

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Group on Environmental Measures and International Trade

REPORT OF THE MEETING HELD ON 5-7 JULY 1993

Note by the Secretariat

1. The Group on Environmental Measures and International Trade held its eleventh meeting on 5-7 July 1993 under the chairmanship of Ambassador Hidetoshi Ukawa (Japan). The programme of work was contained in GATT/AIR/3457.
2. The Chairman informed the Group that the delegation of the People's Republic of China had requested observer status and, in the absence of any objections, welcomed them into the Group as an observer. He recalled the earlier agreement to focus, although not necessarily limit, the discussions under the three agenda items to the points indicated in GATT/AIR/3457.
3. The Chairman noted four new secretariat documents. TRE/W/12 was on the trade effects of labelling requirements and TRE/W/13 was an outline analysis of the trade effects of various environmental measures that had been discussed in connection with agenda item three. These two documents supplemented the information contained in TRE/W/3 and its two addenda. TRE/W/3 also contained useful information on the objectives of environmental measures, which several delegations had suggested should be kept in mind during the Group's examination of trade effects of these measures. The third document (TRE/W/15) was on the German Packaging Ordinance. Finally, TRE/W/14 was on the results of the first session of the Commission on Sustainable Development.

Agenda item three

4. The representative of Brazil noted that TRE/W/12 correctly identified the main problems that might be caused by eco-labelling schemes, and the special difficulties and costs developing countries might encounter in obtaining a label. It was necessary to take into account the voluntary and informative nature of eco-labelling; this implied that the trade effects would be generally less important than those of regulatory measures and, therefore, more positive. On the other hand, this implied that the information provided should be accurate and based on scientific evidence, and not distort the proposed aim of promoting environment friendly products.
5. Eco-labelling schemes were new in their application, especially those based on life-cycle analysis, and it was difficult to evaluate if their trade effects were less important than regulatory measures and if the information they provided was accurate. It was possible that both these aspects varied by country and scheme concerned and product in question. Some products, for example, might be perceived by the public as potentially more environmentally damaging and, thus, consumers would prefer that they were eco-labelled as opposed to other products, irrespective of the information on the label.
6. Eco-labels were certification schemes, therefore subject to the obligations of the TBT Agreement. Undoubtedly, such principles as non-discrimination, national treatment and not

creating unnecessary obstacles to trade applied and, as they were generally voluntary, publication and availability of information through enquiry points also applied. However, when discussing eco-labelling, as well as packaging, the discussion should not be limited to their compatibility with GATT obligations but should examine the possibility of attaining principles or guidelines to help formulators ensure that the trade and environmental aspects were mutually supportive.

7. With single issue labels, he considered that accuracy was particularly important, so that product characteristics and conditions under which the label was valid should be clear to the consumer. He welcomed the ISO's international harmonization in this area and emphasized that it should lead to mutual recognition when more than the manufacturer's declaration was involved.

8. In the case of life-cycle based eco-labels, the different stages of preparation of an eco-labelling scheme posed different problems for foreign exporters. The basic problem was the influence local industry, related market structure, and trade patterns had on the choice of criteria and products to be covered. Although life-cycle analysis was the basis of the schemes, in practice only some aspects were chosen for threshold values. This opened the way for trade and environmental distortions, due to adaptation to local conditions. However, it made possible a great variety of choice of criteria in the same product group, which resulted in differences in the meaning of labels in different schemes.

9. Adaptation to local conditions due to the influence of industry in the preparation process might have unjustified, protective consequences and might have negative environmental effects if requirements included criteria for PPMs. In this case, exporters might need to fulfil the importing country criteria, irrespective of their local environmental or socio-economic conditions, priorities, or development needs. In the case of paper production, for example, Brazilian producers were complaining that some eco-labelling schemes (and some packaging regulations) made recycling an absolute value, even though production was based on pulp taken from planted trees. He enquired whether it was more environmentally friendly to avoid cutting trees or to promote planting more of them. In the Canadian Environmental Choice Scheme, according to his information, PPM requirements were replaced by fulfilment for imports of local environmental legislation. His delegation wished to know more about this provision, since it seemed a good basis for integration of trade and environmental objectives.

10. The diversity of eco-labelling schemes produced negative trade effects since exporters had to fulfil different criteria for different markets. However, international harmonization was difficult due to the complexity of the issue and should be approached carefully so as not to impose requirements unwarranted by different environmental and developmental conditions. Obstacles to mutual recognition were a function of this diversity, so guaranteed admission of foreign labels, since labels were voluntary, informative devices, might contribute to a solution.

11. He considered that transparency was a basic instrument to reduce the negative trade effects of eco-labelling while preserving its environmental objective. In this context, improving mechanisms for taking into account foreign comments beyond the TBT obligations on voluntary certification schemes should be examined, especially if PPMs were to be addressed. Recently, Brazilian producers had found it difficult to be heard in the preparation of an eco-labelling scheme. This had discouraged and generated suspicion on the part of developing countries, for whom it was difficult to gather the relevant information and follow international developments in this area.

12. Lastly, he raised the issue of the intended profile of eco-labelling awards. Some schemes aimed to have a scarcity of awards with a view to encouraging industry to move to more

environment-friendly options. Other schemes were more liberal with awards aimed at a minimum level of environmental-friendliness, and tended to contain less strict threshold values for criteria. It was too early to conclude the effectiveness of the stricter option, but it would be necessary to evaluate it in the future to ensure that the environmental effects compensated for the restrictiveness of the awards. In this context, as with packaging, the Group would benefit from presentations of individual schemes; Brazilian producers were interested in the EC eco-labelling scheme.

13. The representative of Mexico noted that the trade effect of eco-labels was not in the form of a direct impact on market entry but, rather, on competitiveness once the product was already on the market. The trade-distorting effect of eco-labelling was illustrated by the actual goals of such schemes, which were to promote consumption and sales of products bearing the eco-label and, thus, automatically create a competitive advantage for industries that met the labelling criteria. She considered that the basic problem was the lack of accountability during the development of eco-labelling programmes, particularly in defining and establishing the criteria for awarding eco-labels. These programmes lacked transparent and efficient mechanisms for considering the interests of foreign suppliers and ensuring that implementation would not render them an arbitrary and discriminatory measure.

14. She mentioned the following points from the analysis in TRE/W/12:

- (1) The fact that it was local industries which, in most cases, suggested product categories for inclusion in an eco-labelling programme suggested that important trade interests were behind the measure.
- (2) The limited possibility for foreign suppliers to participate in the product selection process called into question the measures' environmental objective, as there may be a broad range of more environmentally-friendly products coming from other countries which were not accepted on the market because they had not been considered in the programme and thus not eco-labelled.
- (3) Since foreign suppliers did not participate in establishing criteria, the programme might overlook the positive environmental features of foreign products and produce unnecessary trade restrictions. Examples included natural packaging materials which, while more environmentally-friendly, could not penetrate export markets because they did not meet the established requirements, and chemical and textile sectors of developing countries.
- (4) The variety of parameters for the environmental assessment of products, in the absence of internationally-agreed standards guidelines, might focus on aspects that were not necessarily directly related to the environment; in particular, assessment relating to PPMs might be influenced by domestic value judgements or locally-used methods without any scientific justification.
- (5) The freedom to establish relevant criteria might entail discretion, arbitrariness and discrimination, particularly with respect to PPMs. The unilateral determination of criteria might favour domestic producers and, even, suppliers of local raw materials, and for PPMs represent an imposition of domestic values and standards on other countries and raise the issue of extra-territoriality.
- (6) With respect to threshold levels for compliance with the established criteria, it was noteworthy that, in practice, none of the existing eco-labelling schemes used different thresholds for products of different origins. This clearly affected developing country suppliers that had difficulty in complying with these local and foreign standards, and suffered from the lack of capital and technology needed to adapt to varied programmes in foreign markets. In this connection, her delegation was sceptical that increased participation in market share of eco-labelled products might compensate for any increase in costs incurred in attaining the eco-label, especially dubious for small suppliers.

- (7) Finally, concerning the supervision of such programmes, private initiatives underlying eco-labelling called for government control and supervision, which should be exercised not only with respect to administration of established programmes, but during the definition of their criteria. Governments should establish parameters to ensure that private initiatives respected international principles and commitments. Eco-labelling was a good justification for signing the Code of Good Conduct in the TBT Agreement.

15. Her delegation believed that any analysis of labelling requirements with GATT rules should consider not only transparency where shortcomings existed, but other GATT principles and concepts, such as necessity, non-discrimination and national treatment. The notion of "equality of opportunity" in the latter would require attention because, in this case, equality was not only to compete but also to participate in the setting of criteria and thresholds. Consideration would have to be given to the premises in the TBT Agreement, which established that technical standards and regulations must be prepared and applied so as not to create trade barriers or be more trade-restrictive than necessary to attain a legitimate objective.

16. Finally, her delegation agreed that mutual recognition of labels might be a useful way, rather than harmonization, to resolve trade problems and recognize specific circumstances and requirements of various markets. This was in line with Principle 11 of the Rio Declaration, which stated that environmental standards, priorities and objectives should reflect the environment and development context to which they applied.

17. The representative of the European Communities considered that TRE/W/3, its addenda and TRE/W/12 provided a factual basis for the Group's work on eco-labelling schemes, as well as typologies and analyses of their possible trade effects. In the context of this agenda item, he referred to Chapter 4 of Agenda 21 which dealt with "Changing consumption patterns". Points 4.20 and 4.21 were relevant to eco-labelling; their heading stated: "Assisting individuals and households to make environmentally-sound purchasing decisions". Point 4.20 encouraged governments to develop criteria and methodologies for environmental impact assessments and resource requirements throughout the full life-cycle of products and processes. The results of those assessments should be transformed into indicators to inform consumers and decision-makers. Point 4.21 encouraged governments to expand eco-labelling and other environment-related product information programmes to assist consumer choice.

