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Group on Environmental Measures and International Trade

REPORT OF THE MEETING HELD ON 18-19 MARCH 1993

Note by the Secretariat

1. The Group on Environmental Measures and International Trade held its ninth meeting on 18-19 March 1993 under the chairmanship of Ambassador Hidetoshi Ukawa (Japan). The agenda and relevant documentation were contained in GATT/AIR/3402.

2. The Chairman recalled previous agreement to focus the discussions under the three agenda items on the issues agreed and contained in GATT/AIR/3402. He did not wish to strictly limit the discussion to these issues. However, in an attempt to streamline the work and build on results achieved, he encouraged delegations to follow the agreed focus.

Agenda item two

3. The representative of Switzerland underscored his delegation's view of the importance of transparency as one of the underpinnings of the multilateral trading system. GATT had an extensive system of notifications, in particular Article X which was reinforced by the 1979 Understanding and the Technical Barriers to Trade Agreement. The efficiency of this system would be further enhanced by the conclusion of the Uruguay Round; the draft FOGS decision would establish a centralized registry of notifications which would bring together all existing notification procedures within the GATT so that they would be accessible to all.

4. His delegation considered this system, both as it existed and as it would be after it had been reformed, to be comprehensive; therefore it was difficult to identify gaps in it. He stressed that it seemed unnecessary to supplement or substantially amend the existing procedures as transparency must remain an instrument and not become an end in itself.

5. After having read the Annex in TRE/W/7, his delegation remained unconvinced that measures which were likely to have negative trade effects did not fall within the existing system he had mentioned, if only by the broad formulation of Article X, which covered all possible measures that could have direct and negative effects on trade.

6. For example, some delegations had expressed concern that Article XX measures may relieve a party from its notification obligations. His delegation believed that Article XX allowed derogations from GATT obligations of substance but should, in no way, affect procedural obligations such as those of Article X.

7. Some delegations were of the opinion that measures taken by regional or local authorities within a federal state could be overlooked. He recalled that the federal state was responsible for ensuring the proper implementation of GATT provisions by its regional and local bodies, including, in particular, Article X notification obligations.

8. In addition, he considered that if trade-related environmental measures adopted pursuant to MEAs really affected trade, they fell within the scope of current notification obligations and it made little difference whether or not they were taken based on the MEA.

9. He concluded that it would be difficult and, perhaps dangerous to establish a notification system requiring notification of all types of measures. Such a system, purportedly exhaustive, would be likely to contain gaps owing to its complexity and the continuous evolution of measures and instruments which it would be supposed to cover. It would be impossible to eliminate such gaps except by regularly and frequently revising the entire list. For these reasons, his delegation preferred a broad formulation, such as that of Article X, which favoured a bona fide and pragmatic approach to transparency.

10. Regarding notifications, other delegations had already pointed out that the fundamental problem, with which the Group would have to deal eventually, arose from inadequate implementation, not from the deficient conception of the system. His delegation, therefore, was inclined to study the extent to which the Trade Policy Review Mechanism (TPRM) could assist the Group by including an evaluation of countries' diligence in notifying.

11. The representative of New Zealand shared the view expressed by the representative of the United States at the previous meeting that the issue of gaps had at least two dimensions: the question of coverage (measures captured or not captured by existing provisions); and the form or level of transparency for those measures covered by existing provisions (or falling outside existing provisions). TRE/W/7 primarily dealt with the first dimension, concluding with an Annex of the types of measures identified by various delegations as possibly falling outside the coverage of existing transparency provisions.

12. TRE/W/7 also contained several prescriptive approaches the Group could follow under this agenda item. In this respect, he suggested a third dimension: the determination of what were authentic gaps and the manner with which these might be dealt.

13. As with other agenda items, his delegation favoured an approach that would avoid prescriptions at this stage. In this area transparency could be achieved by following a similar approach to that under agenda item three, which entailed attempting to identify potential trade effects of various environmental measures categorised in Secretariat documentation. This would avoid prescription until the dimensions of any problems were better understood. One of the logical filters for assessing the relevance of GATT transparency to various types of environmental measures was their potential trade effects. Identification of such effects through

first-principles analysis would assist in subsequent identification of true gaps in transparency, in terms of the dimensions noted above.

14. As under agenda item three, such an analysis initially could be based on contributions by delegations which would build on the initial categorisation and analysis contained in TRE/W/4. Although there did not seem to be complete agreement on which types of measures fell within existing transparency provisions, delegations might keep in mind the type of list compiled in the Annex to TRE/W/7 when making their contributions. He believed that such an analysis should be generic in nature but need not be totally abstract. National experiences, with domestic measures and with measures of others could enrich the discussion, provided that confrontational approaches were avoided.

15. The representative of Japan commented on the "possible approaches" section of TRE/W/7. He considered that the establishment of environmental enquiry points merited further elaboration. As for additional interpretations, decisions or understandings, he stressed that the Group should be careful not to prejudice how it dealt with the outcome of the substantive analytical work under this agenda item. In this context, he considered it premature to make judgements on the adequacy of the existing GATT provisions and those contained in the Uruguay Round package.

16. His delegation had found useful the list of potential gaps identified by delegations in TRE/W/7. This list should be revised continually based on additional comments from delegations and suggestions based on national experience. As mentioned in TRE/W/7, in order to have a more precise understanding of the gaps, the Group needed a clearer view of the scope of the provisions in the existing GATT Articles and the proposed Uruguay Round package. However, he did not believe it would be productive to engage in detailed discussions on interpretations of GATT provisions; it would be more productive to clarify questions by collecting specific cases of concern to delegations. The purpose was not to name individual countries but to focus the discussion.

17. The Annex of TRE/W/7 listed a few points which were either closely related or which overlapped (for example points 1 and 2, or 13 and 14). Although there was no specific mention of it in the Annex, the participation of non-governmental organizations, especially in the case of labelling, was important. He agreed that voluntary eco-labelling could have a significant impact on trade. With respect to points 1, 2, and 3, his delegation believed that it would be useful to take into account the progress of agenda item three. In addition, he agreed that the issue of process and production methods (PPMs), addressed in point 4 of the Annex, could be a useful focus.

18. On the issues of compliance, two aspects were involved. First, differences among the contracting parties on the interpretation and understanding of the notification obligations led to non-compliance. Second, negligence of obligations by contracting parties could not be usefully pursued in the Group. The former was closely related to the question of the interpretation of GATT Articles, differences of which

caused problems among contracting parties. A shared understanding of the coverage of those provisions should be developed, which was closely linked, in this context, to the issue of gaps.

19. Collecting specific cases of concern to delegations, without entering into arguments on the interpretation of provisions at this stage, could clearly identify the problems.

20. The representative of Brazil reiterated that the Group should explore, as a means to tackle transparency issues, the establishment of enquiry points to provide information on trade-related environmental measures. This suggestion addressed two preoccupations: 1) that environmental measures affecting trade should not be subject to stricter notification disciplines than other similar measures affecting trade; and 2) since it was not practical to overextend notification requirements and since some non-notifiable measures were relevant to trade, transparency should be ensured through other mechanisms.

21. Also, an enquiry point could be a practical manner of dealing with the problem of voluntary measures, including standards and conformity assessment. Even if incomplete, it would contribute to improving information on procedures which were decentralized among entities in many countries.

22. Most of the measures about which such an enquiry point would be able to give information were already covered by the TBT Agreement (in its present and Uruguay Round versions). Article X of the present TBT Agreement stipulated that enquiry points should provide information on technical regulations and standards (i.e. voluntary technical specifications), and certification systems of governmental, non-governmental, as well as regional bodies.

23. In the case of standards or certification systems issued by non-governmental bodies, the existing obligation was that "each party shall take such reasonable measures to ensure..." that there was an enquiry point able to give information. His delegation believed this included mandatory and voluntary technical specifications of a product's characteristics, including those with an ecological purpose, as well as certification of compliance with such technical specifications. In the revised TBT Agreement, technical specifications of PPMs would be included as well as all forms of conformity assessment. Since voluntary eco-labelling, using product life-cycle analysis, was a conformity assessment procedure which was based on the technical specifications established for product characteristics or PPMs, it would be included in the information which enquiry points were expected to give. The problems that may be caused by voluntary environmental measures were not well known and further analysis was required to determine whether they differed from other voluntary measures.

