need to clarify rules and regulations. How would one for example deal with the problem of "like products"?

Although economic instruments, such as emission, product, administrative charges and marketable permits, are more market conform and show encouraging results when used, the mentioned general lack of internalization of environmental costs favours a recourse to regulatory instruments.

These span from environment quality standards, emission standards, process standards, product standards to outright restrictions or bans of certain polluting ingredients of products or products themselves.

Having in mind that the GATT only allows tariffs as a general rule, quotas and other restrictions such as import or export bans only in exceptional circumstances, the problems of "GATTability" of environmental concerns as well as the legality of some of the measures already taken now, are clearly posed.
5. **Measures having trade effects**

(a) **Bans and restrictions on products**

Import bans or restrictions of products because of their harmful nature need as a complementary measure the same ban on domestic use and/or production of the product or ingredient in question. In GATT terms, national treatment as well as non-discrimination have to be applied (Article I, III) and unnecessary restrictions to international trade have to be avoided (Article XI). Article XX of GATT should serve in some cases as a basis for such bans.

Some of the major problems in this context are:

- How to solve a dispute, if there is no agreement on the harmful nature of the product or ingredient?
- Are unilateral actions justified, if so under which circumstances?
- Could somebody not accepting the classification of a product as hazardous invoke nullification or impairment, especially if there is a change in the classification of a product or ingredient?
- What sort of scientific evidence is to be accepted?
- Who is going to be the judge according to which criteria?
- Which transparency requirements have to be met?

Different regulations could put national economies in a disadvantaged position. How does one distinguish between, on the one hand, decreased competitiveness as a signal for necessary structural adjustment due to environmental concerns and on the other hand, what industry likes to call "unfair trading conditions"?

(b) **Bans and restrictions on process and production methods (PPM)**

GATT has so long concentrated itself on goods and has looked on contracting parties mainly as a black box, getting involved only at the stage when national policies left the national sphere and became international.

The international nature of many, but certainly not all environmental problems brings the problem of process and production methods into the picture. They are not part of the present GATT but have been included in the draft TBT and SPS texts. Trying to influence process and production methods, if they are not regulated through an international agreement to which the parties in question are signatories, raises the problem of extraterritoriality and therefore such attempts have to be handled with great care and diligence.
Is there a need for such measures which aim at process and production methods?

What degree of gravity and danger, measured against which criteria, would justify measures against products produced or processed in a manner which is considered to be harmful and hazardous?

Harmful and hazardous for whom? The nationals of the State where the process or production takes place, the nationals of the State taking action, humanity in general because a public common good is at stake? Which superior good has to be in danger?

On which legal basis could measures be taken? Would Article XX as it stands be a basis or would it need an interpretation by the contracting parties? Is Article XX presently limited in scope to perceived threats in the territory of the contracting party invoking it i.e. in the importing and not in the exporting country?

In this context, how do international agreements, present or future, which use trade instruments to achieve their aims fit into the GATT context? Can there be conflicts between obligations under the GATT and those international agreements? If yes, how should they be solved? Are there overriding principles and interest or would the lex posterior apply? How is the legal situation of third parties? Concretely, how are the experiences with the 1987 Montreal Protocol, designed to reduce chlorofluorocarbons and limit ozone destruction by restricting trade in these products and trade in products that use chlorofluorocarbons in their manufacture? Is the Protocol effective? Should its instruments be used in other cases too? Could the Polluter Pays Principle (PPP) be used to avoid trade distortions?

The tendency of the environmental discussion is to take the cradle-to-grave approach, which means that a product is seen from its very beginning to its very end, i.e. its disposal. What are the potential consequences of this approach for the GATT?

(c) Article XX

Article XX is often referred to as the key article to introduce environment into the GATT. It would take too long to analyse in this forum Article XX in detail, therefore a few comments in addition to those already made have to suffice.

Article XX(b) has, inter alia, as a condition that the measures taken are "necessary" for the protection. Its (g) exhorts that they have to "relate to" the conservation of resources. These two qualifiers necessitate the application of a stringent yardstick: trade measures should perhaps only be allowed if there are no other measures that are more closely linked to the source of the problem.
We are of course aware of many other environment-related problems but I will just briefly touch on them:

(d) **Standards and norms**

Standards and norms play an important rôle, they are either compulsory or voluntary in nature, ranging from emission to testing. The problems related to them are well known in the GATT context, but there remains a lot of additional work to be done taking into account the specific environmental dimension.

(e) **Subsidies, financial incentives**

Is there room for subsidies in the field of environment (GATT Article XVI:4) or should they be treated as actionable? Subsidies might for example be given for structural change to convert the polluting process and production methods into clean ones. These issues are already part of the Uruguay Round negotiations but we should not lose their environmental angle.

(f) **Packaging**

Does a preference for environment-friendly packaging, such as deposit refund systems, infringe on the national treatment requirement, especially if their obligatory introduction de facto favours national producers?

(g) **Eco labelling**

May national Eco labelling schemes de facto or de jure differentiate between nationals or foreigners?

6. **Developing countries**

The problems mentioned so far concern all contracting parties, developed and developing alike. In the field of environment and pollution the distinction between the two categories is to some extent of limited value as the degradation of the environment and pollution hit all of us.

Nevertheless, the social cost pricing of natural resources and natural resource-based exports as well as the offsite environmental damages are not reflected in export prices and they are generally of a special concern to developing countries. This forms a special part of the problem of internalization of environmental costs already referred to. Furthermore, all contracting parties should improve current domestic practices of environmental and natural resource management to assure sustainable supplies.

The use of environmentally-sound technologies should be a top priority. There is need to encourage their selling, leasing or any other form of transfer to developing countries without creating new dependencies.
The inadequacies of the market for environmental services should be eliminated. In this context tourism might be an example to quote: nature-oriented tourism, wildlife is a major source of income for many developing countries. Excessive tourism is a major threat, therefore, in this context too, there is a need to internalize the costs of the environment.

Let me just recall here, that I have already mentioned earlier the concept of burden sharing.

We have taken up much time, nevertheless, we have neither tried to be exhaustive nor have we tried to give answers. So, for example, we could not deal with the services sector, which also would merit the same thorough exam of the interrelationship between international trade in services and the environment.

We have not tried to give answers, because we hardly know any at this stage of discussion and research, but we also wanted to make clear, that a profound and long debate among the contracting parties will be necessary in order to try to find answers together.

I think we need not repeat which way we have proposed to reach these common answers.

In concluding, I would like to refer back to the study by the GATT secretariat on "industrial pollution control and international trade" prepared for the 1972 Stockholm Conference and circulated as document L/3538, dated 9 June 1971. Those of you who have taken the trouble to read through it again, have discovered that the problems have remained to a great extent the same. What has changed is their dimension, their urgency, the public perception and a few new ones have been added to the list.