REPORT OF THE MEETING HELD ON 10-11 MARCH 1992

Note by the Secretariat

1. The Group on Environmental Measures and International Trade held its third meeting on 10 and 11 March 1992 under the chairmanship of Ambassador Hidetoshi Ukawa (Japan). The agenda and relevant documentation were contained in GATT/AIR/3298.

2. The Chairman recalled that a useful and substantive discussion of the three agenda items took place at the last meeting. Numerous issues and questions arose out of that discussion, and had been listed as an addendum to the report of the meeting (TRE/3). He considered them useful points to focus the discussion, which, he suggested, should concentrate on the first agenda item followed by the next two in the time remaining.

General discussion

3. Delegations generally considered that the Group's discussions had been productive and had provided a good basis for future work. The issues and questions raised as well as several important, general points of agreement identified in the report of the last meeting were evidence of this. Several delegations also noted the importance of an educational process occurring in capitals on the subject of trade and environment, which had been initiated by the Group.

4. The representative of Malaysia, on behalf of the ASEAN countries, hoped to see the Group clarify all the issues and questions raised at the last meeting and come to specific recommendations and conclusions to report to the Council. In this way the Council would be able to consider timely and appropriate responses so as to avoid contradictions and ambiguities in the obligations of contracting parties vis-à-vis other relevant multilateral agreements. He also asked that the principles he had outlined at the last meeting be observed in the work of the Group. These included limiting the scope of the work to the three agenda items; self-restraint on the part of contracting parties in introducing environmental measures with trade implications; not using the precautionary principle as a legitimate reason to introduce environmental protection measures in contravention of the GATT; taking into account the particular problems of developing countries; settling any conflicts of GATT rules in GATT; and not attempting to set or harmonize environmental standards for the purpose of reducing trade-distortions or conflicts, etc. He concluded by drawing attention to the Singapore Resolution on Environment and Development, which he made available to delegations.

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5. The representative of Hong Kong described three principles which, as he understood from the last meeting, were shared by delegations. The first was that multilaterally agreed solutions should take precedence over unilateral ones in the trade and environment debate. Hong Kong encouraged efforts to bring greater specificity to this principle. The second was the shared desire to show that the GATT framework of rules could accommodate legitimate environmental concerns, and that the GATT did not present or create unreasonable obstacles or barriers to a party's pursuit of its environmental priorities. The third was the common view that the rôle and competence of GATT in this area was limited and did not include the setting of environmental standards. This should be clearly articulated in order to dispel outside apprehension that GATT was seeking to assume a rôle beyond its competence. He believed that these points would provide a useful platform from which to build detailed future discussion. He added that some of the issues and questions raised at the last meeting were too controversial or complex to address at this stage and that the Group should keep strictly to its agenda. Several delegations agreed.

6. The representative of Venezuela considered that some of the issues and questions were either legal or political in nature; the latter, although important, did not fall in the mandate of the Group. In this regard he asked that clear guidelines for the Group's future work be elaborated.

7. On this last point the representative of India agreed, considering that many of the questions were wide-ranging, complex and perhaps went beyond the agenda. The Group should focus on its agenda and based on any results of its work, it could perhaps look at these complex issues and any others deemed necessary and appropriate to examine. Also, he reiterated the importance of the three principles noted by Hong Kong on which there appeared to be a wide measure of agreement, and added a fourth that the liberalization of trade would contribute to better environmental protection.

8. The representative of Japan believed that the complexity of the issues required the Group to take the time necessary and not to jump to conclusions. Although they were positive in nature, he did not believe that the Group's first priority was to answer all the issues and questions raised at the last meeting. He suggested that it would be useful to give a certain structure to them in order to plan for future discussions. On this last point, the representatives of Chile, Canada, New Zealand and Argentina agreed. The representative of Chile added that the list of issues and questions in the addendum was not exhaustive, nor were all those listed necessarily priority items. The representative of Canada added that some issues and questions could perhaps be dealt with later rather than sooner.

9. The representative of New Zealand added that it would be useful to have an analytical look at some of the issues, but not all were relevant to explore at this stage. He believed that the work of the Group had been of a wide-ranging, confidence building nature, and would be for some time given the sensitivity of the subject. This sensitivity stemmed from the widely different perceptions in approach, not only among, but also within, delegations. He believed that careful, analytical investigation of the
issues to define the problems would be the best way to build confidence and dispel misconceptions. Such work should be forward-looking but based on an analysis of the agenda. The representative of Argentina added that structuring the issues and questions was a way to proceed step-by-step and focus the discussion. From the discussions he concluded that it would be very difficult for the Group to deal with the questions in a general way. He believed that the Group should concentrate on those questions on which there was some degree of consensus and which would allow it to make some progress.

10. The representative of Austria asked to what extent the Group could look into pertinent UNCED documents, specifically document A/CONF.151/PC/100/Add.3. The representative of Canada noted that this document was in a preliminary stage. He added that participants to the UNCED were looking to GATT to address the subject of trade and environment, therefore the Group's time could be better spent on that. The representative of India noted that the UNCED document requested a clarification of the rôle of GATT. The Group's task was to examine the trade provisions of other international environmental agreements vis-à-vis GATT with the aim of clarifying GATT's rôle in dealing with environmental trade issues and whether any changes in GATT's rules were necessary. He believed that GATT was competent and flexible enough to deal with trade-related provisions in multilateral agreements, although this was without prejudice to the outcome of any such examination.

11. The representative of Tanzania stated that in the view of his delegation, GATT's time was being disproportionately taken up by the subject of environment before the U.N. Conference in June. The UNCED process was assuming the global fire-fighting rôle in this area. It still needed time to create its peace-building rôle by providing a more basic concept of security through consideration of the historic roots of insecurity. He believed these roots were the permanent features of the global order whereby a few "haves" with power were taking the "have-nots" for granted. He added that the supremacy of GATT principles and provisions was seen as applying inflexibly; he hoped this was not the case. Further work in this area should await the outcome of the UNCED; the GATT dispute settlement mechanism appeared the competent place for addressing these issues.

12. The representative of Chile sought to relate the work of the Group to the Uruguay Round by asking what impact a change in tariff structures would actually have on the environment.