24. He added that environmental enquiry points should go beyond those established by the TBT/SPS Agreements to provide information on environmental measures which were not subject to notification procedures

nor were technical specifications (for example, internal ecological taxation or handling and waste disposal schemes). Regarding compliance of notification procedures, he considered that trade policy measures subject to notification, such as quotas, licensing or prohibitions, could be available from enquiry points.

25. He deemed eco-taxes to be potential instruments of hidden discrimination between domestic and foreign producers. Although, in principle, they were designed to apply in a non-discriminatory manner to domestic and foreign producers, systems of exemptions and different levels of taxation might penalize imported products or, unjustifiably, discriminate among different foreign suppliers. In the absence of internationally-accepted, scientifically-based criteria, such exemptions and tax differentiation might benefit domestic producers. At the same time, even if not conceived with a protectionist objective, they would be designed with domestic environmental problems in mind, which may not be the same in foreign countries. For example, Brazilian paper exporters had identified both problems in a Belgian proposal for an ecological tax currently under examination in Belgium. Here, it was difficult to identify the scientific criteria for exemptions resulting in ten percent taxation of domestic paper products compared to fifty per cent of imported products.

26. He considered that handling requirements, which may have negative effects on trade, were aggravated when information concerning the requirements and conditions for access to collection schemes was not easily available. These measures, whose specificity to the environmental area, together with their importance to trade, might have to be included among the measures normally notified to the GATT.

27. In addition, an environmental enquiry point should inform exporters of the potential benefits resulting from environmental measures. These could include information on government incentives for consumption of certain products (in absolute terms or relative to other penalized products), government procurement regulations that gave preference to products that fulfilled voluntary environmental standards and promotional programs for ecologically sound products conducted by non-governmental organizations. Finally, enquiry points could provide developing countries and their enterprises with information on the availability of technical assistance to help them comply with, or take advantage of regulations and other measures.

28. The representative of Canada shared the view that the Group should clarify what it meant by transparency which embraced a wide range of possibilities. At one end was "passive" availability of information through publication after or before the implementation of a trade measure. At the other end, he envisaged an "interactive" process wherein the party contemplating the environmental measure and the parties who would be affected by it engaged in a dialogue during the development of the measure. Transparency, in certain circumstances, should go beyond simple notification to provide: 1) the opportunity for input by interested parties in the developmental stages of a measure, and 2) the time for affected industries to adapt to new measures.

29. He added that the Group's focus on environmental measures did not imply more onerous or different transparency requirements for trade-related environmental measures than for any other trade-related measures. There were many environmental measures which did not affect trade, and therefore were not the subject of the Group's discussions. In this respect, the Group was still at the problem-definition stage of its work and he agreed with the delegation of New Zealand that examining the trade effects of different types of environmental measures was a productive way to proceed. This would permit an understanding of where transparency was most important to minimize unnecessary trade effects and, subsequently, of the methods that would ensure a desirable level of transparency.

30. The Draft Final Act of the Uruguay Round held the potential for a number of promising developments in transparency. For example, the envisaged broad membership of the new TBT Agreement would subject all contracting parties to its rights and obligations, one of which would be to establish enquiry points. He joined with the delegation of Brazil in emphasizing the need for enquiry points. He noted that transparency obligations in the TBT Agreement would be extended to include standards based on PPMs which related to product characteristics. Another positive step would be the envisaged central registry contained in the FOGS text.

31. He raised three generic case studies drawn from the Annex of TRE/W/7, the examination of which may aid in establishing a trade-effects hierarchy of cases in which transparency would be important in avoiding the disruption of trade. The first case was transparency in MEAs. TRE/W/10 compiled the trade-related notification requirements that existed in MEAs. These provided generally for notification of measures to the Secretariats of the Agreements and to the Parties to the Agreements, but not on a wider basis.

32. He noted that some delegations had indicated that they did not see the need to notify trade-related measures taken under MEAs to the GATT because MEAs were similar to international standards. His delegation was not certain that such an analogy was appropriate in this context. One reason was that an MEA, while requiring a certain trade measure, may not specify how the measure was to be implemented. This left some scope for parties to select the method of implementation which was most suitable to their particular circumstances.

33. The manner in which a measure was implemented may affect its trade implications. For example, a quantitative restriction on imports of an environmentally damaging substance could be implemented in a number of different ways, such as a global quota, a quota allocated on the basis of historical import shares (Article XIII), or an allocated quota which suppliers could trade subsequently among themselves. Each method could have different trade effects, indicating the importance of transparency measures implemented pursuant to MEAs affecting trade.

34. The second case study examined voluntary eco-labelling schemes which, although involving some degree of government, were voluntary and therefore not subject to all requirements under the TBT Agreement. He considered

that providing information in advance of implementation, and affording an opportunity to provide input regarding the elements of a program were two possible elements of transparency. The former was important particularly given the importance of eco-labels as a marketing tool and the competitive advantage they provided.

35. The fact that sellers were willing to pay for the right to use eco-labels on products which met the applicable eligibility criteria was evidence of this advantage. If a domestic or imported product, which was established in the market prior to the introduction of an eco-label, failed to carry the new eco-label, that product could lose significant market share. Even if later granted the label, the product might not be able to regain its previous market share. In the case of an imported product, a significant disruption of trade might have occurred, and, if the product had met the eligibility criteria for the label from the outset, this loss of market share would not have benefited the environment. He suggested that the above scenario reinforced the importance of advance notification of labelling schemes in order to give domestic and foreign suppliers the opportunity to undertake the necessary measures to apply and qualify for the label.

36. Another aspect of transparency was to provide domestic and foreign suppliers the opportunity to provide input regarding the elements of an eco-labelling program. This could help ensure the achievement of the object of the program while facilitating international trade. Also, it could be particularly important to foreign suppliers, since some of the elements of a proposed program may not be fully applicable to the situation of the foreign supplier. For example, some of the criteria used might target an environmental problem which was only significant in the country implementing the program.

37. He presumed that the relative importance attached to different environmental concerns in an eco-labelling program reflected the priorities of the country introducing the program. It was possible, however, that the relative weights might not reflect the seriousness of the problem in the country of the foreign supplier. In addition, there could be a difference in scientific approach between the environmental authorities in the implementing country and the country of the foreign supplier. For instance, the criteria in the eco-labelling program could adopt a certain approach for measuring environmental impacts which was considered appropriate in the implementing country. However, the environmental authorities of the foreign supplier might have adopted a different way of measuring environmental impacts.

38. These examples pointed to the need to ensure that foreign suppliers had the opportunity to provide input in the developmental stages of eco-labelling programs, and the use of enquiry points would facilitate this.

39. The third case addressed environmental charges which had wide-ranging and complex trade effects and transparency applications. He imagined a situation where a jurisdiction was contemplating the use of taxes or

environmental charges, perhaps in combination with regulatory measures, to address the pollution created by a particular production process. There could be different trade effects depending on which type of environmental charge was being discussed and when the charge was levied during the product life cycle.

40. A charge on emissions from the production process, for example, would likely have little, if any effect on imports and only a limited potential to impact exports in certain circumstances. There could be, of course, indirect trade effects in terms of induced changes in demand for a particular input or in demand for a certain type of capital equipment.

41. He considered that a charge on the particular polluting input used in the production process, however, could have direct impacts on its trade. He asked how imports and exports would be treated in the context of this type of charge. Since the purpose of the environmental charge was presumably to internalize the environmental damage caused by the use of that input, it could be assumed that the tax would apply also to its imports and not to its exports.

42. A charge on the output of the production process in question would likely have direct trade effects. However, the nature and magnitude could depend on the point in the production/sales chain at which the charge was assessed. In particular, imports and exports would be treated differently depending on whether the charge was assessed at the point of production or retail sale. These examples pointed to the benefits of advance notification to foreign as well as domestic suppliers. It would provide the former with an opportunity to adjust operations to the demand for a particular product with a view to avoiding disruptions to trade.

43. His delegation considered notifications necessary for labelling programs, and for trade-related measures taken with respect to MEAs. The Group could proceed on the basis of case studies as had been suggested by other delegations. It would then be able to identify which trade-related environmental measures were of particular concern to contracting parties.