18. Positive, voluntary eco-labelling was reflected in the Mexico/US Tuna Panel report, where the Panel found that the labelling programme concerned was not inconsistent with GATT Article I:1. The European Communities had enacted, in 1992, an EC-wide eco-labelling scheme and a number of Member States had enacted national eco-labelling schemes. The EC eco-labelling scheme promoted the design, production, marketing and use of products with less environmental impact during their life-cycle, and provided consumers with information on products' environmental impacts. The eco-label was awarded to products which met these objectives and were in conformity with EC health, safety and environmental requirements. Imported products which had requested the eco-label had had to meet the same criteria as EC-manufactured products.

19. Products groups and ecological criteria were defined at the EC level after consultation with industry, commerce (both groups included trade unions where appropriate), and consumer and environmental organizations. The ecological criteria were established using a "cradle-to-grave" approach, whereby evaluation of a product included the choice of raw materials, distribution, consumption, use and disposal. An indicative assessment matrix listed horizontally

product life-cycle phases (such as production and disposal), and vertically the fields of environmental interest (such as waste relevance, soil, water and air pollution, energy-consumption and consumption of natural resources).

20. Member States could act as lead countries in developing proposals for ecological criteria for product groups. Applicants paid an application fee and a fee for use of the label which were fixed by competent bodies of the Member States and might vary by a twenty per cent margin. Recently, the EC Commission had established indicative guidelines for the fees: the application fee would be ECU 500; the annual fee would be 0.15 per cent of annual EC product sales having the eco-label. Importers could apply for an eco-label to the competent body of the Member State into which the product was imported. While not comprehensive, he had endeavoured to outline the elements that were relevant to the Group's discussion. He would provide more information to delegations if necessary.

21. He considered that eco-labelling schemes were one of the better ways of making trade and environmental policies mutually supportive. Their primary aim, to enable environmentally aware consumers to make informed choices, had been endorsed at UNCED. The EC scheme was designed to function in a non-discriminatory manner, applying the same objective criteria which covered a product's entire life-cycle, to all products regardless of their origin. As such, it conformed to the requirements of most-favoured-nation treatment and national treatment, although he added that foreign products that received the label could expect to have a competitive advantage over domestic products that did not.

22. The representative for Sweden, on behalf of the Nordic countries, drew the attention of the Group to two related papers. The OECD secretariat had submitted a document entitled "Environmental Labelling Schemes in OECD Member Countries" (ENVWA/SEM.6/R.32, 11 May 1993) to the recent ECE Warsaw Seminar on "Low-waste Technology and Environmentally Sound Products", and the other was a note for UNCTAD's ISO/IEC SAGE sub-group on eco-labelling entitled "Eco-labelling and International Trade".

23. International harmonization of labels would level the conditions placed on certain products, whereas reciprocal mutual recognition would enable one country to automatically award labels to products which had qualified for labels in another country and vice-versa. As stated in TRE/W/3, and analyzed further in TRE/W/12, paragraphs 4-5, criteria for awarding labels should be based on product quality in all stages of development, not geographic origin. If a product were awarded a label based on credible criteria in its country of origin, it should be allowed to be exported and sold in a foreign market with the original label. He clarified this point by dividing labels into two groups. The first consisted of two sub-groups: "negative labels", which had warnings indicating that use or disposal required particular attention, and "single issue labels", which addressed one aspect of environmental quality, for example bio-degradability. The second group addressed a product's environmental qualities and/or PPMs, so-called "environmentally-friendly labels".

24. He considered that the first group (negative and single issue labels) should not raise significant trade problems and mandatory negative labelling was covered by the TBT Agreement. Since toxic chemicals, pesticides, and other dangerous products posed a potential threat to the environment everywhere, labelling them informed consumers. Similarly, single issue labelling helped consumers choose a preferred disposal method; the problem remained how to assess the degree of danger or harm that required labelling. He concluded that the first category of labels provided opportunity for international harmonization and mutual recognition of negative and single issue labels.

25. Concerning the second group, eco-friendly labelling, international harmonization or mutual acceptance was more complex. Intra-Nordic environmental cooperation had noted that even slight environmental differences could raise problems.

26. His delegation thought eco-friendly labelling should be based on life-cycle analysis, covering raw material consumption, energy requirements, pollutant emissions, waste generation, recyclability, landfill requirements, etc. Here, he recognized that international cooperation was difficult. When products were traded, some of these criteria were relevant to production, irrespective of whether a product was consumed locally or exported; the rest covered use and disposal.

27. The question thus was whether governments should emphasize the environmental impacts of production, or consumption and disposal. If production was considered more harmful, and the principle of accepting the competence of local impact assessments was accepted, eco-labels of the exporting country should logically be recognized. But, if the focus was on consumption and disposal, eco-label awarding criteria of the importing country should be applied. To clarify, he mentioned that his delegation did not wish to imply that recognition was a legal requirement, as nothing prevented a product with a foreign label from being marketed. Thus, eco-friendly labelling should be two-pronged, one relating to production and the other to consumption and disposal. An imported product would obtain two eco-labels, one each from the exporting and importing country. For environmentally-oriented consumers, however, this might lead to confusion and not be practical.

28. The UNCTAD paper stated that many emerging programmes, including those in developing countries, were modelled on existing programmes which might lead to future harmonization and/or mutual recognition of criteria and methodology, perhaps under the aegis of the ISO, which would help to increase consumer credibility. The exact scope and nature though, would need to respond to domestic characteristics. The UNCTAD paper referred to proposals of mutual recognition for eco-labelling schemes, although environmental conditions differed between countries and "environmentally-friendly" products in one might be less so in another. Thus, total harmonization of national eco-labelling schemes was hardly possible. Nevertheless, his delegation agreed that it would be useful to study the possibility international standardization offered to harmonize methodologies for environmental impact assessments and life-cycle analysis.

29. The representative of Austria thought that the Group's deliberations should be based on the assumption that trade effects identified should be considered neither to be avoided nor desired, but as a consequence of, or a necessity to attain, their environmental objectives. Such an assumption was appropriate for a thorough, yet broad, analysis.

30. TRE/W/12 and 13 illustrated that looking at the trade effects of certain measures might only give a partial picture and not take account of the environmental effectiveness, structure, contents or objectives of a measure. The Group should clarify the interrelationship between GATT and environmental measures, but if its analysis were restricted to trade effects, without analysing the environmental rationale behind the measure, taking into account international environmental law, its analysis might be restricted. The Group's agenda covered a wide range of environmental measures which could potentially have an impact on trade. However, in most cases, it was not the environmental measure itself, but the way it was implemented that had trade impacts.

31. The Group's discussions had studied specific packaging and labelling cases based on delegations' provision of their national regulations; continuing this would be a valuable

contribution to future analysis, and he would transmit his delegation's information on its new packaging regulations.

32. He commented that TRE/W/12 did not indicate clearly one of the main goals of voluntary labelling, namely to offer producers a reward for considering their products' environmental impact. Given the objective of minimizing adverse economic effects on the environment, efforts should be made to ensure that voluntary eco-labelling would not be applied so as to constitute unnecessary, unjustified and arbitrary restrictions on trade. However, the emergence of voluntary eco-labelling was a response to an increased awareness and demand by consumers for information on products' environmental characteristics. As satisfaction of such demand, not the possible impact on trade, was the main focus, the application of labelling schemes (through equal access to labels, clear criteria, transparency, reliability and accountability), which prevented disguised trade restrictions, should be at the centre of the Group's analysis.

33. In order to ensure reliability and credibility of such schemes, their elaboration needed to be in cooperation with governments, industries and relevant social groups and based upon state-of-the-art transparent technological and scientific knowledge. This should ensure equal access for producers meeting the criteria, and fulfil consumer demand for reliable information. His delegation thought that efforts towards international harmonization were important, although in many cases, might not be possible.

34. The representative of Hong Kong commented that TRE/W/12 illustrated that eco-labelling schemes were designed to differentiate products in order to influence consumer choice and, indirectly, to induce changes in production/distribution behaviour. As such they would affect market access or conditions of competition and trade effects were unavoidable. This did not indicate that labelling schemes were unacceptable; in fact, some developing and exporting countries had eco-labelling schemes. He believed that the Group needed to view the issues in a way that accounted for both trade and environmental concerns.

35. However, eco-labelling schemes could manifest a domestic bias whereby foreign suppliers could be disadvantaged, in terms of opportunity to participate in their design, and the availability of material, technology and local support, etc. Given these factors, there might not be effective national treatment. This was particularly so for developing countries and multi-market suppliers. Therefore, this inherent imbalance needed to be addressed through special measures, such as those outlined in paragraph 14 of TRE/W/12 (transparency, accountability, mutual recognition and harmonization).

36. From his perspective, eco-labelling requirements generally were preferable to mandatory requirements and acted to avoid unintended trade obstacles. Further efforts could be made to enhance foreign suppliers' participation by including chambers of commerce and traditional suppliers in the consultation stages of a new scheme. To this end, he envisaged a cooperative approach with increased sharing of experience among governments and organizations at the national level. He concluded that eco-labelling, a market-orientated instrument, was preferable to mandatory schemes such as packaging requirements. The Group's task was to minimize adverse, unintended trade effects and to prevent protectionist abuse. As such, continued analytical work and discussions would lay the ground for multilateral cooperation.