13. The representative of Turkey believed that freedom of exchange could protect the environment through increasing wealth and living standards. The Group should not emphasize modification of the provisions of the GATT; this would permit greater protectionism under the pretext of environmental protection. He believed that the flexibility of the GATT structure could deal with the delicate question of the environment while at the same time preserving free trade.
Trade provisions of multilateral agreements vis-à-vis GATT principles and provisions

14. Delegations generally considered that this agenda item presented the most pressing issues and was therefore of the most concern.

15. The representative of Malaysia, on behalf of the ASEAN countries, stated that contracting parties were bound to other multilateral agreements to which they were signatories just as they were to the GATT. Where those obligations required conciliation with concerns such as the environment, the ASEAN countries would be prepared to review them in light of conclusions from UNCED. He added that no contracting party should have to subscribe to an agreement merely because it contained principles or provisions to which the party adhered in the GATT. International obligations of states did not automatically flow from one instrument to another; consequently, no international obligations of a multilateral agreement should be ascribed to a state which was not a party to it.

16. The representative of the European Communities stated that work on this item had to begin from a clear perception of what the problem was. This issue was the subject of considerable misunderstanding and begged a clear response. As an example of such misunderstanding, he cited the widely different interpretations of the report of the Panel on U.S. Restrictions on Imports of Tuna. Some believed that it put into question all multilateral agreements, while the EC believed that it sent a positive message regarding measures based on multilateral co-operation.

17. He considered that the approach to this first agenda item must be based on a clear and positive interface between trade provisions of multilateral agreements and the GATT. It must also be comprehensive because the global dimension of environmental problems was growing and becoming a high political priority. He stressed that GATT must avoid passing judgement on other multilateral agreements and that any solution to this interface should be defined in a positive way.

18. Regarding question 7, he believed there was a need to clarify what a multilateral agreement was. His preliminary thought was that it was an agreement open to negotiation and accession by all countries. In this regard, he asked what level of international consensus was needed to justify certain trade provisions. On question 9, he believed that it was essential to avoid any situation which could lead to a conflict of obligations between GATT and other trade measures. A multilateral agreement might use such measures to define a certain objective and indicate that trade measures could be adopted to achieve that objective, but not specify the criteria to which such trade measures would have to be subject. There was clear international recognition of the legitimacy of certain actions, but the criteria for the individual application of such measures by contracting parties must be examined in the GATT.

References to numbered questions and issues relate to the initial list of questions and issues raised at the meeting of 21 January, contained in the addendum to TRE/3. These are reproduced in the addendum to this report.
19. The representative of the Republic of Korea stated that any solution must be balanced between the two equally important objectives of trade and environmental protection. An important question was whether Article XX was equipped well enough to serve as a basis for using trade measures to protect the environment. It was important to prevent possible abuse of Article XX by erecting new barriers to trade or hindering the removal of existing barriers. He added that the Group must carefully review trade measures in the multilateral agreements contained in Annex 4 of the Factual Note (L/6896) to see if there were inconsistencies with GATT provisions. As the work progressed, other multilateral agreements could also be examined. He suggested that the GATT secretariat prepare a detailed explanation of the trade provisions of other multilateral agreements. He supported the ASEAN proposal, made at the last meeting, for a registry of such measures.

20. The representative of Algeria noted that the Group's approach represented a break with tradition and was on the threshold of a new approach. She considered that all the questions raised clearly pointed to a break with the mechanical approach to economic and trade issues in international agreements followed in the past. In this respect, the request for an inventory of trade measures in international agreements would be a study limited to very specific trade-related agreements and was more closely related to the new biological approach. This was symbolized by the fact that the environment was being integrated in all areas of international concern, not just in GATT.

21. The representative of Australia stated that, from a logical point of view, it was impossible to address more concrete issues without some consciousness of the underlying definition of what constituted a multilateral agreement. The Group should approach this subject with caution and careful analysis, and with a focus on the future because its deliberations could have consequences on the many such agreements presently being negotiated. He considered that in coming to a mutual accommodation between trade and multilateral environmental agreements, the Group should proceed on the assumption that this accommodation could be accomplished without diminishing the effectiveness of the GATT rules. For this reason, it was necessary to find as much precision as possible in understanding what constituted a multilateral agreement.

22. He asked if legitimacy could be conferred on a multilateral agreement by the number of parties to it, by the potential number of parties to it, or by the number allowed to negotiate it. A related question was whether representation should be broadly based with respect to the level of economic development. He believed an examination could begin by defining the terms "multilateral" and "environment". He preferred the term "multilateral" rather than "international" because the latter implied any agreement between countries, and, from the GATT perspective, it might be better to consider treaties negotiated among a range of countries. In this context, he wondered what criteria were used to determine the wording of Article XX(h).

23. He made reference to an article in the Havana Charter which subsequently became GATT Article XX(j). A subcommittee reported its view that the provision in question was "intended to require members to take guidance not from any multilateral agreements as such, but from agreements
of a wide and general nature". He noted that there were other examples in GATT history which recognized the legitimacy of multilateral agreements among a limited number of members. The Group should consider whether it wanted to follow this path.

24. On the definition of "environment", he said that in popular usage the term could be extended to include considerations which were more properly used in dealing with domestic, political or cultural values. He had no definitive suggestion as to what constituted an "environment" agreement, but one element might be the degree of scientific consensus required for an issue to be considered a legitimate environmental concern.

25. On question 1, the representative of Hong Kong said that any answer would have to be nuanced to take into account not only whether new agreements took precedence over old agreements, but also whether participants were identical in both agreements. Another issue was whether broad-based trade provisions in multilateral agreements were necessarily more specific than the GATT rules.

26. Regarding the scope of Article XX(b), he observed that it was an exception to the principles of GATT and, for that reason, should be relied upon only in exceptional circumstances. A recent panel report offered useful guidance as to which situations could be regarded as consistent or not with this exception. On question 1, he believed that the EEC had given some useful pointers, but as a matter of common sense, it appeared that a regional agreement could not be regarded as a multilateral agreement in the sense that the Group was using the word. Any agreement would have to be assessed on its own merits, taking into account the openness and level of participation.

27. The representative of Japan voiced some preliminary thoughts on this item. He stated that GATT provided the fundamental basis on which to predicate trade and commercial policies. If the rights and obligations of parties under GATT were adjusted to meet specific policies of individual parties, GATT's basic rules could be undermined. Stretching the rules to serve individual policy objectives would risk unilateral measures based on subjective value judgements. Although those who have little or no experience with the GATT or who put a high priority on environmental concerns would have a different perspective, he viewed the subject of trade and environment with the assumption and fear that once the GATT régime began to change, it might invite considerable negative consequences.