44. The representative of the Philippines, on behalf of the ASEAN countries, referred to paragraphs 5 and 6 of TRE/W/7 which stressed the need for a timely flow of information in order to enable trading partners to become acquainted with trade-related environmental measures at an early stage, prior to implementation, and which stated that "although the exiting procedures seem to ensure transparency of most, if not all measures which have an impact on trade, the lack of clarity and specificity in the transparency rules makes them too general to be effective." These observations suggested the need to define the elements that should be contained in notifications of national environmental measures to make them more effective in achieving what her delegation considered to be the aim of transparency: to help ensure the stability of market access and prevent trade disputes. This would also improve the quality of notifications.

45. In this regard, she noted that TRE/W/4 stated that the anticipated trade effects of a number of trade-related environmental measures may arise

from the manner in which they were implemented or administered, irrespective of the fact that they may be GATT-consistent measures. Examples included economic instruments such as product-specific subsidies for environmental purposes; regulatory instruments such as prohibitions or restrictions on imports or on domestic sale or use (covered under GATT Article X) and technical regulations or standards (particularly in relation to product handling, waste management and disposal); and voluntary eco-labelling schemes.

46. Given these observations, it may be useful for the Group to examine which elements should be contained in notifications of the above measures. Preliminarily, her delegation believed they should include a description of the measure and information on: 1) the relevant government and other bodies involved in the elaboration and administration of the measure; 2) the procedures through which foreign suppliers or their representatives could gain access to the measure; and 3) where and when public consultations were to be conducted so that supplying countries, particularly developing countries, could make their views known to the relevant authorities at an early stage. Developing criteria for eco-labelling schemes was an example of where the latter element would be important. She added that attention should also be paid to the notification of sub-national measures.

47. She concluded that some aspects of the Questionnaire for Import Licensing Procedures may provide a good basis for greater specificity of notifications. Progress in this area of transparency would establish clearer guidelines on how notifications should be made and, thus, partly address the compliance issue.

48. The representative of the European Economic Communities believed that transparency was not a solution but a valuable mechanism for communication. He found prior notification to be the most appealing method and believed that the question of whether a new system of notification was required was legitimate, given the Annex to TRE/W/7. He considered that the suggestion of the delegation of Brazil concerning enquiry points deserved to be studied by the Group. This could be done generally, but most effectively on a case-by-case basis.

49. With respect to trade-related measures taken pursuant to MEAs, he considered transparency important but stated that notification was usually made to the relevant bodies, and requirements to directly notify the GATT could provoke problems of conflicting international law. One possibility was to create administrative channels through the various Secretariats, but he would hesitate to create a GATT system of notification in the face of another system of international law. Finally, he believed that transparency should be an element in any solution provided by the Group.

50. The representative of the United States commented that TRE/W/7 brought into sharper focus what was meant by transparency and gaps. In reviewing the Annex, his delegation's impression was that many, if not all of the measures listed were subject to some level of transparency obligation, at the minimum, the obligations of Article X.

51. His delegation found interesting the explanation given by the Secretariat at the previous meeting pertaining to whether measures (particularly Article III measures), which did not seem like trade measures were covered by the 1979 Understanding. His delegation was still examining this as well as the point made by the Secretariat regarding the indicative list that had come out of the FOGS Agreement which included among the notifiable measures, any other measures covered by the General Agreement, its Annexes and Protocols. His delegation was exploring further the exact meaning of this provision. According to some of the negotiators involved, this passage was meant as a place-marker and was not intended to mean that contracting parties notify everything that could potentially be covered by a GATT discipline. Rather, at the time it had been drafted, the final structure of the Uruguay Round package was unclear, especially with respect to services. This could be something upon which to reflect in the context of clarifying the rules of the system.

52. With respect to the future work of the Group, it would be useful to spend more time on measures that were identified in the indicative list. He referred to measures because, normally, the GATT did not look to purposes of GATT Articles but to the measures themselves in order to determine which disciplines should apply. In this respect, it would be useful to discuss further which transparency measures might apply to these measures. He did not expect this to lead to any definitive interpretations but it could sharpen the focus. For example, Canada's discussion of MEAs could be discussed further, in particular the question as to the difference between an MEA that set a standard versus one that set a goal and allowed Parties to determine the manner in which they attained that goal. One response to this question could come from the TBT Agreement which had an explicit exemption for international standards, but also a definition of what a "standard" was.

53. His delegation thought that it would be valuable also to discuss the trade impact of these measures, although the Group should be judicious if discussion illustrated that a measure already had a high level of transparency, such as those covered by the TBT Agreement. This level of transparency would be improved further by the results of the Uruguay Round. Through discussions of the current levels of discipline and the identification of the trade impacts, delegations would be in a position to make some judgements as to the adequacy of these measures. Where the Group went from there would depend on the broader organization of its work.

54. Referring to the possibility that the TPRM was a way to deal with the transparency issue, he considered it important to differentiate between the compliance aspect, where he did not believe that the Group could add much other than clarification, versus the actual requirements. He wondered, with respect to the TPRM, if there was much of a rôle for examining the adequacy of the rules as opposed to compliance with them.

55. On the question of enquiry points, his delegation considered it valuable to exchange information on environmental policies. However, it was unusual to require special bodies to provide information with a mandate based on the purpose of the measures, not on the measures

themselves. For example, he wondered if it was a useful distinction to suggest that there should be a body responding to questions about taxes if they related to the environment but not if they related to something else. This was compounded by the fact that the Group did not have any clear definition of the term "environment".

56. The delegation of Mexico agreed with the delegation of New Zealand that the work under this agenda item, particularly related to identifying the trade effects of the measures in the Annex to TRE/W/7, was a similar exercise to that undertaken under agenda item three. She noted that this work was important to avoid raising potential problems where they did not exist. Based on the effects of the measures in the Annex, priorities could be established when considering possible gaps. Her delegation thought that items 1, 2, 3, 5, and 7 of the Annex deserved the highest priority; TRE/W/9 illustrated cases of trade conflicts related to packaging and labelling and highlighted the urgent need to establish disciplines in this area.

57. Transparency was essential in this area, particularly for the reasons outlined in items (ii) and (iii) of paragraph 11 in TRE/W/9. She agreed with the comments made by the delegation of Argentina that waste disposal schemes and the conditions for reuse and recycling constituted the main gap in the GATT regarding environmental issues. Even though it was still unclear whether they were standards or technical regulations, transparency in these areas was of vital importance especially for measures applied at the sub-federal level. Because the trade concerns here went further than just transparency, it might be better to consider these issues under agenda item three. She considered it premature to voice her delegation's opinion on possible solutions concerning transparency. The establishment of enquiry points, however, was a potentially interesting idea since it referred to voluntary programs and would not be merely a passive undertaking.

58. She added that the Code of Good Conduct in the TBT Agreement of the Uruguay Round would provide for participation by private entities; the present shortcoming was that the provisions did not fully ensure the participation of these entities. Her delegation favoured more active undertakings; since most voluntary programs were co-ordinated or funded by governments, measures and publications could be provided based on information collected in a way similar to that under the new TBT Agreement. The obligation for governments to promote internal transparency would cover the various sub-federal levels.

59. She considered that another priority was item 13 of the Annex, trade measures taken pursuant to MEAs. The Group had been provided with enough information on this issue in TRE/W/10 to have a full understanding. As regards items 4, 6, and 9 of the Annex of TRE/W/7, the Group would have to examine in greater detail the effects on trade before they were determined to be gaps.

60. Finally, the discussion related to compliance with existing disciplines should be continued in the context of examining notification

practices. The motivations behind the actual compliance problem should be examined first; there could be either a lack of compliance or insufficient provisions.

61. The delegation of Sweden, on behalf of the Nordic countries, considered that the Group had carried out a comprehensive analysis of the present GATT rules and their implications for the transparency of trade-related environmental measures. The analysis clarified five points: 1) transparency could take several forms comprising not only notification procedures but also publication, establishment of enquiry points and general availability of information on a measure; 2) transparency could exist before or after a measure had been decided upon and implemented; 3) the existing GATT rules on transparency were poorly implemented; 4) the present and post-Uruguay Round GATT rules seemed to leave several gaps in the transparency of environmental policies with trade effects; and 5) the transparency rules in the TBT Agreement and in the proposed SPS Agreement seemed to be the most comprehensive of the present rules.

62. He recognized that there were deficiencies in compliance with the present GATT transparency rules; even under the notification system of the TBT Agreement, only about half of the forty-one Parties took their obligations seriously. However, he also recognized that there were many reasons why governments might not actively notify their measures such as a lack of financing and resources, as well as an incomplete administrative infrastructure which could hinder implementation.