37. The representative of Switzerland remarked that eco-labelling requirements were not trade measurements per se, but might have trade effects. However, eco-labelling was considered to be less trade distortive than other restrictive measures, such as import prohibitions. As they did not interfere with market forces, their trade effects depended on consumer and producer preferences and behaviour. National eco-labelling schemes, voluntary or mandatory, had multiplied in developed countries and were considered valuable instruments for environmental protection.

Thus, when analysing their negative trade effects, the positive environmental impact should be recalled. Nevertheless, her delegation shared the misgivings of some delegations that eco-labels might be protectionist instruments, depending on their application. An interesting question, in the view of her delegation, was whether a private or a mandatory scheme would have greater trade effects and whether an international eco-label would minimize such effects.

38. First, mandatory eco-labels might affect trade especially when governments did not provide access for third countries. If a large exporter did not have access to the label offered to a domestic like-product in another country, where the market share of imported and unlabelled products was high, changed consumer behaviour towards more eco-friendly domestic products could influence trade flows in the unlabelled product. The foreign supplier of an unlabelled like-product destined for export would be discriminated against; protection of the national label could be interpreted as disguised protectionism of the domestic like-product. However, according to TRE/W/12, trade effects were minimal concerning trade in environmentally-labelled goods, as they affected only a small share of goods already on the market. But, the significance and increased popularity of eco-labels for new and existing products generated a variety of eco-labels and, thus, the trade impact of eco-labelling should not be underestimated. So, the increase of mandatory or voluntary national eco-labels for domestic products, designed exclusively for the domestic market, would affect trade for imported like-products not provided with the same eco-label.

39. Private eco-labels, on the other hand, had other characteristics, such as producers' right to apply eco-labels, marketing instruments, etc. However, trade was affected especially with private labels, where consumers discriminated against foreign unlabelled like-products according to their preferences. It might be difficult for overseas suppliers to meet certain eco-labelling criteria, especially when they were based on process standards. Even in cases where overseas suppliers could meet them, their access might not be guaranteed, especially when industry created specific eco-labels and applied them as a marketing strategy. Such a denial of access constituted discrimination against overseas suppliers. She believed that trade effects of voluntary eco-labels might currently be marginal but it should be kept in mind that this might change in the future. It was difficult to determine whether voluntary or mandatory eco-labels were better able to minimize trade distortions. The effects of both were largely dependent on market shares of labelled and unlabelled like-products and on the increase of labels for new or existing products.

40. Furthermore, trade effects depended on the criteria underlying a label, transparency of and access to it. Internationally elaborated eco-labels, under the auspices of a multilateral fora, were considered a valuable, transparent manner by which to minimize the negative trade effects, while a surveillance body might control the fulfilment of the criteria. Protectionism could be reduced and discrimination of access to the label would not constitute a problem for the participating countries. However, an appropriate international forum for the negotiation of such eco-labelling criteria, such as ISO, was needed.

41. She noted that achieving a consensus on eco-labelling criteria would be a difficult issue at the international level. Her delegation was convinced that it was not the aim to substitute domestic voluntary or mandatory eco-labels with internationally agreed ones, but it would be useful to encourage those which were complementary to domestic ones. The right of countries to develop labels should be maintained and international eco-labels were only valuable if they established high standards of environmental protection. Finally, her delegation assessed that useful information had been provided by delegations and her delegation was working on a submission in order to contribute to the further analytical work.

42. The representative of the United States informed the Group that the Environmental Protection Agency (EPA) had been actively involved in the three areas of environmental labelling cited in TRE/W/12, namely single issue labelling, "negative labelling", and life-cycle-based labelling. The EPA worked with the Federal Trade Commission and the U.S. Office of Consumer Affairs to develop national guidelines for the use of environmental marketing claims, issued in July 1992, intended to prevent the false or misleading use of certain environmental terms in product advertising and labelling and to increase consumer confidence in the reliability and accuracy of such information. His delegation had presented this information to the Group in November 1992.

43. He noted that the EPA was examining the components of life-cycle analysis (LCA) and how and where it could be used for pollution prevention. In 1993, the EPA's Office of Research and Development published a guidance manual for conducting and evaluating life-cycle inventories and was applying it to case studies. His delegation could provide a copy to the secretariat.

44. He considered that the term in TRE/W/12, "negative labelling", which described labelling that indicated a product's dangers or hazardous properties, was an unfortunate choice of words, given the health, safety, and environmental benefits of such labellings. "Hazard communication" or "safe use information" were more appropriate terms.

45. In addition, his delegation did not agree with paragraph 4 of TRE/W/12 that the term eco-labelling generally referred to labels based on LCA; eco-labelling included the gamut of environmental labelling and it was unfortunate, therefore, that the paper did not examine the potential trade effects of the full range of environmental labelling, including single attribute labelling. Finally, his delegation disagreed that differences in countries' environmental standards raised questions of "extraterritoriality". However, he agreed that this problem with respect to eco-labelling merited further consideration.

46. While LCA was useful and showed potential for identifying opportunities for environmental protection and pollution prevention, substantial complexities arose when using it for eco-labelling due to technical uncertainty and subjectivity involved in framing an LCA and in evaluating its results. One type of subjectivity would be in defining the product category(ies) to be examined and compared. For example, if the category was defined as "disposable diapers", one brand might be labelled "environmentally best". But this would exclude from consideration disposable diapers which were less environmentally-friendly than reusable cloth diapers. In some cases, a particular product in a category might be labelled as "environmentally-friendly" when all goods in that category had a detrimental environmental impact. Thus, the Group should recognize that there were many ways to categorize products for eco-labelling.

47. He considered the greatest methodological complexity of LCA was in selecting the elements to be analyzed and determining the criteria, score or threshold to be satisfied in order to obtain the label. No single method for comparing overall environmental impacts existed, and life-cycle assessment involved a comparison of sets of attributes in the products' life-cycles. A yes or no decision required trade-offs between attributes which could involve value judgements, where local or regional concerns would assume a significant role. Therefore, certain PPMs might render a product ineligible for the label, even though the LCA might show a high overall environmental performance.

48. Also, consideration of resources, time, and available technical capabilities might affect the development or application of LCA standards. Constraints in any one of these areas might cause LCA practices to be abbreviated from the theoretical ideal of an LCA, which would make it more an impact assessment or risk analysis, not a full LCA. Other issues included how well an LCA-

based labelling scheme responded to changes in technology or in environmental performance requirements.

49. With respect to international standards, he informed the Group that the ISO's Strategic Advisory Group on Environment (SAGE) had been disbanded in June and ISO Technical Committee 207 had been organized to continue work on environmental management. Its work on eco-labelling had two basic components: the establishment of terms, definitions, symbols, and test methods; and the harmonization of practitioner programmes. In addition, it had established a working group on Environmental Aspects of Product Standards which would work with other ISO technical committees to incorporate environmental considerations into other ISO standards. His delegation considered that it would be useful for the ISO to periodically inform the secretariat on its progress.

50. He added that, although ISO standards were voluntary, many countries incorporated them into national legislation and regulations, thereby transforming them into mandatory standards, which had greater trade implications than voluntary ones. This underscored the importance of transparency, public participation, and objectivity in the development of ISO and other international standards, especially in their adoption into national law. The same consideration applied also to national and regional voluntary standard-setting bodies. He agreed that eco-labelling was a market driven response to demand in the local economy, given the environmental awareness of consumers.

51. The representative of New Zealand expressed an interest in the Group's exploration of the potential which eco-labelling schemes might offer, depending on their design and implementation, to achieve environmental objectives in a least trade-restricting manner. His delegation would reflect on TRE/W/12 and other delegations' contributions, as well as on TRE/W/13 which his delegation had endorsed, the objectives of which were well summarized in its three introductory paragraphs.

52. The representative of Japan recalled the EC's suggestion to categorize eco-labelling schemes according to the degree of governmental involvement. Since government involvement in designing and implementing voluntary labelling schemes was limited, these posed complex issues to GATT.

53. TRE/W/12 stated in paragraph 5 that, "when examining the trade effects of eco-labelling programmes, it must be remembered that the overriding aim of these programmes was to distinguish certain brands of products as having significantly less adverse environmental impact than others in its category". Whether all eco-labelling schemes in existence were designed and administered consistent with such aims was difficult to determine, given the wide variety and voluntary nature of measures. The key questions were who assessed the environmental qualities and on what basis. As TRE/W/13 outlined in paragraph 34, "(eco-labelling schemes) might convey indirectly the impression that unlabelled products did not have positive environmental qualities whether or not such products had been assessed in that regard".

54. In reality, his delegation perceived that there were a variety of eco-labels granted even to products whose environmental qualities were not well verified. As TRE/W/12 pointed out in paragraph 3, one of the goals of labelling programmes was to "improve the sales or image of labelled products"; given consumers' increased environmental consciousness, producers or retailers would be tempted to utilize or develop schemes for their own purposes. He recalled that this point had been made by the ITC representative at the last meeting.

55. He reiterated the point that each country had a right to determine environmental standards or conditions; likewise, product criteria which needed to be met to obtain a label would be determined by government or industries applying it. When importing countries or industries imposed values or standards on exporters, this would unduly burden exporters when the schemes were not administered properly and extraterritoriality could arise if the scheme was designed to control PPMs. He recalled that the Group was expected to examine how best to design and administer eco-labelling schemes, particularly voluntary ones, to avoid undue trade restrictions.

56. As TRE/W/12 suggested, objective criteria based on scientific findings, fair and non-discriminatory implementation (procedures), adequate access by other interested companies (including foreign), and transparency could advance balanced solutions. His delegation would elaborate on these points in the future. Since the Group was at an analytical stage, he concluded that it might be useful to further explore contracting parties', particularly exporting countries', labelling schemes and national experiences.