28. He considered that in answering any questions, delegations should be careful not to generalize too much. On question 4, he believed it would be desirable and appropriate for future drafters of multilateral agreements to have a clear understanding of the rules and principles of the GATT; the GATT could make systematic inputs in such drafting. As a first step in this regard, better co-ordination among government agencies which have responsibility for trade and environment was needed. He concluded that GATT should take the initiative to address this subject and the Group must work actively to send a clear and positive signal to the outside.
29. On question 1, the representative of Austria believed that more recent agreements took precedence over older ones and more specific agreements over more general ones, to the extent that the membership and subject matter were the same. If these conditions were not satisfied then a conflict would emerge. He noted that the Vienna Convention referred to "intersee" agreements (agreements between smaller groups of parties to a broader international agreement) which were only legal if they did not violate rights of parties to the broader multilateral agreement.

30. On question 2, which was related to question 4, he believed it was up to the GATT, and especially the Group, to draw the attention of governments to the possibility of future incompatibilities. GATT should not seek to become actively involved in the drawing up of agreements but, through the contracting parties, it should look at the compatibility of various rules and obligations. Regarding question 3, he believed that the relationship was one of competition and potentially one of conflict. Through diplomacy such conflicts might be prevented or through the dispute settlement procedures conflicts that arise might be resolved and issues might be clarified.

31. On question 7, he believed it was a question of numbers. On question 8, he believed that an international agreement was a higher category of multilateral and bilateral agreements. In Article XX, reference was made to "intergovernmental" agreements. He did not believe there was any difference among the terms, but clarification was needed. On question 9, the Montreal Protocol had certain trade bans by which parties had to abide and hence certain possibilities where states might take certain measures against trade with third parties.

32. On question 10, he believed the purported objectives of trade measures in the Montreal Protocol were to avoid triangular trade and to avoid circumvention of trade by shifting certain production to non-member parties. This would erode the basis of the treaty. Finally, regarding question 11, he considered that non-signatories had very few rights but one rule in international law said that treaties should not impose obligations on third parties without their agreement. The Montreal Protocol, in as much as it put obligations on third parties, was not in conformity with this aspect of international law.

33. The representative of Sweden, on behalf of the Nordic countries, reiterated the Nordic countries' strong belief in the importance of international environmental agreements (IEAs) as necessary tools for the solution of environmental problems that transcended national boundaries. A recent panel report highlighted the importance of this approach against the background of present GATT rules, which must be interpreted as discouraging the use of unilateral trade measures to tackle environmental problems outside national jurisdiction. He added other arguments in favour of the multilateral approach: the environmental interests of more than one country were involved; it could expect to provide better results as opposed to piecemeal action which could work at cross-purposes; and it probably facilitated a more comprehensive approach to the often complex problems addressed.
34. The Group, therefore, needed to find ways to avoid GATT rules being used to impede the implementation of legitimate trade obligations in an IEA, while at the same time providing reasonable safeguards against any misuse of such measures. He strongly supported the need for clear GATT rules in this area as guidance for drafters of IEAs. The issues before the Group might require the elaboration or reinterpretation of the framework of GATT rules and the Group’s task was to provide an analytical basis for answering this and other questions in the addendum.

35. He added that a major difficulty associated with the use of trade measures in an IEA was the treatment of non-signatories. The principle of non-discrimination was a cornerstone of the GATT. There could be an element of discrimination in the operation of an IEA if the same rules did not apply to signatories as to non-signatories. If a non-signatory was a party to the GATT, GATT rights could be invoked. When discrimination occurred, the measures taken must be justified under one of GATT’s exceptions. Article XX would probably be the most likely justification in most cases. Article XX did not explicitly recognize global problems as a motive, so the problem would have to be expressed in national terms. This should not be difficult if the environmental problem was truly transboundary in nature.

36. He added that other environmental agreements addressed national problems in a co-operative setting, allowing extraterritorial trade measures to be taken to help another country pursue its domestic environmental policies. This ought not to give rise to problems as long as measures were kept between consenting signatories. There seemed to be no justification, however, for extending such measures to non-signatories which would enter the realm of coercive use of trade measures within a multilateral setting. The Group must assess this in its own right. In the unilateral context, the GATT frowned upon the use of trade measures to influence policy-making in other countries.

37. The question of "free riders" took on a special significance in the context of an environmental agreement to tackle a global problem. By definition, non-signatories should benefit, but by not signing, they avoided a share of the burden of correcting the problem. There might even be trade benefits from not joining. This was a different argument than the protectionist one of a "level playing field". He did not believe that it was legitimate to neutralize the negative competitive effects of domestic policies by penalizing imports, but the global environmental problem may provide a special and very limited exception to this rule.

38. He added that there was scope for trade disputes between signatories, if an IEA incorporated trade provisions. The question was in what forum and by what criteria should such disputes be solved. An exchange of views on this was necessary, both in the Group and in other fora. Finally, he asked whether trade between signatories in all cases could be carried out completely in conformity with GATT rules or whether derogations could be necessary from an environmental point of view. This was a question that trade policy makers could not answer on their own, but the Group would need
some response in order to be able to tackle the issue of dispute settlement.

39. The representative of Switzerland stated her delegation’s belief in the multilateral approach which would guarantee a minimum level of international legitimacy of efforts to be undertaken. She said that twenty out of 130 multilateral agreements had trade provisions whose aim was to provide for the implementation of the agreement. The relation between these trade provisions and GATT was uncertain. When applied domestically, they could be in conflict with GATT. One of the trickiest problems from the GATT point of view would be to look into the application of trade measures to non-signatories of particular multilateral agreements.

40. She noted that as participation in these agreements increased, the risk of friction would decrease. Thus there was a need to bring together the largest number of countries possible through positive measures such as financial support and facilitated access to clean technology. Trade measures were generally designed on a coercive basis and were used as an exception. She noted that a recent panel and the GATT study on "Trade and the Environment" had shown positive signs in favour of the multilateral approach. GATT should avoid questioning multilateral agreements and they should be approached in a constructive way.

41. She also recalled that in several areas GATT was basing its decision on extraneous elements; for example, the Agreement on Technical Barriers to Trade was based on the presumption that a decision based on an international standard should not be an unjustified barrier to trade, and Article XV of the GATT encouraged contracting parties to accept the IMF conclusions related to finance. In this regard, GATT was a very pragmatic instrument and within its parameters of non-discrimination, proportionality and transparency, it should be able to take into account any multilateral efforts to deal with environmental problems.