63. He noted that paragraphs 17 and 18 of TRE/W/7 summarized some possible ways to improve transparency. First, the Uruguay Round Agreement would cover many of the notification gaps, such as PPMs, which had been identified in the Group. The FOGS text would establish a central registry for notifications and the TBT/SPS Agreements would include a provision that required the establishment of a single government authority for notification purposes. His delegation supported the additional suggestions of delegations including a review of notification practices in the TPRM exercise and establishing environmental enquiry points as means to improve the implementation of the rules, and transparency in general.

64. His delegation did not believe that the Group was in a position yet to conclude the identification of issues and the analysis required under this agenda item. Specifically, his delegation considered it important that the Group pay attention to the different degrees of compliance in the existing transparency rules and that it continue to discuss the identified gaps listed in the Annex of TRE/W/7. It would be interesting to analyze whether some of the gaps required new systems or whether it was possible to cover some of the gaps by broadening the interpretation of the 1979 Understanding, without entering into a negotiating process.

65. His delegation agreed with the delegation of Canada that there was merit in focusing on those measures that had more substantial trade effects, in particular those gaps that dealt with taxes, deposit refund schemes and other economic instruments or regulations. Priority should be given to these measures as they had an immediate and practical influence on

industry and traders. In this respect, his delegation was willing to provide input into the analysis of these gaps and supported the suggestion that delegations provide information on national experiences.

66. The delegation of Hong Kong reiterated the importance of this issue to trade and the environment; if achievements were made in this area, the Group's substantive work would be made easier. He agreed that transparency was not a solution but a form of communication and a means to an end. He agreed that there were gaps in understanding as to what the existing disciplines were and the degree of compliance that applied. He did not believe that all environmental measures needed to be subject to GATT transparency requirements nor that trade-related ones should be subject to more onerous requirements.

67. He considered that the main purposes of transparency in this context were: 1) sharing information to minimise adverse trade effects; 2) assisting traders to adjust; and 3) preventing disputes through prior notice and consultations. The Group was now at a stage of analysis that required delegations to share their national experiences in order to move to the substantive issues.

68. Transparency rules should be commensurate with trade effects. This might entail transparency at different levels ranging from prior notification or opportunity to consult before implementation at the top end, to ex-post notification, depositing of information with an enquiry point or TPRM review at the bottom end. He agreed with the delegation of New Zealand's criteria for determining and differentiating notification requirements based on the manner in which measures affected trade.

69. He proposed that the Group examine three categories of environmental measures. The first would constitute measures which operated as, or directly affected, conditions of market access. Examples included bans on import, sale, or use, technical regulations, and licensing or permit requirements. Most, if not all, were covered by existing GATT or future Uruguay Round Agreements. Here the gap was in developing a common understanding of obligations and work should be aimed at ensuring compliance. Second, there were no clear GATT rules for measures that affected "equal opportunity to compete". Examples included voluntary labelling or certain packaging schemes aimed at influencing consumer choice, including those by NGOs or private enterprises. The Group's work should be to develop a common understanding of the present situation and where the Group would need more work. The third category comprised measures which had unintended effects on trade. Examples included handling or disposal schemes and tax incentives or disincentives. Basic disciplines here should be voluntary notification, depositing details with an enquiry point, as well as an obligation to provide further information or enter into consultations upon request.

70. In conclusion, he agreed that the Group would benefit from further information gathering, analysis and case-by-case study. But, at a certain point in time, the Group must consider what to do with all the information that it had amassed.

71. The delegation of India agreed with the suggestion by the delegation of New Zealand to develop criteria to determine those measures which were likely to have trade effects. He suggested that the initial criteria should look at national environmental regulations. It would be useful to combine the New Zealand approach with the case-by-case approach. The Group should study those measures which were likely to have trade effects and then formulate an analytical framework.

Agenda item three

Packaging

72. The representative of Canada stated that packaging and labelling instruments, including voluntary arrangements supported by governments, were increasingly used as components of environmental polices in many countries, including Canada. The Group's interest in the subject lay in the impact of such measures on international trade; he sensed broad agreement that the issues under this agenda item were of immediate importance to exporters in all countries.

73. He considered that the Group was still in the educational phase of considering the issues; the immediate task was to define the issues. To do this most effectively, the Group should focus on identifying the trade effects of packaging and labelling measures and/or approaches. Only with a full understanding of the trade implications could the Group examine such measures in the light of key GATT principles and provisions. The aim was not necessarily to decide which approach should be taken in any particular case or whether alternative approaches would be equally effective in achieving the environmental objectives, nor to take into account other, non-trade issues in choosing a particular approach.

74. The New Zealand analysis presented at the previous meeting provided insight on the trade impacts of bans on certain packaging, and mandatory recycling/recovery laws. It identified which factors might be considered in determining the existence and scale of resulting trade effects, for example, the size and relative importance to exporters of the import market for the particular product; the size and number of affected exporters; the technical and economic feasibility in the export country of shifting to the packaging required in the import market; the availability of appropriate packaging in exporting countries; and the relative importance of packaging to the total cost of the product.

75. He considered that the Secretariat Note, TRE/W/9, described the aims behind packaging regulations and illustrated how exporting countries could be negatively affected by such measures. For example, foreign suppliers, with a small share of the market, may find the costs of joining that country's recycling program prohibitive. Alternatively, such a recycling program could naturally be geared to the particular types of packaging used in the domestic market but not those used in the exporting country.

76. TRE/W/9 concluded that unnecessary trade effects could be significantly reduced through ensuring the fullest transparency possible and national treatment for overseas suppliers in any local programs. His delegation agreed that respecting these two principles could significantly mitigate unnecessary trade effects. The former was particularly important for all measures, including voluntary ones supported by governments.

77. He added that in and of themselves the above two principles may not always be sufficient to preclude unnecessary trade effects; other fundamental concepts in the existing TBT Agreement would be relevant in many instances in the packaging area. For example, Article 2.1 of the Agreement contained the obligation to ensure that technical regulations (including mandatory packaging and labelling requirements) did not have the effect of "creating unnecessary obstacles to international trade". This obligation had been clarified in the Uruguay Round revision to provide that such regulations (i.e. mandatory packaging and labelling requirements) shall not be more trade restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment would entail..

78. At the previous meeting, his delegation had presented a hypothetical case of a fifty per cent recycled content requirement on all packaging as a measure to reduce pressure on domestic landfill capacity. The purpose of the case was to identify the questions that would aid in exploring possible trade effects of the measure. As the New Zealand analysis had suggested, the impact of such a measure on imports of packaged goods may be more significant than the impact on imports of packaging material. To simplify the analysis, he focused on the trade impacts on packaging material of domestic and foreign producers.

79. Two key points should structure further examination of possible trade effects of this and other case studies: whether and how imports and exports were covered by the specific measure, and the resulting impacts on trade flows, including the allocation of cost burdens between domestic and foreign participants in the market. Applying this structure to his case would yield additional questions.

80. For example, given that the manufacture of packaging meant for export would equally relieve pressure on landfill capacity as would the manufacture of packaging destined for the domestic market, would it be reasonable to expect all domestic production, regardless of ultimate destination, to be subject to the fifty per cent rule? Would imported packaging be subject to the rule? Also, did the disposal of imported recycled packaging not take up as much space as the disposal of an equivalent amount of imported packaging made from new material?

81. He considered that requiring imports to meet the fifty per cent rule would no doubt relieve pressure on landfill capacity in the exporting country. But if the exporting country were a large producer of packaging but a small consumer of packaging, would it not have to import waste in order to meet the recycled content requirement for packaging in the market of the country taking the measure?

82. In such a case, requiring that the exporter purchase imported waste in order to achieve the fifty per cent recycled content rule would result in reduced landfill utilisation in the country from which the waste was purchased but that may not be country with the recycled content requirement. Only in this last case would applying the measure to imports appear to help achieve the environmental objective because the exporter would bear some of the costs of achieving the domestic environmental objective of the importer. The exact sharing of cost burden would depend on the kinds of economic and market criteria identified in the New Zealand analysis (e.g. share of market of packaging material held by foreign producers).