57. The representative of the Republic of Korea noted that his delegation would comment on eco-labelling at a future meeting.

Agenda item two

58. The representative of Sweden, on behalf of the Nordic countries, considered that it was essential to have a precise understanding of what sorts of trade effects the Group was considering, and whether they referred to any changes in trade, either through changes in volume, geographical pattern or between different types of goods, or more limited changes, leading to new or different roles for domestic versus foreign producers. His delegation thought that the latter, which appeared to be the one used in TRE/W/13, was more relevant in an international trade forum intent on creating conditions compatible with Articles I and III. He noted that it would be difficult for the Group to analyze trade effects defined in the former broad sense as trade patterns were continuously changing, as investments were made, consumer preferences changed, competitive positions improved or declined, technology evolved, etc. He agreed with TRE/W/13 that the purpose of the Group's analysis, at this stage, was only to identify potential trade effects, not to evaluate them.

59. Several general factors helped determine the trade effect of these measures, some of which were described in the "general considerations" of TRE/W/13. He considered that one, several or all of the following factors noted in TRE/W/13 would be present in a given situation: (1) the cost of the measures in comparison to the total value of the product or the PPM and the product's price elasticity; (2) the national conditions regarding the possibility to replace a material or PPM; (3) market characteristics; and (4) the degree of international application of the measure. An obvious addition would be transparency, but because much attention had been devoted to it, he omitted it from this open-ended list.

60. Taken in combination, his delegation thought these factors had a strong influence on how a specific measure affected trade flows. In fact, the presence of these overlying general factors made it difficult to generalize about the trade effects of individual measures as the contextual factors seemed too important. This did not mean that the Group should not analyze the typical effects of measures; there was much to be gained from it, not least of which was to provide a basis for the Group's work.

61. Returning to the first general factor, a measure having little effect on trade if its cost were small would have a greater effect if its cost were large. As investment costs rose due to new regulations, smaller, often foreign, suppliers might withdraw from the market. These quantitative aspects were important and noted in TRE/W/13 in relation to internal taxes and charges.

62. A second factor to be considered when assessing trade effects involved national environmental resource endowments among domestic and overseas suppliers. A country's possibility to shift from one material to another and its environmental carrying capacity might determine whether it could survive in a market when new regulations were introduced. Depending on access to other materials or production methods, trade effects from the same measure could be significant for one country and non-existent for another.

63. The third factor which concerned size and openness to trade, proximity to overseas suppliers, industry concentration and consumer preferences, varied depending on the product to which a measure related. Thus, the same restrictions could result in different trade effects for different products. On the fourth factor, the more countries applying a measure the lesser would be its trade effects. This was a strong argument for multilateral cooperation in the environmental area.

64. Another factor, relevant to most individual measures being analysed, concerned the stage in the distribution chain at which a measure was targeted. A measure which was directed at production, for example a fee or tax on polluting processes or input components as applied by most countries today, affected domestic producers only. Thus, the trade effects were favourable to foreign producers, who were not obliged to follow the regulations or pay the fees. However, this was not true if the measure was a process-based fee on a product. Depending on the circumstances, the fee could also be applied to imported products which caused problems of determining fair charges, of taking into consideration differences in environmental and economic situations of exporting countries, etc. The latter was referred to as the PPM issue, on which the Group would have to focus at some point. In this context, he recalled that such charges could be constructed as to exempt exported products. This would amount to a differential treatment of exports which would create a distinct trade effect, similar to an export subsidy.

65. If a measure was directed at distribution, for example through reuse systems for glass and paper, foreign and domestic producers would be equally covered; the distributor would demand the same from both suppliers. However, there was a risk of unfavourable trade effects for foreign suppliers as the measures could be based on domestic conditions.

66. Finally, charges or regulations could also be aimed at the consumption stage; for example, taxes to encourage the use of lead-free gasoline. These would seem to apply equally to domestic and imported products and, alone, would have negligible trade effects.

67. The representative of Canada noted that his delegation was reflecting on TRE/W/12 and 13, which contained many ideas that his delegation had made in earlier interventions, and would present its comments at the next meeting.

68. The representative of Australia noted that his capital had not yet received the documents, so he was unable to make a substantive intervention at this stage.

69. The delegation of Mexico considered that there was an emerging consensus in the Group regarding transparency. In this context, he supported the Chairman's comments at the May meeting, in particular: (1) that transparency requirements in the area of the environment should not be more restrictive than in other areas; (2) the idea of establishing environmental contact points as a possible solution to fill the "gaps" in transparency; and (3) that the Group's main concern should be measures with significant trade effects.

70. He also found an emerging consensus on some points related to the "gaps": (1) measures utilized under Article XX were not exempt from the obligation to notify given the provision that such measures must not be applied "in a manner which would constitute ... a disguised restriction on international trade"; and (2) trade measures under MEAs should not be exempt from the transparency obligations under the GATT. He underlined the lack of, or weak, transparency mechanisms in a large number of MEAs.

71. His delegation agreed, in principle, with paragraphs 3 and 9 of TRE/W/4 in that economic instruments used to protect the environment had less distorting effects than regulatory instruments. This was another example of the preference in GATT for action through prices rather than through quantities or prohibitions; economic effects of the latter were less predictable and obscured changes in international competitiveness.

72. He believed that the Group should continue to study the trade effects of environmental measures on a case-by-case basis, including economic instruments, in particular environmental taxes. Such taxes were becoming increasingly common and their different applications led to different trade effects, which should be examined in light of GATT provisions, especially concerning transparency.

Agenda item one

73. The representative of Canada recalled that the Group was examining the issue of trade measures in MEAs in order to be assured that the current rules of the GATT provided sufficient scope to governments to achieve their environmental objectives in a multilateral context, while providing adequate disciplines against abuse. Given the GATT's mandate, discussions in the Group were limited to instances where the achievement of specific, collective environmental objectives required measures affecting trade.

74. He considered that the Group remained in the analytical or problem/definition stage where the fundamental task was to examine the existing GATT principles as they related to trade provisions in MEAs. The Group's main focus thus far had been to consider the types of trade measures that might be proposed in MEAs, whether or not they conflicted with GATT provisions, and the issues that arose regarding proposals to accommodate those that could conflict with GATT rules. His delegation emphasized the need to continue to focus not only on those trade measures that fell outside GATT rules, but on which types of measures would not likely conflict with GATT obligations, as the Group had recognized that a wide range of such measures existed.

75. He noted the environmental community's request for guidance regarding measures which could be employed without risk of difficulties arising under GATT; the Group could respond by developing an indicative list of such measures with the assistance of the secretariat. In addition, the Group needed to continue assessing all relevant GATT provisions, including, for example, Articles I, III, XI, XX and XXV, to clarify the scope that already existed in the GATT and to address the question of which measures might not be covered by current rules. As this analysis was incomplete, his delegation did not consider the Group ready for a prescriptive discussion.

76. He recalled the Group's general view that proposals for the use of trade restrictions likely to fall outside the scope of GATT rules would arise in exceptional circumstances. Historical evidence revealed that, for example, of the 245 measures taken for environmental purposes which were notified to GATT under the TBT Agreement between 1980 and 1991, none had been challenged. Of the 152 MEAs reviewed by the GATT secretariat in its factual note (L/6896), only seventeen contained trade provisions and, of those, only two appeared to contain trade provisions which treated trade with parties and non-parties differently. This supported the

New Zealand conclusion (TRE/W/8), that discriminatory trade measures would not normally be required to achieve an MEA's objectives; further analysis of this kind was needed.

77. While none of the seventeen MEAs required trade measures based on PPMs, his delegation cited the Convention on Fishing with Long Driftnets in the South Pacific which called for such measures provided they were consistent with the parties' international obligations, including those under GATT. Finally, of the panel decisions relevant to interpreting GATT Article XX, none involved measures contained in an MEA.

78. Even though the Group was future-oriented, recent evidence revealed that it was not dealing with an endemic situation facing governments in their normal policy-making process, but what appeared to be exceptional situations where existing rules might not be sufficiently clear. It could not be precluded that governments, acting collectively through an MEA, would require the use of GATT-inconsistent measures in order to achieve an environmental objective; the increasing number of MEAs being negotiated suggested that this issue warranted attention. In considering how to address the use of trade measures in MEAs, two criteria were relevant. First, would GATT accommodate the use of "least trade-restrictive" measures required by governments to achieve a given environmental objective; and would accommodating the exceptional case result in the exception becoming the rule? His delegation was not in a position to conclude how to meet these two criteria.

79. The EC submission had advanced the Group's work by focusing discussion on the advantages and disadvantages of a "general exceptions" approach. This approach would exempt otherwise GATT-inconsistent measures from certain GATT disciplines, if they were taken pursuant to an MEA which met certain conditions, such as whether it represented a "genuine" multilateral consensus. The latter issue was recognized as the cornerstone of the EC approach and had elicited a number of questions.

80. The Nordic delegation had recently posed questions and considered criteria for defining a "genuine" multilateral consensus. His delegation agreed that a general exceptions approach would require that criteria be agreed upon in advance and be generally applicable. The challenge would be to strike the right balance between setting criteria necessary to cover a broad range of future circumstances while limiting the risk of misuse. He agreed that criteria would need to go beyond the number of participants to include, for example, a given percentage of production and consumption and qualitative factors, such as regional representation, stage of development, openness to new participants on equitable terms, etc.