42. She believed that question 1 was very delicate. As noted by others, general rules apply first and foremost to the determination of priority in instruments dealing with the same subject and with the same number parties. She also considered it difficult to date the GATT and to determine a specific time when the obligations of the contracting parties came together in a single instrument. There was the date of adoption, but since then it had been amended and revised. She concluded that the general rules of public international law could provide guidance and criteria in some cases but perhaps not be able to give full and final answers. The Group would have to look elsewhere for means of reconciling this question.

43. The representative of Brazil voiced a need to identify the problems in multilateral agreements and the GATT. The use of concrete cases or problems would facilitate the discussion and direction in which the Group should go in its work. The Group may not be touching upon existing problems but only referring to provisions, principles or criteria that would have to be established in the GATT in order to address the relationship between GATT and multilateral environmental agreements. He believed this was rather difficult to grasp at this stage. Also the
history of GATT showed that national measures that have trade effects, taken in order to protect the environment, could be addressed within GATT through Article XX. This gave the impression, then, that national measures could be addressed in the GATT but measures under multilateral agreements could not. This is where the Group would need to draw up criteria. He added that in order to see the direction the Group should take it had to show that the GATT was not sufficient to address multilateral agreements, for which he had not heard any convincing arguments.

44. The representative of Venezuela believed that question 1 was more a question of precedent and did not so much reflect the legitimacy of the latest agreement. He asked if there were several agreements with provisions related to trade and the environment, how would the range of agreements be determined? He also thought that determining the precedence of agreements was a sovereign decision to be taken by each country reflecting its priorities and concerns. On questions 2 and 4, he believed that the GATT should act only as an observer and coordinate work with other organizations; delegations alone should be involved in negotiating multilateral agreements. He concluded by making reference to the evolving dispute settlement procedures of the GATT. The system was based on panel reports and, in this regard, the tuna panel report was significant.

45. The representative of Canada believed that the Group must acquaint itself more fully with trade measures in multilateral environmental agreements. Environmental as well as trade experts must come to a common understanding of the issues and all their aspects and then examine how GATT would deal with them. He asked why a measure taken under Article XX in pursuit of a national domestic environmental objective, which was possible, was different from a measure taken pursuant to a multilateral agreement for the same objective. He suggested that the secretariat prepare a factual paper which would sort by type the multilateral environmental agreements with trade provisions. It could examine them in an unspecific way, without judging or questioning their objectives, in order to further the education process and progress the Group’s work.

46. On this last suggestion, the representative of India considered that the Group should address the three agreements on the agenda first and then perhaps revert to the other multilateral environmental agreements. He also believed that a registry of trade measures taken in the context of multilateral agreements could be useful. He considered that if two successive treaties were dealing with the same subject matter, then the later one would take precedence. However, he concluded that regarding GATT and multilateral environmental agreements, the subject matter was definitely not the same and, hence, one could not supersede the other. On question 2, which was related to question 4, he noted an emerging consensus from the last meeting that GATT should not get involved in standard-setting. It would be necessary for governments to coordinate their positions to ensure that policies and positions taken in both GATT and negotiations of other international environmental agreements contribute to greater compatibility between both.
47. On question 7, he believed that the membership and number of countries to an international agreement, representing a large arena of countries from various stages of development, were important elements. He considered the three agreements cited in the agenda as multilateral agreements and the task of the Group should be to focus on the trade provisions of them. On question 10, he noted that one objective of trade measures was to take care of the "free rider" problem so that such countries did not benefit from the better global environment without contributing to it. Trade provisions were also used to avoid third-party circumvention of obligations. He noted, however, that if circumvention was a real problem it could be resolved by controlling the consumption of the controlled product. In this regard, he quoted from page 12, paragraph 1 of the secretariat's report on "Trade and the Environment".

48. He noted that a recent panel report addressed the fact that Article XX(b) and (g) could not be used for extraterritorial measures but did not reduce contracting parties' rights to convene and formulate multilateral agreements. He noted that the major question regarding the trade provisions of the Montreal Protocol was whether the GATT justified them or whether there was a conflict with the GATT principles and provisions, particularly since trade provisions were more onerous for non-signatories than for signatories. He noted that the Parties to the Protocol met in December 1990 and were not able to determine any inconsistency with the provisions of the GATT.

49. The representative of the United States shared the concerns about safeguarding the existing multilateral agreements. In reference to question 1, she noted that according to Article 30 of the Vienna Convention, where successive treaties were related to the same subject matter and, when parties to earlier treaties were also parties to later treaties, the earlier treaty applied only to the extent that its provisions were compatible with those of the later treaty. The Montreal Protocol was successfully negotiated after the GATT entered into force, but was this all the rule contemplated? The question also arose, however, as to whether and how to determine if two treaties were related to the same subject matter.

50. She also asked if the order in which a country became a party to an agreement was relevant, and to what extent was it relevant that the GATT was implemented through the protocol of provisional application. How would environmental agreements prior to the GATT be handled and how would a GATT panel deal with a dispute? In reference to question 4, she noted that it would have to be determined what "the GATT" meant, i.e the contracting parties or the secretariat? The latter should observe negotiations in other fora to frame the issues and to offer historical advice, but in the absence of advice from the contracting parties it could not rule definitively on trade measures.

51. On question 5, emphasis should be on the least trade-distortive measure. Negotiators should consider the range of policy instruments available, including those that would have the greatest possibility of achieving the environmental goal. She noted that much work was going on in
different agencies on instruments that were more trade-friendly, such as market or economic instruments. On question 10, she considered that all signatories of multilateral agreements had made a judgement that they were willing to include trade measures that dealt with the "free rider" problem for specific reasons. She felt the first reason was to achieve the environmental objective of the agreement, such as the CITES. Other reasons were to encourage states to join the agreements, or to meet the agreement's environmental standards, and to deny non-parties potential benefits in trade areas resulting from the increased cost borne by industries participating in the agreement. This was exemplified in the Montreal Protocol. Without its trade provisions, non-parties might reap a share of the global environmental benefits without paying associated costs.