83. Moreover, the additional transport costs incurred by the exporter in taking back waste could result in a relatively higher cost burden on foreign producers. However, the objective of reducing the flow of used packaging to landfill could be achieved in a number of other ways with different trade impacts depending on the particular approach.

84. Another way to reduce the flow of packaging material to landfill sites could be to increase user fees at landfill sites and leave the selection of disposal methods and recycling possibilities to market forces. In this case, foreign producers could purchase the used packaging but would not be required to do so. If they did, they would not be required to incorporate it into packaging destined for the importing country.

85. Such an approach could be combined with a requirement that all packaging material in the importing country be recyclable, whether produced domestically or imported, and whether produced from recycled or virgin material. This approach would appear to offer the potential for achieving the domestic objective in the importing country with less burden on foreign producers and through the use of a performance-based standard, an approach encouraged in the TBT Agreement (Article 2.4).

86. He considered that another possible approach to reducing landfill utilisation would be a differentiated tax with, for example, a general rate applying to all packaging and a reduced rate applying to material with at least fifty per cent recycled content. He presumed that a tax would be levied on all packaging at a level reflecting the costs of waste disposal but domestic producers would be given the incentive of a lower tax rate to incorporate waste material into their packaging.

87. He asked if domestic production destined for export would have to pay the basic tax. Would this production benefit from the lower tax rate if it contained fifty per cent recycled material? Since imported packaging contributed to domestic landfill use, it would appear that that tax would apply to imports; would imported packaging have access to the lower tax rate if it met the fifty per cent rule? These three cases were only examples of approaches that could be used to address the problem of the waste disposal of packaging material; different approaches clearly entailed different trade effects.

88. He did not consider this analysis exhaustive, but it suggested that market-based approaches may be less disruptive to trade than mandatory measures based on recycled content. Both recycled content requirements and differentiated taxes based on recycled content could have significant but different trade effects, the nature and size of which depended not only on the type of measure used but also on the economic and technical features of the particular market for the products in both the importing and exporting countries.

89. The representative of the European Economic Communities considered that the medium-term objective should be to identify issues on which clarification or development of GATT rules would be appropriate. TRE/W/9 stated that some of the trade effects of packaging requirements related primarily to differences in comparative advantage. Where this was the case, his delegation considered that such trade impacts were an unavoidable feature of packaging requirements and would be addressed with difficulty through GATT rules and disciplines.

90. The Group should, however, focus on possible means of reducing avoidable trade impacts of packaging requirements while fully respecting the right of countries to apply appropriate policies to deal with the environmental consequences of packaging. There were, in principle, good reasons for GATT intervention as it was possible that domestic requirements could be designed, in many cases without real protectionist intentions, to afford unnecessary protection to domestic producers.

91. His delegation considered that the two key questions in the packaging field were: was there scope for ensuring that transparency provisions were applied in such a manner that the concerns of foreign suppliers were effectively known by public authorities when new packaging requirements were being developed; and how could effective national treatment for foreign suppliers in accessing domestic packaging programs be ensured?

92. On the latter question, it seemed unlikely that a domestic packaging requirement would formally discriminate vis-à-vis foreign suppliers. It may therefore be useful to focus on how far the concept of "least trade restrictiveness" was relevant for packaging requirements. The question to examine would then be how far packaging requirements could be designed in a manner which, while being fully effective in achieving the country's environmental goals, would have a lesser impact on international trade.

93. He added that different types of policy instruments were being used in the packaging field. The Group should identify the specific trade issues which related to four types of policy instruments. The first was technical regulations setting out certain characteristics which packages needed to fulfil in order to be put on the market. Closely related were measures which prohibited the use of certain types of packages, which were considered to be particularly damaging from an environmental point of view. The GATT had already well-developed rules for these types of measures, primarily in the TBT Agreement.

94. Related questions to be considered were: was there scope to further harmonize in this field; how far were the bans of certain types of packages based on a sound analysis of the environmental risks; were there least trade restrictive alternatives which would be equally effective in achieving the environmental goals?

95. The second type of policy instrument was handling requirements. These did not affect the marketing of packages, but may impose an obligation or an incentive to recover or reuse packages after the marketing stage. His delegation considered that the TBT Agreement did not appear to cover this type of requirement and the basic framework of GATT discipline was provided by the national treatment obligation of Article III, as well as the general transparency provisions.

96. The Group could examine whether there was a need to further develop GATT disciplines applicable to handling requirements. Questions to be considered were: how would effective access by foreign suppliers to domestic programs for the recovery or reuse of packages be ensured; and would the application of the principle of "least trade restrictiveness" be relevant to handling requirements?

97. A third policy instrument was recycled content requirements which required that packages contained a certain percentage of recycled materials. The relationship of such requirements to GATT rules was not clear. For example, would they be considered as a PPM? If so, did a requirement to use recycled materials affect the final characteristics of a product so as to justify the application of such requirement to imported products? If the objective was to favour demand for recycled products, would it not be more appropriate to use economic instruments, such as tax incentives, rather than regulatory measures?

98. The fourth policy instrument was voluntary industry programs. One question was how to ensure that foreign suppliers had effective access to voluntary industry programs? Underlying all the questions he had posed regarding the four policy instruments were three themes: transparency, effective national treatment, and least-trade-restrictiveness.

99. He added that environmental taxes were playing an increasingly important rôle in environmental policy and raising a number of issues that may need to be considered from the GATT perspective. They were not, however, specific to the packaging field so it would make more sense to consider the trade impact of environmental taxes horizontally, rather than within the context of agenda item three.

100. On the contrary, deposit-refund systems were more specific to the packaging field. He asked if, in GATT terms, such deposits should be considered as an internal tax or as a mechanism for the enforcement of related regulations. In any event, their trade impact would be closely linked to that of any related measure which may have been introduced to ensure the collection, recovery or reuse of packages. It would make sense, therefore, to examine this in connection with the measures described in the

previous paragraphs, in particular handling requirements and voluntary industry programs.

101. The representative of Sweden, on behalf of the Nordic countries, wished to consider the rationale for packaging legislation, not because his delegation considered the GATT nor the Group the appropriate forum to deal with environmental policy as such, but because it believed some understanding of what motivated packaging legislation could help to better identify the issues. His point of departure was that the amount of waste created in an industrial society was an increasing, urgent and critical environmental problem. The pollution stemming from waste related to production processes, incineration of waste, and the loss of land through landfill, including littering.

102. Growing waste mountains also pointed to a fourth urgent and macroeconomic problem, namely unsustainable management of scarce natural resources in the long term. Between twenty-five to fifty per cent of all waste constituted packaging waste. The numbers were subject to great variation, depending, inter alia, on the definitions of waste used, nevertheless, it was clear that reducing the amount of packaging was an urgent environmental task in most industrialised countries.

103. This challenge had at least two important dimensions: that the amount of packaging must be reduced, and that the remaining packaging materials must be made recyclable to as great an extent as possible in order to manage scarce natural resources in a sustainable manner. There were also other legitimate objectives of packaging policy, such as the protection of products for health reasons.

104. Life-cycle analysis had shown that the use of recyclable packaging was environmentally superior to non-recyclable packaging, and this applied to most packaging material. Legislation promoting recyclable packaging could target different phases in the life cycle including production, use or "handling", or destruction. An example of the first would be legislation introducing a producer's or distributor's responsibility for packaging waste which may include formalised goals for the recycling of different packaging materials. An example of the second would be legislation for returnable bottles. Requirements concerning the incineration of waste would fall into the third category.

105. His delegation considered it important not to inadvertently fall into the trap of viewing trade effects as something to be avoided, per se. Packaging legislation was intended and would lead to changes in behavioural patterns both for producers and consumers. Trade in a substance which was banned would decrease and trade in substitutes would increase. For example, if a government limited the use of packaging containing a mixture of materials that rendered it harder to recycle, demand for packaging made of only one material would probably increase.

106. New requirements regarding packaging would lead to new trade patterns and some producers would gain and others would lose. This occurred continuously as new technology emerged, forcing adaptation, and was

accepted by the GATT. The Group should not be concerned with all trade effects, but with those that might be termed unnecessary or unjustifiably discriminatory, which may be the result of protectionist intent, rather than environmental considerations. The Group's main task was how to identify those about which it should be concerned.