81. A second issue, central to this approach, was the precise object of the "genuine" multilateral consensus, to which the Nordics referred as "specificity". He wondered if a general exception would apply when a contracting party merely asserted a linkage between that measure and the objectives of a "genuine" MEA, or would an exemption only apply to those measures explicitly mandated in the MEA. Before such difficult questions were answered, the general exceptions approach remained incomplete. The EC submission had contributed to a better understanding of the relationship between Article XX provisions and trade measures in MEAs, which merited further examination, along with other relevant GATT provisions. One would be Article XXV, the waiver approach, which Hong Kong suggested at the February meeting that the Group consider. This approach would deal with exceptional cases on a case-by-case basis.

82. As exceptional cases were not unfamiliar in the GATT, he recalled that Article XXV had been created to allow contracting parties to waive GATT obligations in exceptional circumstances. It was developed so that contracting parties, acting jointly, could permit each party to take

whatever steps were necessary to achieve legitimate policy objectives, while protecting the benefits that had been negotiated through successive rounds of trade negotiations. He noted a 1955 GATT working party that had concluded: "The words 'in exceptional circumstances not elsewhere provided for in this Agreement' are designed to limit the use of the waiver provision to individual problems to which the Agreement as written does not provide an adequate solution and where an amendment would result in a modification both broader in its application and more permanent than is required." (L/403, page 2)

83. His delegation had not concluded whether Article XXV provisions presented the most appropriate approach to deal with the exceptional circumstances discussed in the Group, but its provisions were relevant to the underlying issues and warranted the Group's analysis. References to Article XXV that had been made so far had focused on its potential disadvantages. The Nordic delegation, at the February meeting, had noted that the Uruguay Round Draft Final Act contained provisions which explicitly imposed time limitations on any waivers granted. Also, obtaining a waiver could be time-consuming and since its application could only be made after the MEA had been negotiated, this approach would not provide certainty to negotiators of an MEA that a waiver would be granted. Finally, the Nordic delegation had noted that if an MEA failed to secure a waiver, a conflict of obligations could arise for contracting party governments.

84. His delegation agreed with Hong Kong that these concerns, while real, might pose less of a problem at the practical level. For example, if an MEA reflected a genuine multilateral consensus, it would find broad support among GATT contracting parties. He was not sure that complete certainty was either feasible or desirable under any approach. Increased certainty was best provided through ensuring broad participation in MEAs and through co-ordination between the trade policy and environmental policy communities, both in capitals and at the international level. In this context, he noted the recently endorsed OECD guidelines on trade and environment.

85. Under present provisions of Article XXV, if a contracting party were compelled to address a policy concern with a measure which could not be justified under GATT provisions or general exceptions, it could ask the contracting parties to act jointly to allow it to maintain that measure. In the case of an MEA with a large membership, parties might jointly seek a waiver for a particular measure in the MEA. A number of issues could be relevant, including the "specificity" of the measure, as noted by the Nordic delegation. If a waiver request were granted for trade provisions in an MEA, without those measures having been fully described, it could lead to parties having "carte blanche" to unilaterally implement a variety of measures. Another scenario could involve a contracting party applying for a waiver after a trade-restrictive measure, taken for environmental purposes, was in place and had been, or would be, subject to challenge under GATT provisions. The current provisions permitted a range of possibilities; apart from whether the application for the waiver was made individually or collectively, it could be made after negotiation, signature, ratification, or implementation of the MEA.

86. He considered that a waiver approach would focus on a specific measure affecting trade, taken by one or a group of contracting parties pursuant to an MEA. It would not focus on the MEA itself or the validity of its environmental objectives and, therefore, would eliminate the need to agree on general criteria to apply to any future MEA. Rather, international consensus would be established based on the merits of each case. If a waiver were obtained, it would demonstrate a sufficient level of consensus that the measure was required in this instance. If not, it would be a clear indication that such consensus did not exist. His delegation believed that this would be a supple, yet robust, approach to accommodating international consensus, as well as measures taken pursuant to regional and global agreements. He stated that use of the waiver provisions would identify which, if any, amendments might be required; if a number of waivers were granted for measures of a specific type or taken under certain circumstances, the General Agreement could be

modified to accommodate those measures or situations without creating a remedy bigger than the problem.

87. As more work was needed, his delegation requested the secretariat to summarize the experience with Article XXV and indicate the full potential of its existing provisions, as improved in the Draft Final Act. This report could address such questions as: (1) what was the experience regarding, and potential for, waivers granted pursuant to requests by individual or groups of contracting parties; (2) when had waivers been requested and granted, i.e. after a successful challenge or outside the context of a challenge but prior to or after a measure had been implemented; and (3) had waivers been approved on a simple yes or no basis, or had qualifications or conditions been attached? The Group might also reflect on whether Article XXV voting rules are a sufficient proxy for a multilateral consensus, perhaps in light of provisions 5(i) and 5(ii) of the Article.

88. Similarly, he contemplated a case-by-case approach under Article XX, particularly under a refined version of Article XX(h). He requested the secretariat also to provide a report on the potential relevance of Article XX(h) to the issue of trade measures taken pursuant to an MEA drawing, *inter alia*, upon the work of the 1954 Working Group (L/320).

89. Until such thorough analysis was conducted on all relevant principles and provisions of the GATT, the Group's analytical work would not be complete. Without this analysis, the Group would be unable to consider whether or precisely what further clarifications or amendments would be required to provide governments with adequate scope to use the measures required to achieve environmental policy objectives when acting multilaterally.

90. The representative of India was not certain whether the Group was at the stage of analysis where it was ready to examine legal alternatives, or that there was a consensus that trade measures necessarily had to be taken or were essential in MEAs. Although trade measures were claimed to be exceptional, there was a lot of substantive work needed before alternative provisions could be considered, such as Articles XX and XXV.

91. Although some MEAs contained trade measures, his delegation was not convinced that these were necessary to address environmental problems. Thus, as with the EC submission, such an investigation would be premature. Nevertheless, the Canadian paper was a substantial contribution and his delegation would examine it closely.

92. He questioned whether requests that had been made to the secretariat for a guidance paper on which measures might be employed without serious risk of difficulty arising under the GATT was asking for interpretations of the GATT. He enquired if an analysis of Article XXV entailed an interpretation of the Article or, rather, a factual note. He sought further clarification on this and preferred the Group only to consider a secretariat paper on Article XXV after it had examined and made substantive comments on the Canadian paper.

93. The representative of Hong Kong viewed the Canadian paper as an attempt to further proposals that had been discussed in the Group. In particular, his delegation was interested in the reference to Article XXV to which he had referred in earlier meetings. There were two advantages to the waiver approach: first, it did not have to be defined strictly according to its present use and could be modified. The GATT's value to contracting parties would not be reduced because it would play a positive role in the waiver determination. The second advantage was that the onus of proof would not be reversed and would remain the responsibility of those who would seek coverage to prove their case. Furthermore, he did not see any problem with

studying the use of Article XXV during this phase of the Group's analytical work; it was important that the Group not reject any ideas or accept any ideas at face value.

94. The delegation of the European Communities considered that the question of what constituted a genuine MEA was important, given that an exception for certain types of trade measures under Article XX, as his delegation had suggested, was only justified when the MEA was genuinely multilateral. He agreed that for the purposes of a collective interpretation of Article XX, the criteria to evaluate an MEA should be qualitative rather than a mechanical formula based on quantitative criteria. He concurred with the Nordic observations regarding how an MEA was negotiated and its terms of accession for countries that were not original signatories. Quantitative criteria, related to the level of participation in an MEA, could prove useful in some cases; for example it was necessary to have a special safeguard against easy recourse in MEAs to certain types of trade measures of concern to GATT, such as those based on production or processing methods (PPMs), which did not affect the characteristics of a product.

95. In its submission (TRE/W/5), his delegation had noted that certain types of trade measures applying to non-parties to an MEA could only be covered by a collective interpretation of Article XX if the level of participation of producers of the product subject to restriction were sufficiently representative. His delegation would consider the Nordic suggestion that another criterion could be that a meaningful number of consuming countries were signatories. His delegation would reflect further on the qualitative criteria, suggested by India, regarding representation of signatories at different levels of development.

96. With respect to dispute settlement, the Nordic delegation had identified two possible situations. First, a trade dispute between two countries, both party to GATT and to an MEA, could have a bearing on the trade measures that were in dispute; second, a trade dispute between countries, each party to GATT, but one of which was not party to an MEA, might have a bearing on the trade measures taken by the other party. He limited his remarks to the first case, which were based on the notion that GATT should not contradict or jeopardize collective efforts to address environmental problems. In the interest of a mutually supportive relationship between trade and environmental policies, GATT should be responsive both to the goals of MEAs and to the procedures agreed upon by the parties to the MEA to achieve those goals, including the dispute settlement procedure chosen.

97. He thought it useful to consider the possibility that if a party whose interests were affected by a trade measure in an MEA requested GATT dispute settlement but the other party claimed that its trade measure was legitimate under the MEA, the GATT dispute settlement procedures could be suspended in order to wait for the result of the MEA dispute settlement procedure. If the latter concluded that the trade measure was covered by the MEA, given that the country affected by the trade measure had accepted the terms of the MEA, it would be reasonable for GATT to refrain from an examination of the issue. On the other hand, if the MEA procedure concluded that the trade measure concerned was not covered by the MEA, it seemed that the customary GATT procedures should be pursued. In this structure, it might be desirable to enable third party GATT contracting parties to present their views to the dispute settlement body that was designated under the MEA. This could be solved by allowing both parties to the dispute to present written statements of the trade aspects of the dispute from other GATT contracting parties which supported their position.