52. The representative of Argentina believed that the Group had first to assess what the GATT as an institution already contained with regard to the three agenda items. Afterwards the scope of the work could be extended. He agreed that compiling a list of trade measures contained in multilateral environmental agreements would be a step forward although the Group should first refer to the agreements in the agenda. He concluded that the discussions thus far on this agenda item had been positive and had generally indicated the work that must be done. In this regard, it was likely that the Group would have an extremely important rôle to play.

53. On question 1, the representative of Turkey noted the general principles of law regarding two agreements on the same subject. He added, however, that whenever the agreements were completely different it was not possible to determine which one of the two prevailed. There were not many laws on this issue, which led to complexity. His delegation did not think it necessary to reply quickly to the questions raised, but to analyse them in-depth.

Multilateral transparency of national environmental regulations

54. The representative of New Zealand noted a degree of overlap between this agenda item and the other two. He believed that agenda item two could be thought of in three parts: the first related to agenda item one with respect to the transparency of national measures taken pursuant to multilateral agreements; the second related to the transparency of measures taken under labelling and packaging requirements; and the third related to transparency of measures for other national environmental regulations. With regard to the first part, he noted that some delegations had already suggested examining this question. He also noted that some delegations had also referred to existing GATT machinery to deal with questions of transparency. A useful first step would be to examine this machinery to see whether it fully captured national environmental regulations, and, if not, what the Group might wish to do.

55. The representative of Sweden, on behalf of the Nordic countries, noted that at the last meeting he had emphasized the utility of the existing procedures within the GATT framework. He believed that the GATT provided contracting parties with a practical basis for judging measures which would have a significant impact on trade because it allowed each party to decide
for itself whether measures could have a significant effect on trade or not, with the awareness that the absence of a notification could be negatively regarded if the measure was challenged by an affected trading partner. In this regard, he noted that there was no real advantage to be gained by not notifying an environmental measure. On the contrary, there was much to be gained from notifying in terms of avoiding trade disputes.

56. The procedures in the Agreement on Technical Barriers to Trade provided a useful early warning of possible problems associated with a measure. Experience had shown that it was often possible to modify draft regulations to take into account countries' concerns, without sacrificing the original objective of the measures. He added, however, that notification procedures and transparency could not in themselves resolve a real conflict of interest of which drafters of regulations were not fully aware.

57. Present notification procedures in the GATT were not without their drawbacks. For example, not all contracting parties participated in the Agreement on Technical Barriers to Trade, and those that did, obviously interpreted the obligation to notify very differently, judging from the wide variations in the number of notifications that were received from different countries. This should be kept in mind when discussing possible options for increasing transparency.

58. In examining the list of notifications in document L/6896 to determine whether there were categories of environmental measures that were not covered by existing rules, the Nordic countries concluded that a broad spectrum of environmental measures, such as notifications concerning quantitative restrictions, limit values for harmful substances, emissions standards, limitations or bans on the use of products, import bans, sales bans, recycling requirements, and labelling and packaging requirements, were covered. They noted, however, that the list did not cover notifications under Article XV:I (subsidies taken for environmental purposes). It was also unclear as to whether the present inventory covered measures taken for an environmental purpose that were not linked to Article XX but were considered as an Article III measure.

59. Another general gap included environmental measures taken by local governments which were not covered as well as central government measures. It was also unclear as to what extent economic instruments which worked with the market rather than against it, but nevertheless represented government intervention, were or should be covered by present procedures. In the area of environmental policy, interventions could be justified as corrections of market failures, due to the fact that many environmental effects were also externalities. Another area not covered was handling requirements such as recycling systems for the handling of wastes. These were most often purely domestic and non-discriminatory and were rapidly becoming a necessity in many densely populated and highly polluted countries. Exporters might, however, consider them as setting up new barriers to trade. He noted that there were fairly far-reaching recycling requirements being put into place today that had not yet been notified, even though they covered packaging on imported goods.
60. Also, the area of services had so far not been covered and might merit attention in due course. Finally, technical regulations focusing on production methods were not covered very efficiently at present. He believed, however, that many of these gaps would effectively be taken care of by corresponding elements in the draft Final Act of the Uruguay Round. The revised Agreement on Technical Barriers to Trade would cover production methods that were related to product characteristics as well as a first level of local government. The single undertaking would widen the coverage of the Agreement to all contracting parties. There would be a new Decision on Sanitary and Phytosanitary Measures, and the text of the Functioning of the GATT System would foresee a central registry of notifications which would increase clarity and enable stronger monitoring of measures. It would also contain a broad undertaking to review notification procedures.

61. Some gaps would not be addressed, however, including strengthening the day-to-day implementation of notification obligations and the notification obligations for measures taken under Article XX. Indeed, it could be argued that Article XX relieved a party from all obligations, including notification. The Nordic countries believed that for measures covered by the Agreement on Technical Barriers to Trade and the draft Decision on Sanitary and Phytosanitary Measures, an obligation to notify would remain even if Article XX was used as a justification. The Tokyo Round Agreement on notification also covered, in principle, measures taken under Article XX, although the actual practice should be reviewed. Finally, the term "disguised restriction" in the chapeau of Article XX had, on occasion, been interpreted as relating mainly to transparency rather than motives. Whether there were environmental measures taken under Article XX that would still escape notification was a question that could not be answered without further study by the Group.

62. The Nordic countries believed that Article XX included the exceptions needed to justify the increasing number of measures legitimately taken by many countries to protect their domestic environment. Transparency would be desirable for such measures and could help avoid unnecessary trade policy friction. He concluded that it should be possible for the Group to contribute substantively to the smooth functioning of the GATT framework of rules in this area. This was important because his delegations believed that transparency played an essential rôle in the avoidance of trade disputes.

63. The representative of the European Communities stressed the importance of transparency. He noted the utility of the Swedish intervention for pointing out that there was already a highly developed system of notification in the GATT, particularly if the results of the Uruguay Round were taken into account. It was not necessary to develop new systems in this area; however implementation was an issue which could be examined. Each delegation had a responsibility to examine how well it was complying with the existing notification requirements and to assess any residual gaps in the system.

64. The representative of Canada informed delegations that his Government had been fulfilling its notification obligations conscientiously. In fact,
it had been notifying product standards which might not have needed to be notified, such as those which conformed to international standards or whose likely trade effects were hard to discern. Because contracting parties might interpret obligations under the Agreement on Technical Barriers to Trade and the Uruguay Round differently, their practices might differ. It might be appropriate for the Group to discuss these items to elaborate more clearly the appropriate implementation practices for these obligations.