107. He concluded that it was difficult to introduce restrictions regarding packaging without also affecting the product inside the package. However, from an environmental point of view, this was perhaps an aspect that received less attention. In the GATT the package and the product were regarded as one. Thus, the relationship between product and packaging seemed to be treated differently from the environmental and trade communities. For this reason, his delegation considered that it would be important to have a thorough and open analysis of the "like product" concept.

108. The representative of Argentina shared the conclusion of TRE/W/7 that the major problem regarding packaging arose from the rules on packaging once it had become waste, rather than from technical rules on packaging materials. He reiterated his delegation's view that standards for waste management, through requirements on handling of packaging materials, did not seem to be covered by the TBT Agreement; the trade effects of such requirements would be interesting to study.

109. Provisions on the recovery of materials could vary depending on whether the packaging was primary, secondary or tertiary (for transport). He used, as an example, the laws of a country, mentioned on page 16 of TRE/W/3, which was the most advanced in this field. This country's legislation on tertiary packaging required the producer or user of the packaging to recover it for reuse or recycling outside of the public waste disposal system.

110. Recovering packaging waste for re-export to the country of origin did not seem commercially viable. He asked that for a traditional material such as wood, used specifically for the transport of fruits and vegetables, what were the alternatives available to the exporter? The wood could not be re-exported for reasons of cost; the low grade of the wood meant that it could not be reused or recycled; and, in the case of the country mentioned, its incineration was also prohibited. Undoubtedly, the trade effect of this type of handling regulation, in the absence of an established channel for the recovery of packaging, was similar to that of prohibitions on materials analysed by New Zealand at the previous meeting.

111. He added that in the case of the mentioned country, some exporters had started to purchase their packaging materials in that country, in order to be able to export to that market. This additional cost would have obvious implications for competitiveness. He added that the link between handling standards and bans on certain materials would be legally established in the proposed directive on packaging and packaging waste being studied by a major trading bloc. It also included an explicit provision that all packaging, for which there were no channels for subsequent return and reuse

or recycling, would be prohibited, at the latest five years after the directive became law.

112. Finally, he stressed that the difference between handling provisions and those banning certain materials was that the latter, but not the former, may be incorporated into technical regulations and therefore covered by the TBT Agreement's notification and consultation requirements.

113. The law of the mentioned country contained different provisions for primary packaging, which must be recovered by traders and returned to the manufacturer of the product or of the packaging, who was obliged to reuse or recycle it. This requirement was supported by a deposit refund scheme. Foreign suppliers would face the same difficulties as with the provisions for recovery of tertiary packaging. Nevertheless, for primary packaging, the system provided an alternative to producers and distributors: they may set up a system of collection, sorting and reprocessing of packaging wastes on a regular basis.

114. The products falling under this system would be identified by a specific label incorporated into the packaging material. To qualify for this label, the producing company must provide a guarantee from a recycling firm that it would reprocess the packaging material. There was apparently no discrimination in the granting of such labels to foreign suppliers, since all packaging materials were subject to the same rules. Nevertheless, in qualifying for these labels, exporters could face the problems described in paragraph 18 of TRE/W/9, related to the cost of participating in recovery and recycling schemes.

115. His delegation was especially concerned about the tenor of paragraph 18 (iii), that in order to be eligible for a label, packaging must utilise a certain proportion of recycled materials. This problem was correctly raised at the last meeting by the delegation of Canada, which questioned whether it mattered whether packaging was made with recycled material, given that the product would be imported into the national system. This was undoubtedly a PPM provision, since the granting of labels would be contingent upon compliance with requirements set by the importing country.

116. The trade impact of the obligation to participate in a scheme such as the one just described would depend on the factors outlined in paragraph 18 of TRE/W/9. His delegation was concerned with sub-paragraph (v); the greatest potential for discrimination against the foreign producer might arise from the application of differential tariffs on the foreign producer to obtain acceptance under such a scheme. For small exporters, these additional costs could be significant enough to prevent access to markets.

117. His delegation disagreed with the statement contained in paragraph 21, that trade difficulties seemed to arise principally from differences in comparative advantage, which were of the same nature as greater transport costs that foreign suppliers must bear. Differences in transport costs were inevitable, stemming from natural reasons such as geographical location, and implied a genuine comparative advantage. In contrast, cost

differences imposed by environmental regulations concerning packaging were created by the action of governments. Therefore his delegation did not believe that "it may be unavoidable that overseas suppliers suffer some disadvantage" (paragraph 22).

118. Finally, his delegation believed that it would be useful to further study the suggestions in paragraph 23 regarding measures that could be taken to avoid unnecessary trade effects from packaging regulations.

119. The representative of Poland considered that the conclusions he had drawn from the New Zealand analysis presented at the previous meeting remained valid in the light of TRE/W/9. The analysis showed that the importance of negative trade distorting effects was more noticeable when: the country introducing import bans or setting up new packaging requirements had a large internal market and/or played an important rôle in world trade; other countries were major sources of production and exports; the availability of packaging alternatives was limited; the cost of packaging alternatives was high; and the cost of transportation, depending on geographical distance and development of transport infrastructure between trading countries, was high.

120. His delegation considered that large trading nations had a special responsibility, when introducing new internal environmental requirements and regulations, to carefully consider the likely trade distorting effects of each new packaging standard, given the high cost and limited availability of packaging alternatives. Until now, GATT regulations allowed each member to set its own environmental standards (Articles III and XX). The idea of least damaging environmental regulations was of crucial importance in this case, and transparency requirements in this area could only slightly diminish the significance of trade distorting effects.

121. He added that new packaging and labelling regulations, imposed by large trading nations, may be especially painful and limit export opportunities for economies in transition and less developed countries, where the availability of packaging alternatives was generally fairly limited and the cost of switching to modern, probably more capital-intensive packaging technology, may be high due to limited capital resources. It was therefore likely that the economic rent (profits) resulting from the supply of new packaging materials would be transferred to more capital abundant countries, from which exporters also faced lower transportation costs.

122. His delegation believed that only close collaboration with international standardization institutions and collective interpretation of GATT rules could diminish the risk of trade distorting effects of new environmentally-friendly packaging and eco-labelling regulations being gradually introduced by large trading nations.

123. The representative of India stated that an important task of the Group was to first identify and then examine the possible trade effects of packaging measures aimed at protecting the environment. The New Zealand analysis revealed that arriving at precise trade effects in each case was

fairly complicated and would in any event depend on many market characteristics. The issues raised in this analysis deserved full consideration in the Group.

124. His delegation agreed that the Group's efforts must be to develop common understanding of the potential trade effects of the various packaging measures, rather than try to prescribe what kind of packaging measures should or should not be applied for environmental protection. Once the size or measure of the problem was ascertained, the Group may be in a position to devise appropriate solutions which would seek to achieve the environmental objectives while, at the same time, be non-trade distorting in nature.

125. He added that TRE/W/9 showed that the increasing use of life-cycle analysis to define the preferred characteristics of packaging and to frame requirements and regulations may be viewed with concern. This was so, since there was an element of subjectivity in this procedure and it was by no means certain that packaging requirements determined on this basis were least-trade distortive or always served the goal of environmental protection.

126. TRE/W/9 clearly brought out the potential trade effects of various types of packaging requirements likely to be faced by overseas suppliers. It showed that almost any packaging requirement taken for environmental protection had the potential for creating more problems for overseas suppliers rather than domestic ones. Since most of the problems faced by overseas suppliers had to do with incurring extra cost and burden, it was reasonable to assume that even among the overseas suppliers, developing country exporters would be more affected than others.

127. He added that the preferred form of packaging material used by overseas suppliers was often a function of national resource endowment, technological capacity or production and transportation costs. It was widely accepted that national factor and environmental endowments differed from one region to another and indeed from country to country. It was in this light that efforts to internationally harmonize packaging and disposal services must be viewed. His delegation did not see international harmonization as a panacea for all problems. However, it was willing to look at the various possibilities and see how it might resolve some of the concerns of overseas suppliers, particularly those from developing countries.

128. TRE/W/9 suggested that ensuring the greatest transparency and national treatment for overseas suppliers could reduce unnecessary trade effects arising from differences in national packaging requirements. The Group may consider how this could be achieved so that packaging requirements did not needlessly distort trade by posing an enormous and unjustified burden on overseas suppliers.