98. If both parties to the dispute desired, it should be possible to handle the dispute in GATT instead of the MEA. Noting that the views of his delegation were tentative and in need of development in light of the Group's discussions, he wondered whether the issue of the "choice" between two possible dispute settlement procedures might depend partly on the "specificity" which the MEA had provided for trade measures. "Specificity" had wider implications than those

relating to the choice of the dispute settlement forum. His delegation's submission had noted that the presumptive value, given to the fact that a trade measure was envisaged under an MEA, might depend on how far the MEA specifically provided for the application of trade measures. If the MEA did not precise the trade measures to be applied by the parties, GATT could examine more closely whether the measure was the least trade-restrictive option available. At the extreme, a country could apply a trade measure to fulfil an MEA's objectives despite the fact that the MEA did not envisage the application of trade measures. Such a case fell outside the scope of an exception for trade measures taken pursuant to an MEA.

99. The delegation of New Zealand, commenting on the Nordic reference to the issue of "specificity", referred to MEAs where no provision was made for the use of trade measures because their negotiators had not deemed it necessary or appropriate to include them. This situation could have arisen either because negotiators had not considered providing for the use of trade measures, or because provision had been rejected. Either way, his delegation agreed with the Nordic observation that an MEA which specified environmental objectives, but did not specify the use of trade measures, did not represent an international consensus on the use of trade measures nor any basis for the use of trade measures.

100. He recalled the reasons, outlined by the Nordic delegation, as to why it might not be possible or appropriate to determine in an MEA the form and extent to which trade measures should be used by all signatories: (1) difficulty in initially determining which measures should be taken suggested a need for periodic revision of the MEA to account for changes that might have taken place; and (2) differing circumstances among signatories suggested that different measures might be needed by signatories to achieve the MEA's objectives; just as the same trade measure would not be appropriate for all signatories, trade measures might not be appropriate at all for certain signatories.

101. His delegation considered that the concept of "deemed necessity" in relation to provision for trade measures in MEAs would continue to be the subject of the Group's discussion. The likelihood of discretionary use of measures pursuant to an MEA being delegated to the national level pointed to the relevance of various principles and concepts familiar to GATT, including necessity, proportionality, least trade-restrictive, and of treating such discretion on a case-by-case basis. Otherwise, an MEA might serve as an excuse for the misuse of unilateral measures. He concluded that the contributions of the Nordic and Canadian delegations indicated a substantial range of issues which needed further analysis.

102. The delegation of Mexico considered that further analysis was required concerning extraterritoriality, non-parties and other important aspects, including the "specificity" of measures. Document TRE/W/10 showed that few MEAs included mandatory obligations for the use of trade measures; the majority recommended that parties take the "necessary actions" to achieve the MEA's objectives without specifying when, how and which trade measures should be used for implementation. Only a few cases specifically stated the type of measure to be implemented, such as quantitative restrictions, although parties could decide on the manner of implementation. In such cases, the parties were requested to apply measures by issuing import or export certificates or permits, thereby permitting a wide range of discretionary power regarding their use.

103. In this connection, it was worth considering the following questions. First, to what extent could it be considered that there was an international consensus on the use of trade measures under MEAs, when reference was given only to the environmental objectives and not to the specific ways in which governments could achieve those objectives? Second, to what extent could an MEA, which was not specific and permitted a wide margin of flexibility regarding the use of

trade measures, serve as a model or excuse to apply discriminatory, unilateral and/or protectionist measures? Third, how did this situation correspond with concepts within GATT such as "necessity", "proportionality", "non-arbitrariness" and "least trade-restrictiveness"? Finally, what criteria could the Group recommend when assessing alternative measures?

104. The above questions led his delegation to agree that the Group's mandate was to deal with exceptional cases. In this context, it might be necessary to review systematically whether the legal channel for the results of the Group's analysis of such exceptional cases should be a general waiver or another possibility. His delegation believed that the Group should continue its in-depth analysis in order not to prejudge its conclusions.

105. The representative of Japan recalled that the EC had proposed a collective interpretation of Article XX to which the Nordic delegation had given merit as opposed to the waiver approach; the delegation of Hong Kong had called for a cautious approach and the Canadian delegation had presented a useful framework for analysis. Previously, his delegation had expressed its concern about the broad and unclear meaning of the word "environment", as well as the difficulty in defining the term "multilateral". If GATT obligations could be waived for certain measures, care should be taken not to erode the disciplines of the rules. Thus, his delegation's initial reaction was that the waiver approach, given its ad hoc and case-by-case use, could have merit.

106. He added that when environmental concerns were shared by many contracting parties, or when the trade-related measure in question was properly designed and administered, based on a multilateral consensus, obtaining a waiver would not be an obstacle. His delegation agreed that it would be wise to keep the alternatives open until the Group was confident that the key issues had been examined.

107. The representative of the United States concurred with Hong Kong that the Group should not reject any idea out-of-hand nor accept any at face value. He considered that the fundamental questions raised by the Nordics on the definitions of "multilateral" and "specificity" needed further reflection, but it was important to ensure that there was no conflict between GATT and MEAs which must coexist without interfering with the objectives of one another. The Group should proceed with some caution because there had only been limited experience with MEAs to date. While the Group had studied a list of them, these were narrow in scope. Moreover, UNCED had been a clarion call for international cooperation to deal with urgent international environmental problems, which had previously not been dealt with effectively. Since these questions were only now being addressed, the Group was not in a position to prejudge the answers that the international community might define. Thus, he cautioned against drawing conclusions from past experiences in order to anticipate the future; the GATT worked best when it avoided disputes rather than settled them.

108. Second, he believed that care should be taken with the Group's vocabulary; he noted that GATT principles of uncertain derivation had been used, such as "least trade-restrictive" and "proportionality". The former had come up in the Uruguay Round in the context of standards-related issues, but not more generally, and the latter had arisen as a footnote in that context. Before the Group began using and setting these terms as parameters for making decisions, he suggested that the secretariat prepare a document illustrating where these terms had arisen in GATT instruments or panel decisions. This would allow the Group to proceed on a knowledgeable basis.

109. His initial reaction to the Canadian proposal to respond to the environmental community about what measures could be taken without raising questions in GATT was that this would raise questions concerning the European Communities' suggestion that certain MEAs did not cause

problems in the GATT because they were MEAs. Without having taken a position on this, he considered it would be difficult for the secretariat to write a thoughtful paper on the issue.

110. The representative of Thailand, on behalf of the ASEAN contracting parties, believed that matters concerning trade provisions in MEAs involved substantive legal complexities and implications which would have a bearing on the rights and obligations of contracting parties. Until all the complex issues that have been raised in the Group were thoroughly examined, it was premature to make decisions on approaches. Her delegation agreed with Hong Kong that, at this stage, discussions should continue and all necessary information should be gathered.

111. The representative of Canada appreciated the interest in his delegation's paper. He responded to the Indian delegation's initial reaction that the purpose of the paper had not been to propose that the Group move forward but, rather, that analysis was needed, covering all relevant GATT provisions, principles, and articles.

UNCED follow-up

112. The representative of India voiced satisfaction that the Group was considering the UNCED recommendations; his delegation had been urging early consideration of the specific issues raised at the UNCED against the general backdrop of UNCED's larger objective, and consideration was necessary to counter propaganda about GATT's alleged indifference towards environmental concerns. He hoped this process would lead to certain conclusions vis-à-vis the issues raised. He underlined three concepts contained in the title of Chapter 2, "International Cooperation to Accelerate Sustainable Development in Developing Countries and Related Domestic Policies", relevant to the Group's work.

113. First, was the concept of international cooperation which, based on a consensus mode of decision-making, was the underlying philosophy of the UNCED which the Group should bear in mind. It would necessarily imply firm rejection of any notion that unilateral action by individual States could resolve environmental challenges facing the international community.

114. The second concept was sustainable development, the relevance and significance of which, he recalled, he had elaborated in a recent informal meeting of the Committee on Trade and Development (CTD). A serious examination of the UNCED recommendations could not be divorced from this concept. He considered that the central question in the debate on sustainable development in the context of the trade-environment interface was not only how to define the present generation, but how to define the needs of that generation. Clearly, even the minimum needs for survival of a large majority of people in the third world were not being met; unsustainable use of resources in these circumstances was solely dictated by survival needs. On the other hand, global resources were being drawn unsustainably to meet the needs, in some cases, avoidable and greedy needs, of people in other parts of the world. The issue was how to reconcile these two trends. While not wanting to inject a North-South controversy into the Group debate, the issue had a North-South dimension which could not be overlooked, and which raised difficult and complex issues that did not lend themselves to easy or quick solutions.

115. The third concept was to seek to address the problems of developing countries. This implicitly recognized that the prescription for achieving sustainable development in developing countries may have to be different from that of other countries. Indeed the Group should take note that UNCED had recognized that environmental standards valid for developed countries may have unwarranted social and economic costs in developing countries.

116. He did not consider that all UNCED recommendations were relevant to GATT. Issues such as removal or eradication of poverty and financial assistance to developing countries were not within the competence and mandate of GATT, and aspects relating to sustainable development were being discussed in the CTD. However, one UNCED recommendation which was relevant to the work of the Group was Principle 12 of the Rio Declaration, which emphasized international cooperation among States to address environmental degradation. It also stipulated that trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

117. Furthermore, the UNCED recommendations that sought to make international trade and environmental policies mutually supportive in favour of sustainable development required clarification of GATT's role (and that of other international organizations) in dealing with environment related issues, including, where relevant, conciliation procedures and dispute settlement. This entire agenda could be divided into two aspects: access to markets for developing countries, and the trade rules to deal with global or regional environmental concerns (part of the Group's mandate). The objective of the first was to ensure improved market access for developing countries which had been recognized as imperative for sustainable development as well as for protection of the global environment. Not only should existing trade barriers for developing countries' exports be removed, but new ones should not be erected in their place. On the second aspect, trade rules to address environmental concerns should not hinder or impede developing countries from achieving their legitimate developmental objectives.