65. The representative of India believed that only measures which had a significant trade impact should be included in a registry of trade measures taken in pursuance of multilateral environmental agreements. Trying to gather information on all environmental measures might make the task unmanageable. He agreed that the existing GATT provisions relating to transparency were comprehensive and adequate enough to take care of such needs. They would be made even more effective through the improvements foreseen in the Uruguay Round, such as widened membership of the Agreement on Technical Barriers to Trade and the envisaged registry of notifications in the context of the FOGS negotiations. This latter improvement would allow contracting parties to review the notification procedures and to monitor how the implementation of these notification requirements was being met.

Trade effects of new packaging and labelling requirements

66. The representative of the United States stated that care must be taken in applying national packaging and labelling standards because the growing number and complexity of competing systems could increase the chances for unintended trade effects and serve as a basis for trade discrimination and impediment of market access. She believed one way to address these problems was through harmonization efforts, already under discussion in the International Standards Organization. Such efforts would have to take into account the right of a country to develop environmental standards to protect the environment and the need for transparency.

67. She posed several questions that had arisen in her country with respect to current or proposed eco-packaging systems: was the scope of the programme appropriate; did it broadly mix industrial activity with commercial and consumer packaging; had unique packaging concerns, for example, those associated with medical devices, been taken into account? She also asked if there was recognition of the potential trade-offs between the reduction in packaging and the increases in food and other product wastes associated with damage or spoilage in shipment; and if the value of packaging material in meeting consumer needs been addressed?

68. On the question of discrimination, it could be asked if there were adequate safeguards against product and material discrimination in the implementation of the regulation. Her delegation believed that eco-labelling systems could maximize pollution prevention, eliminate consumer confusion and provide incentives for producers to create environmentally preferable products. But eco-labelling systems could potentially be a source of consumer deception, could promote one product
over another that was actually more environmentally friendly, and could discriminate against foreign products.

69. She added that procedural issues, such as labelling systems that stressed plant inspections but did not provide for visits to foreign manufacturing plants, that excluded large firms, or that restricted the number of firms that could participate, also gave rise to trade-related concerns. She concluded that the use of such regulations for the protection of the environment was clear; however countries must be vigilant in ensuring against undue barriers to trade.

70. The representative of Sweden, on behalf of the Nordic countries, mentioned that Article III appeared to play an important role in packaging and labelling issues. In this regard, the definition of "like product" was a central issue. For instance, he asked what the "like product" was to be compared with when a regulation concerned not the product itself but its packaging. Some recycling systems required a certain type of package or container to function. Were the discriminatory effects of this legitimate on the grounds that an imported package was simply not "like"?

71. He added that one area of concern with regard to labelling was that eco-labelling requirements often focused not only on the environmental qualities of the product itself, but also on whether it was produced in an environmentally friendly manner. This begged the question of whether an imported product should be judged by the same standards, or only by the properties of the product itself. He believed a case could be made for using different sets of criteria for domestically produced and for imported goods when affixing an eco-label. He concluded that this issue contained many difficult technical issues and it was necessary to proceed with this item as quickly and as concretely as possible. In this regard, a case study approach might be an efficient way of moving forward.

72. The representative of Switzerland considered that packaging and labelling requirements were not trade measures as such, but could have an impact on consumer pattern and behaviour and thereby represent effective barriers to trade. Indeed, she noted that these schemes were proliferating today in many countries and having considerable influence on consumer patterns. In informing the consumer, they also encouraged producers and manufacturers to meet these requirements by producing in a manner which was less harmful to the environment.

73. She believed that if eco-labelling schemes were well used, they should enable market forces to substitute for more direct and drastic trade measures. However, problems with their usage might arise from the diversity of national systems. She agreed with the representative of the United States that international harmonization of such regulations could cut down on the divergencies and thus diminish the impact on trade.

74. Regarding packaging requirements, the main purpose was to reduce the harmful effects of the packaging material and quantity of waste packaging. There was, therefore, a need to monitor the amount of waste by attacking the root cause. In industrialized countries, in particular, legislative
action was being undertaken in order to oblige manufacturing industries to rethink their sales techniques and to adopt new ways of consuming products. In some cases, new types of packaging materials were being used and old materials were being prohibited. She added that since the packaging waste would occur where the product was consumed, both national and imported products would be affected. It would become crucial for exporters, therefore, to ensure that their products, or the packaging system, conformed with the rules established.

75. She concluded that from a trade point of view, this was a more sensitive issue than eco-labelling, since packaging requirements and rules were more rigid and therefore might give rise to difficulties of adaptation for foreign producers. These problems would be even more serious when the regulation varied from one country to another.

76. The representative of Canada agreed that eco-labelling systems could be a much less trade-disruptive solution to certain environmental problems, however they should be as trade-friendly as possible. He suggested that perhaps the Group could pursue the question of international standards in terms of criteria, symbols and terms.

77. The representative of the European Communities believed there was a general recognition that both eco-labelling and packaging requirements were responses to extremely serious environmental challenges and, in this regard, were central elements to national environmental policies. In discussing these issues, he believed it was important to ensure a framework which would allow for a high domestic standard of environmental protection. Indeed, the GATT allowed each country the right to establish high standards for environmental protection, provided that certain basic disciplines, such as non-discrimination, transparency, national treatment and the avoidance of unnecessary obstacles to trade, were respected.

78. He considered it important how an unnecessary obstacle to trade was viewed. In this regard, the report of the Panel on U.S. Restrictions on Imports of Tuna indicated that it was not the level of environmental protection which was at issue, and which each country had the sovereign right to determine. The only question was whether the objective could be achieved through the use of less trade-restricting measures, without in any way questioning the level of domestic environmental protection.

79. He considered that there should be no questions as to whether or not such schemes were legitimate in GATT terms because this Panel also found that an eco-labelling scheme which related to the characteristics in which the product had been manufactured was fully compatible with the GATT. He noted that there were different approaches to deal with packaging. He believed that many were based on what was to be done with the package when it had been put on the market. This was clearly legitimate provided that no unnecessary obstacles to trade were created in establishing national regulations which were applied on a non-discriminatory basis to imports.

80. He added, however, that there were other types of approaches such as requiring manufacturers in their production methods to use a certain
content of recyclable material. This again was perfectly legitimate as far as domestic manufactures were concerned but there was a growing tendency to require importers of these products to conform to the same type of requirements. This raised other important issues. Finally, he considered that the issue of harmonization could be addressed later, although it had been said that the Group was not necessarily the place to set harmonized standards of environmental protection.