129. The representative of Brazil agreed that the Group would benefit from a progressive deepening of reflection on the consequences for trade of environmental packaging regulations. An important contribution in this

regard would be the presentation of concrete cases of countries that had applied extensive environmental packaging regulations or had faced problems with them. For such discussion, a more informal setting would be useful. However, in the absence of such a setting, he asked the indulgence of the Group in referring to specific countries; his purpose was to try to identify and better understand potential problems.

130. An examination of concrete cases might help to identify typical problems and formulate some principles that could constitute guidelines for ensuring that legitimate environmental packaging regulations, as well as labelling, were as least trade restrictive as possible. To this effect, the Group could examine in which ways environmental packaging and labelling standards, regulations and related conformity assessment procedures were more trade restrictive than equivalent non-environmental measures.

131. The typology in TRE/W/3 and Add.1 showed that the more frequent forms of environmental packaging measures were: regulations on packaging materials; recycled content provisions; waste valorization targets; product charges; deposit-refund systems; and take-back obligations, all of which could have negative effects on trade even when abiding by GATT Articles I and III. In practice, legislation tended to combine the various forms.

132. There was also a tendency to impute responsibility and costs for handling packaging waste to producers, causing concern to exporters regarding effective access to local collection systems or the necessity of introducing collection procedures, and because the legislation normally addressed local environmental concerns which may be different from environmental concerns in the exporting country. This introduced misplaced requirements on imported products.

133. The German packaging legislation, which followed the tendency mentioned above, was considered a basic model and its implementation would be followed with interest. France had also implemented legislation that followed the basic features of the German model, and the European Communities may adopt a directive of general guidelines that corroborated this direction. The Group would benefit from a detailed exposition by the EEC of its proposed directive, since its aim was to avoid that legitimate packaging regulations constitute internal barriers to trade within the EEC. This could enlighten efforts to do the same on the multilateral level.

134. He considered that regulations specifying materials that were allowed to be present in packaging may have a negative impact on trade. The products allowed may not be available in the country of export, and the exporter may even be forced to buy permitted materials from the country imposing the legislation. The list of permitted materials may be tailored to domestic availability and used materials. A case, specific to the environmental area, was recycled content requirements, which if applied to imported products, did not address any environmental problem in the importing country. Material for recycling may simply not be available in some countries and sustainable management of raw materials production may be more adequate in environmental terms.

135. The problem with charges was the possible adaptation of exemptions and tax differentiation to benefit domestic production. Mandatory deposit-refund schemes may benefit local producers due to the cost of reusing containers (costs of collection, transport, etc.) or if refillable containers excessively raised transport price due to weight. Establishing ambitious waste valorization targets, including recycling targets, as in the German legislation, may give way to progressive tightening of all the instruments for its attainment.

136. Finally, take-back obligations were the key to the tendency to impute responsibility and costs for handling packaging waste to producers, and led to the distinctive feature of the German and French programs: the establishment of enterprises (Duales System Deutschland in Germany, and Eco-emballages in France) that collect packaging materials marked on the basis of certification provided by the firm, following a contract with the producer (the green dot). As in the case of other handling schemes, access of foreign producers was the crucial point in terms of effect on foreign trade. These enterprises had a monopoly position so how could it be ensured that certification to use the marker would not be denied or that procedures would not be more cumbersome or prices higher for foreign producers than for domestic ones?

137. Developing countries would have particular difficulties to comply with such legislation. Attention had already been directed to the problems that primary packaging made of wood may face in Germany; the prohibition on incineration, combined with the obligation to reuse, banned low quality wood in exports to Germany. He noted that there were already cases of developing countries that had to buy packaging from German producers to continue to export. At the same time, complex recycling marking requirements caused additional problems.

138. He concluded that most of the problems he mentioned related to the problem that although most packaging regulations were formally consistent with GATT Article III, they may be, in practice, discriminatory for the above reasons. In this context, his delegation would have to examine the consequences of the ruling of the United States/Canada beer panel. Finally, he recalled that, as in the case of technical specifications in general, national diversity constituted an obstacle to trade. Therefore, international standardization should be encouraged in the area of environmental packaging regulations, which would inform developing countries of the main environmental concerns in this area and the ways to deal with it.

139. The representative of Japan agreed with the case-by-case approach. The New Zealand analysis of the previous meeting and the Canadian analysis presented at this meeting provided the Group with a useful basis for further analytical work on trade effects. In addition TRE/W/9 provided further analysis on how packaging requirements could put overseas suppliers in a disadvantageous position. Paragraph 20 suggested that comments from delegations on their national experience with new forms of packaging requirements would be helpful. His delegation had been studying specific cases and would return to this at a later stage.

140. Paragraph 15 of TRE/W/9 analysed the difficulties faced by overseas suppliers with recovery, reuse and recycle requirements. These were due to the distance necessary to transport goods to the market, and differences in dimensions, design, and technology. It would be difficult to ensure that national treatment was administered to overseas suppliers in appropriate time. In this context, harmonization efforts might be the key to solve problems, but different national resource endowments, technological capacities, and transport costs remained.

141. As suggested in TRE/W/9, in assessing the national treatment for overseas suppliers on the above measures, access to local programs and information on how they were administered could be important elements for the Group to examine. For this reason, further study on specific examples of local problems, including programs operated by non-governmental organizations, could be useful to understanding national treatment.

142. The representative of Mexico stated that her delegation believed that it would be useful to examine the relationship between the trade effects of packaging requirements and the environmental goals that they pursued, with special reference to their effectiveness. The intention was not to judge these requirements, but to seek to understand the application of certain key GATT concepts in this area, in particular, the provision that the measure should be the least trade-distorting one available. This concept should be examined by weighing the environmental benefit against the possible trade distortion.

143. Apart from the lack of transparency, the trade effects of packaging lay in the differences, among countries, regions and localities, in the formulation and application of these measures. Her delegation shared the views of New Zealand concerning the specification of materials. These requirements could have the same impact as a trade prohibition, directly effecting not only trade of the material or packaging in question, but also of the product contained therein.

144. These effects could be felt by several actors: 1) the industry of the exporting country which, unless it adapted to the new specifications, could lose its market share in the importing country; 2) the industry of the importing country, which could end up with a captive domestic market, or the exporting countries, in an endeavour to continue exporting, which would be obliged to purchase the prescribed packaging material; and 3) third countries, having the necessary economic and technological capacities to adapt to the requirements of the importing country, which could benefit from a possible trade diversion.

145. Even if the new requirements were applied equally to domestic producers and to importers, the de facto effects could be discriminatory, favouring national producers. Since, in the majority of cases, local industries participated in risk evaluation and in establishing the criteria governing these systems, there was evidence of scope for lobbying to promote the "acceptability" of their packaging materials and products. This could amount to disguised protectionism.

146. She added that in some cases, these measures could even harm the environment or undermine sustainable development. What would happen, for example, if a country with vast resources for producing a packaging material was prevented from using that material and was obliged to replace packaging with other material that it did not have or that it considered more harmful to the environment? The example of a recycled content requirement, given by Canada at the last meeting, was a good illustration of such a case. If the exporting country did not consume sufficient quantities of the product in question so as to be able to produce the required recycled material, would it then have to import waste for that purpose?

147. The fundamental problem in such a case could lie even in the issue of extraterritoriality. If the environmental policy objective of the country applying the measure was to reduce the generation of waste in its territory, why would it also have to concern itself with whether the imported products had been also made of recycled material? The exporting country may not have the same problem or may have larger landfill capacity. The trade effects of this type of requirement were considerable, and its effectiveness, in terms of the environmental goals pursued, raised questions that would have to be carefully studied when the Group dealt with such concepts as "necessity".

148. Recovery, re-use and recycling requirements, as well as handling and return systems, also held significant trade-distorting potential. The competitiveness of imports was undermined both by the differences in the cost of returning the material to the market of origin, as well as the costs of participation in, and the factors hindering access to, the importing country's handling and/or recycling systems.

149. Studying the effectiveness of such measures was difficult because they were so heterogeneous. In the absence of internationally accepted premises concerning product life-cycle analysis, most measures were based on subjective evaluations which were largely the result of social pressures in the countries applying them. She noted that some experts believed that there were considerable discrepancies between public perceptions and reality. In many cases, the costs to the environment from energy consumption in the transport and recycling of returned material could outweigh the environmental benefits. But reality may be distorted because packaging was visible while energy consumption was not.