118. On the specific principles in Chapter 2.22, he considered that paragraph (i), which spoke of avoiding unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country, emphasised cooperation among States - UNCED termed this "a new global partnership" - and stressed that the multilateral system offered the best recourse to deal with trade-environment issues. He conceded that, in some circumstances, trade measures may be found necessary to enforce environmental policies, but certain rules and principles, such as non-discrimination, least-trade restrictiveness, transparency and the need to take into account special conditions and developmental requirements of developing countries, must apply. These deserved detailed consideration in the Group.

119. He suggested that the above amounted to two simple propositions: environmental issues without any transboundary or spill-over effects were best left to national authorities and people of the territory concerned; and environmental issues with transboundary or spill-over effects were best resolved through international or regional (as the case may be) cooperation, based on consensus.

120. UNCED recognized that environmental standards were, and had to be, different in different countries. For instance, environmental standards that were valid in most advanced countries may be inappropriate and of unwarranted social cost for developing countries. Thus his delegation found unacceptable that trade restrictions be used to offset differences in costs arising from differences in environmental standards; this notion had the potential to disintegrate the multilateral trading system.

121. He added that implications of the issue of process and production methods (PPMs) were equally dangerous. If two like-products, produced or processed differently, one of which resulted in apparently greater damage to the environment than the other could be treated differently, the two main pillars of GATT, MFN and national treatment, and the multilateral trading system would be dismantled. Numerous questions would also be raised on such issues as the definition of environmental damage, extraterritoriality and unilateral action, which would contradict the letter and spirit of the UNCED. He, therefore, cautioned the Group against cutting at the root of the

international trading system by erasing all meaning from the principles of natural endowments and comparative advantage.

122. He concluded that the existing principles and philosophy underlying the multilateral trading system, embodied in the GATT, were sound and of equal and crucial relevance to the debate on trade and environment, as to any other trade policy issue.

123. The representative of Brazil stated that his delegation maintained the view that the principles relating to trade and environment in the Rio Declaration and in Agenda 21 must be fully integrated into the GATT as the basis on which to build any work on trade and environment. Although those principles were not intended to be "legal language", their message was clear and should not be reduced nor expanded.

124. He added that the UNCED results must be read as a whole. By linking inextricably environment and development under the concept of sustainable development, the UNCED was about making efforts for a better planet for the benefit of mankind. This linkage represented important progress in the debate on both issues, and discussing trade and environment after UNCED was necessarily discussing the integration of trade, environment and development.

125. He added that UNCED was about international cooperation, particularly to address pressing environmental problems with transboundary and global effects. At the same time, it was recognized that many other environmental problems were diverse in their nature, not only due to diversity of ecosystems, but also to different relationships between humans and their environment. While environmental problems in developed countries stemmed mostly from affluence, those in developing countries stemmed from poverty. In the Introduction to Chapter 2, this call for cooperation came in the form of proposals for a "new global partnership", a "continuous and constructive dialogue" or the fostering of "a climate of genuine cooperation and solidarity".

126. Under this perspective, it was natural that Section B of Chapter 2 spoke against unilateralism and extraterritoriality as incompatible with "genuine cooperation and solidarity". This was also found in other chapters of Agenda 21, such as on oceans, forests, international legal instruments and mechanisms as well as in the Rio Declaration itself. Common responsibility for environmental issues had to lead to their common treatment; unilateralism and extraterritoriality created suspicion and resentment in the dialogue on environment and development, impeded the search for real solutions and may cause increased damage to the environment. In particular, unilateral trade measures for environmental reasons taken against developing countries had negative effects on their development perspectives and therefore on the environment. Extraterritorial measures, furthermore, imposed social preferences of one society on another, disturbed the determination of priorities in terms of environmental protection and tended not to take account of differences in environmental problems.

127. The call in Agenda 21 for avoidance of "unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country" was a call for cooperation and against unilateral trade measures. The statement that "environmental measures addressing transborder or global environmental problems should, as far as possible, be based on an international consensus" meant that governments should do their utmost to find cooperative solutions to these problems.

128. A third basic message from UNCED was the need to address the causes of environmental and developmental problems. This idea was expressed in many parts of Agenda 21; the formulation in Chapter 2 asked to "deal with the root causes of environment and development problems in a manner which avoids the adoption of environmental measures resulting in

unjustified restrictions on trade". In order to do so, the realm of cooperation offered a number of options preferable to restrictive trade measures. For developing countries, transfer of resources and technology to tackle directly the causes of environmental problems could do more than any trade-restrictive measure which, although easier and less costly, should not substitute for true cooperation. Developed countries' commitments in this respect, made at UNCED, should not be weakened, and governments should be alerted against the use of an environmental justification by protectionist lobbies.

129. However, Agenda 21 stated that "should trade policy measures be found necessary for the enforcement of environmental policies", "certain principles and rules should apply". Those listed in paragraph 2.22(i) arose mainly from GATT experience; paragraph (f) borrowed language directly from Article XX. This implied a recognition by UNCED of GATT's past effectiveness in allowing legitimate measures to protect the environment while barring protectionism. He added that a number of measures to protect the environment and promote development could be taken without violating GATT rules. Furthermore, Article XX provided the possibility to take measures to protect the environment, if its criteria were fulfilled, even if they contradicted a GATT rule.

130. In the past debate his delegation had considered it useful to clarify, through an interpretation, the criteria of Article XX. This should be done in light of the principles established in Agenda 21. He concluded that he had emphasized some of the foundations of the UNCED results that bore on the Group's debate to help in clarifying the framework established by UNCED for discussions on the relationship between trade, environment and development. His delegation also recognized that examination of the Introduction and Section B of Chapter 2 introduced a number of issues related to trade, environment and development that went beyond the traditional agenda items and was ready to contribute to their identification and analysis.

131. The representative of Mexico emphasized three basic postulates that framed his delegation's participation in the Group's UNCED follow-up exercise. The first was the definition of GATT's competence in this area. Agenda 21, including Chapter 2, was not drafted exclusively for the attention of GATT; it included recommendations and proposals that also concerned other institutions and national authorities. The introduction to paragraph 2.22 on activities made this explicit. It was therefore important to identify the aspects that genuinely fell within GATT's competence to avoid misinterpreting the content of Chapter 2 or confusing the Group's task.

132. The second postulate was the recognition that the UNCED results were agreed by international consensus at the highest level. Consequently, the principles and recommendations it contained were clear and should be taken as a common basis and point of departure for the work of this Group. The third postulate was the recognition that sustainable development was the main element of the Group's debate and that compatibility between trade and environment could be achieved only by taking into consideration the development dimension. He noted that the title of Chapter 2 made clear that the ultimate goal was to accelerate sustainable development, particularly in developing countries.

133. The spirit of the entire Chapter, particularly its introduction, was to promote sustainable development by international cooperation. The call to establish a new partnership among States to achieve a more efficient and equitable world economy recognized that economic and developmental inequalities prevailing hitherto were fundamental causes of the present environmental imbalances, i.e. that excessive levels of consumption in some countries and extreme poverty in others had contributed to environmental deterioration.

134. The invitation in paragraph 2.1 for States to overcome confrontation and foster cooperation and solidarity in the treatment of environmental and development problems, made clear that the solution could not be found through punishment or the use of sanctions.

Strengthening national and international policies to tackle environmental and development problems indicated two paths, international cooperation, and action at the national level, through specific actions. The latter meant that countries should exercise their sovereignty in the development and implementation of policies that matched their own environmental and development context.

135. Likewise, paragraph 2.2 brought out that the acceleration of sustainable development required a dynamic and supportive international environment and determined policies at the national level. This national policy-making process was the opposite of the imposition of objectives and priorities by some countries upon others, just as economic uncertainty and instability were the antithesis of trade and its central place in the development process. Economic instability and uncertainty were largely attributable to protectionism and unilateral trade action and every effort must be made to fight against them. Paragraph 2.4 underlined this by recognizing the need for consensus-building at the intersection of environment, trade and development.

136. His introduction confirmed the main principles resulting from UNCED, in particular:

- (i) that environmental problems within national borders, which did not affect other countries, should be resolved by national authorities by means of suitable policies in line with their own objectives and priorities and in their own environmental and development context; and
- (ii) that environmental problems that overstepped national frontiers and had cross-border or global effects should be resolved through international cooperation and consensus.

137. His delegation believed that the first objective must be to define the Group's competence in line with the recommendation in paragraph 2.22. Hence, sub-paragraphs (a), (b), (h) and (k) should be considered by the Council, as had been agreed by the CONTRACTING PARTIES. Sub-paragraph (l) was concerned with the process of reviewing the environmental impact of trade and production, as was already being undertaken in some countries in the form of "environmental reviews". It called for cooperation between trade and environment authorities at the national level to ensure that policies in the two areas were compatible. In this connection, UNCTAD was elaborating guidelines on such "environmental reviews". This paragraph's link with GATT was therefore irrelevant.

138. Sub-paragraphs (c) and (j) referred to items 2 and 1 of the Group's present agenda. However, sub-paragraph (c) covered other aspects besides transparency: it stated that where trade measures related to the environment were used, they should be compatible with international obligations. Sub-paragraph (d) was a reaffirmation of the recommendation in paragraph 2.20. The recommendation to "deal with the root causes of environment and development problems in a manner which avoids the adoption of environmental measures resulting in unjustified restrictions on trade" recognized that trade measures were not environmental instruments in themselves. There are two reasons for this: their inefficiency in resolving environmental problems, and that they may easily give rise to protectionism. In this context, the use of trade measures was advised only where trade was the basic cause of environmental degradation. In any case, sub-paragraph (c) recalled that use of such measures must comply with international obligations, including trade commitments.