81. The representative of India stated that conflicting national priorities which lead to demands for the introduction of labelling systems. He believed that both labelling and packaging requirements for environmental purposes were covered by the provisions of the Agreement on Technical Barriers to Trade.

82. He added, however, that a multiplicity of labelling symbols or requirements could cause complexities, confusion and transparency problems. Therefore standardization or harmonization of the labelling requirements, being pursued in the International Standardization Organization, would be worthwhile.

83. He added that packaging requirements could create more severe obstacles to trade than labelling requirements. However, the GATT requirements of non-discrimination and those contained in the Agreement on Technical Barriers to Trade would ensure that such requirements were not misused and did not create unnecessary obstacles to trade. He also believed that the severity of these problems could be considerably lessened through the development of international standards in the appropriate fora.

84. The Chairman took note of the statements made. He invited comments and suggestions on how the work of the Group should proceed. Regarding the date for the next meeting, he suggested that the GATT secretariat find an appropriate date during the week of 4 May and inform delegations. He suggested that the meeting could consist of two half-day meetings with one afternoon and one morning free for consultations among delegations, and could concentrate on the first agenda item, although delegations could comment on the second and third if they desired. He invited views on these suggestions.

85. The representative of Hong Kong suggested that in order to focus the next meeting, the Group should perhaps concentrate on the issues and questions which demanded the most immediate answers, given that some of them were more theoretical and academic and others were more practical and deserved earlier consideration. He outlined two headings under which the issues and questions concerning the first agenda item could be grouped. The first grouping would broadly address what the proper role of the GATT should be in the debate concerning the relation between GATT and multilateral environmental agreements. This grouping would include questions 2 and 4 of Section A of the addendum. The second grouping, which perhaps deserved more immediate attention, would include those issues and questions which focused on the precise manner in which GATT rules and disciplines were relevant to trade measures taken pursuant to multilateral
environmental agreements. This would include questions 12, 13 and 16, and questions 2 and 17 on page 11 of the addendum.

86. The representative of Mexico supported the idea of having one more meeting before the United Nations Conference on Environment and Development in June 1992. With regard to substance, he believed that the best way to proceed without straying from the agenda was not to examine trade practices and trade systems as such, but to look at generic questions that could be identified from the agreements. He believed that the Group should be concerned with the types of measures that could be used, not with the agreements themselves. He suggested creating a table in which the trade contents of the agreements would be organized along with the types of measures that could be taken.

87. He considered that the most simple and direct way for the Group to carry out such a generic examination was for it to base its work on questions. The questions already posed covered the most pertinent concerns. Another way the Group could initiate its work would be to examine the generic or theoretical legal links between these agreements and the GATT. He believed that such links had direct implications for practical questions that might arise in all manner of policies.

88. The representative of Malaysia, on behalf of the ASEAN countries, supported the idea of having one more meeting concentrating on the first agenda item before the June Conference. He suggested one approach to the work could be to identify the principles adopted or advocated in multilateral environmental agreements which impinged upon the provisions of the GATT. This could avoid the difficult and time-consuming exercise of discussing the validity of these agreements and whether or not they could be considered under the first agenda item. Indeed an examination of this latter point would have to address not only whether or not all contracting parties participated in these agreements, but also the fact that the history of their evolution differed very much from the evolution of the GATT.

89. In this identification, all agreements, even those between two or three nations, would have to be examined as far as their provisions impinged upon GATT provisions. A selective approach to the international agreements was undesirable because of the dimension of the problems, particularly regarding the issues of packaging and movement of wastes. To initiate this work, he suggested that the GATT secretariat seek preliminary information as to whether or not these agreements contained provisions relevant to an examination under the first agenda item.

90. The representative of Sweden, on behalf of the Nordic countries, supported the idea of a next meeting during the week of 4 May which would concentrate on the first agenda item, on the understanding that the Group would revert to the other two items in the not too distant future. He agreed with Mexico and Malaysia that the Group should focus on generics rather than on specifics by looking at types of measures rather than the agreements themselves. The Group was not the appropriate forum to discuss specific agreements as such, but should perhaps look at many agreements in
a more generalized approach. He believed it was important not to restrict the scope of the examination to a few existing agreements, but to work on a more general level, because the Group should be forward-looking. He added, however, that he did not want to presume that the provisions or principles of multilateral environmental agreements impinged upon the GATT; he hoped that they did not.

91. The representative of the European Communities supported the idea of focusing the next meeting on the first agenda item. He appreciated the statements underlining the necessity to avoid converting the Group's work into a judgmental exercise regarding the consistency of multilateral environmental agreements with the GATT. At the same time it was obvious that several such agreements contained trade provisions for which a generic discussion would be useful in order to understand the rationale or reasons behind their use of trade provisions. This could be the first step in such a generic discussion. The second step could be a generic examination of which were the GATT provisions which the Group believed were relevant to multilateral environmental agreements.

92. The representative of New Zealand supported the idea of holding the next meeting in May. He also supported, as a useful way to begin, the idea of thematically structuring the questions listed in the addendum to the report of the last meeting. He saw the need for a careful and analytical investigation of the current situation. Another approach could be to build upon the discussions that took place at this meeting and, in this regard, he suggested looking at the first grouping of questions and maybe a few others, such as those mentioned by Hong Kong. Delegations could prepare in capitals for a more in-depth discussion of these questions for the next meeting.

93. The representative of India supported a May meeting that would concentrate on the first agenda item. He shared the view of Malaysia and Mexico in that the Group's work should identify the trade provisions that existed in the various agreements and discuss them in order to better understand their objectives and manner of implementation. This could be done in a generic manner, although it would be necessary to identify the trade provisions being discussed. Also, when discussing these trade provisions, it would be necessary to examine the relevant GATT provisions and how they addressed the particular trade issues contained in these agreements. This examination would not be to pass judgement on these agreements, but to better understanding the interface between the provisions of the GATT and the trade provisions contained in these agreements. He added that since the Group would be looking at the relevant GATT provisions, those mentioned in the questions would naturally come up in the discussions. Therefore, the issues and questions should not be addressed separately but should be woven into the discussions.