150. Recycling requirements, in particular, could have additional negative environmental effects. For example, the recycling industry in a country that had enacted a law on the matter declared that it had sufficient capacity to recycle only twenty per cent of the wastes of a particular material, while the goal set by that law was sixty-four per cent. A projected consequence was that the country would have to export excess waste to others, the prime targets being developing countries.

151. Much study had to be devoted to the effectiveness of packaging systems. She pointed out that along with negative commercial effects of these requirements, there could be positive effects, though they would only

benefit a small group of countries and industry that had the relevant technology. Many developed country packaging industries, in attempting to penetrate new markets, were rapidly building a competitive position in the hope that packaging legislation, similar to that of their country, would be introduced in other countries.

152. The same applied to handling services; industries of countries applying this type of environmental policy had a growing list of foreign clients who needed to use such systems in importing markets. These industries could influence the establishment of such requirements in order to expand their trade of services.

153. In conclusion, the trade effects of these requirements would go beyond the packaging materials and the products they contained, and extend to services and investment. This situation warranted examination, in particular, in the light of Principle 16 of the Rio Declaration. In order to pursue an objective discussion on this subject, her delegation proposed that deliberations include experiences of countries that had encountered these measures in their export markets. The Group would treat them anonymously, thereby avoiding judgments. It would also be useful for experts from the ISO and the ITC to familiarise the Group with their work on standardization in this area.

154. The representative of New Zealand suggested that continued analytical examination of the trade effects of various packaging measures was the most useful work for the Group to undertake. As with agenda item two, he hoped it would be possible to evolve some form of common analytical framework, including the use of case study approaches.

155. He found TRE/W/9 useful including the illustrative list in paragraph 18 which, however, did not appear to encompass the entirety of the paper's analysis. For instance, in paragraph 22, it was noted that "packaging associated with imported products was not likely to contribute the major share of domestic packaging waste". The conclusion drawn was that "it may be unavoidable that overseas suppliers suffer some disadvantage". If so, it was interesting to reflect, in cases of mandatory approaches, whether packaging associated with imported products necessarily formed part of the solution.

156. He agreed with paragraph 6 that greater efforts towards promoting international harmonization could make a useful contribution to reducing distortions and restrictions to competition, if it was based on internationally agreed standards, norms and principles. It would be useful for the Group to be informed of such developments in other organizations.

157. Finally, he informed the Group that his delegation would be submitting information to the Secretariat on voluntary approaches being pursued to achieve his Government's waste reduction targets and the implementation of a voluntary eco-labelling system called "Environmental Choice" which was modelled closely on approaches being followed in several other countries.

158. The representative of the Republic of Korea believed that the multiplicity and diversity of packaging requirements would raise prices for exporters. Soon it would no longer be sufficient to be a competitive manufacturer, but countries would have to be clever in packaging their products for individual countries.

159. Packaging requirements were generally tailored to meet an individual country's view of the proper weights that various factors were to be accorded in the life-cycle of packaging materials. This would mean significantly different packaging requirements in each country. Costs of meeting these requirements would certainly be higher for international exporters seeking a market in several countries, than for domestic producers content with the home market.

160. He did not consider the problem insurmountable, provided that movements were made towards international harmonization of packaging norms, and if guidelines on the importance or weights to be accorded various factors in the life-cycle of packaging materials were established. Such harmonization may eventually require a means of internalizing the externalities or costs attributed to the packaging life-cycle.

161. In addition, to prevent discrimination against developing countries who lacked the most modern and environmentally sound packaging technology, technological assistance should be offered to developing countries to help them meet environmentally friendly packaging guidelines. This latter approach was in accordance with UNCED decisions. The extent, however, that GATT should be involved in such details was a matter that should be open for debate.

162. A second issue raised in TRE/W/9 was the problem of obtaining information on a given country's packaging requirements. Clearly, transparency of various national packaging requirements must be increased. Resolution of this issue was particularly suited to the GATT, yet, there were large gaps in existing transparency provisions, fuelled by national law and MEAs. The GATT could play a useful rôle in collecting information on efforts to fill the various gaps identified and make it available to the international trading community.

163. A third issue raised in TRE/W/9 was the short deadlines that often existed when states enacted new environmental requirements, including packaging requirements, which discriminated against exporting nations. This could be eliminated if firm guidelines on a notice period before new packaging laws were applicable to exporters could be agreed.

Labelling

164. The representative of Sweden, on behalf of the Nordic countries, believed that eco-labelling programs worked as a tool for environmental protection because they increased sales of labelled products; raised the environmental awareness of consumers; gave more accurate and timely information for consumers to make informed judgements; and directed

manufacturers to account for the environmental impact of their products and production methods.

165. Another positive aspect was that they were less trade distorting than many other environmental measures. However, his delegation considered them one part of a broader environmental policy. Eco-labelling programs may affect international trade. However, his delegation believed that such effects, in certain conditions, may be justified. One condition was that national eco-labels should be open to both domestic and foreign producers on an equal basis; he believed that all existing programs were.

166. He noted that transparency and fair costs had been mentioned by delegations as important elements to be included in eco-labelling programs. However, the proliferation of diverse eco-labelling programs could also cause trade effects. If there were a vast amount of eco-labelling programs with different criteria, producers may, for resource or capacity reasons, not be able to apply for participation or to adjust products or production methods to satisfy all the different criteria of the various programs.

167. In such a situation, products which were basically in line with the appropriate environmental requirements may not be labelled and may therefore lose market share even though they fulfilled the requirements for the label. Eco-labelling in such a case might cause unintended trade distortions. Furthermore, a vast amount of programs could give rise to confusion among consumers, which might limit the environmental effects of eco-labelling programs.

168. These problems could be reduced by harmonizing the criteria among national eco-labelling programs. Criteria in national programs normally reflected local environmental conditions with regard to, for example, the environmental carrying capacity and population density. Consequently, harmonizing criteria could lead to products being labelled identically even though their environmental effects may vary between different geographical areas. The eco-labelling program might, in this way, even increase sales of less environmentally-friendly products and cause enlarged environmental problems. These considerations indicated some of the difficulties in harmonizing national eco-labelling programs; an alternative could be mutual recognition of national eco-labelling programs.

169. His delegation circulated information regarding the Nordic voluntary eco-labelling program. Its objectives were to provide information to consumers to enable them to choose products which caused less harm to the environment, to encourage development of products that took environmental aspects into account and to deliberately use market forces as a supplement to environmental legislations.

170. The program at present applied to more than 250 products; those that met the criteria were eligible for the label subject to participation in the costs of the system. The assessment was life-cycle based, which his delegation considered was the best method for eco-labelling. The program was open to both Nordic and other producers and the label could be developed for all consumer products except food, drinks and

pharmaceuticals, as well as products which were dangerous to the environment or manufactured by processes which were likely to significantly harm people or the environment.

171. The representative of the European Economic Communities noted that eco-labelling programs were voluntary in nature and the rôle of the government was normally limited to ensuring objectivity in the granting of the labels. The description of the Nordic eco-labelling program was a good example of such a program. They may, however, give rise to a number of complex issues which needed careful consideration in order to minimize potentially adverse trade effects and to examine where it would be useful to develop more specific GATT rules in this area.

172. An issue to consider was how to ensure that the criteria used for the granting of an eco-label were sufficiently objective in nature and did not favour, voluntarily or not, domestic producers. Life-cycle analysis implied a complex assessment of different types of environmental impacts. A particularly complex aspect related to the environmental impacts associated with the production process. Questions to be considered in this regard included: was there scope for recognizing third country requirements as being equivalent to those applied to domestic producers; would it be appropriate to refuse an eco-label if the environmental conditions in a third country were substantially different to those which prevailed domestically; and how could sufficient transparency and adequate access by foreign suppliers be ensured?

173. The Chairman took note of the comments made. He noted that there were no interventions on agenda item one. He reminded delegations of his open invitation for them to submit their national experiences with packaging and labelling requirements. This information was for the Secretariat's purposes in updating the document TRE/W/3.

174. He suggested that the next meeting of the Group be held on 6-7 May 1993. The Secretariat would inform delegations of the confirmation of these dates, as well the date for an informal presentation by officials from the International Trade Centre and the International Standardization Organization on packaging and labelling. The next meeting would begin with a discussion of agenda item three, then two, then one. He also suggested that the meeting proposed for the week of 21 June be held in the first week of July. This would be decided at the next meeting.