94. The Group agreed that the secretariat would update the addendum of issues and questions from meeting to meeting. It also agreed that the next meeting of the Group would concentrate on the first agenda item, although discussion of the other two items was not excluded. The Chairman would consult with the secretariat to determine what further factual work it
could undertake in order to assist the Group in its deliberations. The next meeting of the Group would be during the week of 4 May 1992. The secretariat would inform delegations as to the exact date.
ADDENDUM

Additional Supplementary Issues and Questions Raised at the Meeting of 10-11 March 1992

A. General questions

Chile

1. To what degree does the present tariff structure throughout the world contribute to improvement or deterioration of the environment?

Agenda Item 1: Trade provisions contained in existing multilateral environmental agreements (e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer, the Washington Convention on International Trade in Endangered Species and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal) vis-a-vis GATT principles and provisions

Nordic countries

2. To what extent do trade disputes between signatories to an international environmental agreement incorporating trade provisions belong in the GATT where there is a well established procedure for dispute settlement using criteria that trade policy makers have accepted or in the agreement where the criteria for dispute settlement are related primarily to the environmental problem being addressed?

United States

3. If a conflict with a multilateral agreement exists, would GATT accommodate the agreement or would it expect the agreement to be renegotiated?

4. Would a blessing on a multilateral agreement apply to the agreement as a whole, i.e. not imply renegotiation of the provision in conflict, or would the blessing apply only to an individual application of the trade measures as written in the multilateral agreement?

5. Would GATT dispute settlement procedures apply to multilateral agreements if a conflict arose, or would such a conflict be settled in another forum?
Supplementary Issues and Questions Raised
at the Meeting of 21 January 1992

Agenda Item 1: Trade provisions contained in existing multilateral environmental agreements (e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer, the Washington Convention on International Trade in Endangered Species and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal) vis-a-vis GATT principles and provisions

A. General questions

Switzerland

1. Do the general principles of law apply? If so, new legislation (i.e. environmental agreements) would take precedence over older legislation (i.e. GATT) and specific provisions, such as those for the protection of the environment would take precedence over more general provisions, such as those in GATT.

2. What rôle should GATT take to ensure that international agreements can function without contradicting GATT?

Australia

3. What is the relationship between obligations under the GATT and obligations under multilateral environmental treaties, and how does this relationship change, if at all, in respect of the various kinds of environment treaties (e.g. treaties which apply trade measures to non-parties to the treaty; treaties which apply trade measures in order to preserve the global environment or environment outside each party’s jurisdiction)?

4. Should the GATT seek to become actively involved in the drawing up of multilateral agreements when these involve trade instruments?

Austria

5. Are trade restrictions used as an instrument of environmental policy necessary, adequate, and appropriate and are they the least distorting means of achieving an objective or could the same objective be obtained by better means?

6. Are parties to various environmental agreements entitled to act on abstract concepts such as "global" concerns; and who will determine which concepts are priorities?
B. Questions related to multilateral agreements

Australia

7. What criteria should be used to determine what constitutes a multilateral agreement and where do regional agreements fit in?

8. What, if anything, differentiates an international from a multilateral agreement from the point of view of the GATT (this was raised during negotiations on the Havana Charter)?

9. What are the differences between binding versus discretionary trade measures taken pursuant to multilateral agreements?

Canada

10. What are the purported objectives of using trade measures, to deal with the "free rider" problem or other objectives?

11. What are the rights of non-signatories? With respect to signatories, what is the relationship between GATT obligations and those of other multilateral agreements?

C. Questions related to GATT Articles and rules

Australia

12. Does the GATT provide specific coverage for multilateral agreements? If so which articles, and if it is an issue that has not yet been confronted by contracting parties as a group, what GATT avenues are open to dealing with such agreements?

13. Is Article XX(h) a possible means of providing an exception to GATT obligations for contracting parties who are members of a multilateral agreement?

14. Do GATT rules offer any scope for trade reciprocity to deal with the "free rider" problem in international agreements?

New Zealand

15. Would a broad interpretation of Article XX(b) have the effect of facilitating unilateral measures of a type that panels in the past have found to be unjustified?

16. If Article XX(h) were to cover multilateral environmental agreements, what sort of general criteria would have to be submitted to the CONTRACTING PARTIES?
Canada

17. What is the relevance of Article XX(b), (g), and (h)?

Malaysia, on behalf of the ASEAN countries

18. Is the maintenance of licensing systems for controlling trade consistent with Article XI?

Agenda item 2: Multilateral transparency of national environmental regulations likely to have trade effects

A. General questions

Hong Kong

1. For notification purposes, what are the parameters in which a measure can be notified as an environmental protection measure (i.e. human health, pollution control etc.)?

Australia

2. Is it possible and/or appropriate for the GATT to develop means for differentiating between legitimate measures and protective measures?

3. Where there is no scientific consensus on an environmental issue, how does the GATT relate to the issue of national sovereignty in terms of political decisions on environmental/conservation matters.

4. The Group could examine trade instruments used for environmental purposes such as environmental taxes and charges, tradeable emissions permits, economic and fiscal incentives to adopt clean technology.

5. What role could the opinion of experts play in panel decisions on trade disputes involving environmental measures?

B. Issues and questions related to GATT articles and rules

Australia

6. The Group would need an examination of the drafting history of Article XX(b) and XX(g) against the historical background of "general exceptions" provisions in trade agreements at the time the GATT was drafted. It should also look at the issue of extra-territoriality in respect of Articles XX(b) and (g).

7. What approach should the GATT take toward trade measures for legitimate purposes which may be inconsistent with current GATT rules?
8. Is the interpretation of the "necessary" requirement in Article XX(b) too limited to provide effective coverage of environmental measures?

9. The Group should examine the applicability of Article II to fees imposed on imports for environmental purposes.

10. The Group should examine the issue of process and production versus the "like products" concept in respect of a contracting party's ability to restrict trade in a product because of the manner in which it was produced.

**Agenda item 3: Trade effects of new packaging and labelling requirements aimed at protecting the environment**

**Australia**

1. The Group should examine the question of "negative labelling" in relation to Article IX:4 prohibiting the material reduction of a product's value.

2. How does Article III relate to packaging and labelling requirements where, arguably, the greater burden is on imported goods particularly when goods transported long distances generally require larger amounts of packaging?

3. The Group should examine the issue of adversely modifying the conditions of competition in respect of Article III.

4. Does the Agreement on Technical Barriers to Trade have a rôle to play in the development of packaging and labelling requirements and supporting regulations?