139. His delegation saw no room for ambiguity in interpreting what Heads of Government agreed at UNCED with regard to sub-paragraph (e), concerning what had been called "eco-

dumping". It sought to avoid the use of trade restrictions as a means of offsetting differences in cost arising from differences in environmental standards and regulations among countries. This was also reaffirmed in the "basis of action", in sub-paragraph (g) as well as Principle 11 of the Rio Declaration, all of which stated that in drafting such regulations, account should be taken that environmental rules valid in developed countries may entail unacceptable social and economic costs for developing countries. Consequently, "eco-dumping" was a non-issue for the Group's work, unless it wished to reaffirm the foregoing.

140. On the contrary, sub-paragraph (g) merited careful analysis by the Group. Mechanisms and incentives should be explored to ensure that the application of standards and the use of trade measures in the environmental area took account of the special factors affecting developing countries, in particular their lack of financial and technological resources. Finally, the contents of sub-paragraphs (f) and (i) were complementary and important for the Group's agenda. In particular, the content of sub-paragraph (i) had been widely discussed under agenda item 1. His delegation believed that henceforth analysis should take account of the principles of this sub-paragraph as well as the spirit of the Rio Declaration and Chapter 2 which rejected unilateralism to protect the environment and recognized international consensus as the means to find solutions.

141. He concluded that, in general, the points which related to the Group's competence were, in fact, already covered by the Group's agenda. The only item that might require greater consideration was sub-paragraph (g), to which his delegation would refer at more length later.

142. The representative of New Zealand considered that the three agenda items the Group had been discussing were relevant to UNCED and remained a subset of GATT's UNCED follow-up work. They continued to be no less important because of this meeting, which could be seen as a "first" in two senses: context and scope. The context was the political agreement reached on the international community's approach to facilitating sustainable development, as enshrined, inter alia, in the Rio Declaration and Agenda 21. The international community placed considerable emphasis on the role of the trading system and trade liberalization in all countries in promoting sustainable development through encouraging efficiency and equity in the global economy. Thus the greatest single contribution GATT contracting parties could make to this objective was an early, balanced, comprehensive and successful outcome to the Uruguay Round negotiations.

143. At the same time the importance of making trade and environment mutually supportive was emphasized. This, along with a number of principles and propositions, was enumerated in Section B of Chapter 2; the Group (along with other organizations) was tasked to examine them in accordance with the mandate and competence of the organization as part of the international effort to give them appropriate operational effectiveness. This was where the question of scope arose.

144. It was clear, particularly from the propositions and principles enumerated in paragraph 2.22 of Agenda 21, that the three agenda items on which the Group was continuing work did not encompass the entirety of UNCED follow-up on trade and environment relevant to GATT. His delegation did not believe it would be productive for the Group to attempt to define the parameters of UNCED follow-up work at this stage. Previous informal discussions identified several items meriting initial consideration, which seemed to be a pragmatic and sensible way of proceeding. The Group could make most effective use of the time available before the November Council meeting devoted to UNCED through focused analytical discussion of these sub-items.

145. Given that time prior to November was limited and would also be taken up by discussion of the three agenda items, members of the Group would probably not expect too much from the Chairman's progress report to the November Council. He recalled that in agreeing to Agenda 21,

governments were mapping out an Agenda for the 21st century. By November, the Group could report that it had started considering aspects of UNCED follow-up in addition to those of its continuing work on the three agenda items.

146. He noted that the secretariat's note (TRE/W/14) implied that the international community was considerably interested in GATT's work on UNCED follow-up. Successful conclusion of the Uruguay Round before the end of the year should significantly contribute to subsequent consideration of UNCED follow-up on trade and environment, including through the agreement of new instruments broadening the scope of the rules-based international trading system.

147. The representative of Switzerland considered that the Group would now enter into an analytical phase of its UNCED follow-up work. She noted that, despite considerable efforts and undeniable success at the local and regional levels in the past twenty years, poverty had not been reduced in absolute terms nor had the worsening of the global environment slowed. UNCED constituted a crucial landmark towards achieving a sustainable development process. It raised world consciousness of the existing environmental problems and their link with development issues. This must now be transformed into concrete actions and commitments at the national and international level. The goal of sustainable development had to be considered across all policy areas and every country carried a certain responsibility to contribute in this regard.

148. UNCED had adopted five agreements and treaties which pointed out the correlation of environmental and developmental problems; sustainable management demanded, therefore, a coherent set of economic, social and environmental policies at all national and international decision-making levels. However, States differed with regard to their economic, social and cultural conditions and had different policy priorities; some countries considered that concern for global environmental problems was a luxury they could not afford, particularly since they believed that industrialized countries were largely responsible for those problems. However, all countries had responsibilities, although differentiated ones, as expressed in the Rio Declaration and in the different environmental agreements.

149. Agenda 21 contained a list of activities to be taken into account for the achievement of the objectives enunciated in Chapter 2B, such as (a) to make international trade and environment policies mutually supportive in favour of sustainable development; (b) to clarify the role of GATT and other international fora in dealing with trade and environment-related issues as well as to encourage international productivity and competitiveness; and (c) to encourage a constructive role on the part of industry in dealing with environment and development issues. Her delegation supported GATT being active in concretizing the objectives enunciated, especially in Agenda 21, Chapter 2B, but GATT was not the only organization responsible for the follow-up.

150. Her delegation believed that a number of UNCED recommendations were already covered by the Group's current work, such as by point 2.22(c) transparency and compatibility with international obligations; 2.22(j) clarification of the relationship between GATT provisions and some multilateral measures adopted in the environment area; and also partly 2.22(i) concerning the various aspects of extraterritoriality. However, there were a number of important points, not yet discussed in the Group, that needed to be analyzed; she elaborated four priorities. The main objective, that international trade and environmental policies should be made mutually supportive in favour of sustainable development, meant, in her delegation's view, that contracting parties should not maintain a traditional approach, seeking to preserve the prerogatives of GATT as the institution for the multilateral trading system, but should also examine to what extent a positive response could be offered to promote sustainable development. How to do so should be addressed under the specific points, and close consideration would have to be given to PPMs.

151. First, point 2.22(e) sought to avoid the use of trade restrictions and distortions as a means to offset differences in cost arising from differences in environmental standards and regulations, since their application could lead to trade distortions and increase protectionist tendencies. This point contained two important aspects to be analyzed in more detail. The first was that countries applied different environmental standards and regulations with diverse impacts on trade. The application of relatively high standards affected the production costs of a product; the relatively expensive product, destined for export to a country whose industry produced in a less cost-intensive way because of lower environmental standards, could have a competitive disadvantage. However, different reasons existed for the application of different environmental standards in different countries. It would be worth analyzing how far international harmonization of environmental standards would be desirable and how far they could mitigate trade distortions. She wondered at what level were the economic costs of harmonization for individual countries reasonable compared to the benefits to the environment, and were there means other than harmonization to avoid trade distortions, such as mutual recognition?

152. Secondly, countries which applied higher environmental standards could apply trade restrictions against cheaper products produced in countries with lower environmental standards and regulations. Her delegation shared the concerns of other delegations that such restrictions might serve as protectionism. Environmental standards and regulations concerned, in many cases, PPMs. The identification of their domestic, transboundary and global environmental and trade implications was important as different environmental needs required different national PPM standards or requirements. It would be worth analyzing the relevance of different possibilities for dealing with these needs and their implications on trade.

153. She raised some questions on this: what response was provided by the trading system for dealing with PPMs; were trade-restrictive instruments, such as countervailing duties or anti-dumping duties, the only options or were there more positive answers to reduce negative impacts on trade as a consequence of different environmental standards? In that context, eco-dumping, a widely used expression for which various definitions existed, was a politically sensitive issue. Her delegation considered that it would be useful if the secretariat could elaborate on the economic implications of eco-dumping in the producing country as well as on trade flows.

154. Thirdly, point 2.22(f), closely related to 2.22(e), called for ensuring that national environmentally-related regulations or standards did not result in trade distortions. National environmental as well as health and safety standards could have impacts on trade, be arbitrary and unjustifiable and serve as disguised restrictions on trade; the question was whether or not criteria were needed to qualify these terms. Her delegation considered it worthwhile to analyze the extent to which national regulations had impacts on trade and the significance of such impacts. The Group's work on packaging and labelling fell under this item.

155. Fourthly, point 2.22(g) concerned the special situation of developing countries. Her delegation was interested in studying in what specific cases environmental standards were inappropriate and of unwarranted social cost for developing countries. Lastly, point 2.22(h) called for encouraging the participation of developing countries in multilateral agreements through such mechanisms as special transitional rules. Her delegation had mentioned that different conditions in relation to the economic and cultural situation of developing countries had to be taken into account and justified different treatment. Clearly defined transitional rules for developing countries already existed in a number of multilateral environmental agreements. It would be worth analyzing what impact on trade would result from either developing countries' participation or non-participation in multilateral agreements. Again, the Group could profit from its current work on the issue of non-parties to a multilateral agreement.

156. The representative of Canada noted that her country was a strong supporter of the UNCED agreements; in particular, only six months after the UNCED, it was the first developed country to ratify both the climate change and biodiversity conventions. Earlier this year, Canada had been elected a member of the Commission on Sustainable Development (CSD), and later as a member of its Bureau, and was working in the CSD and throughout the United Nations system for effective implementation of the principles and programmes of UNCED.

157. She added that since UNCED had effectively set the stage for the pursuit of sustainable development by the international community, and for consideration of the related issue of trade and the environment, her delegation joined in emphasizing the importance of reflecting key results of UNCED in the Group's work. She considered that UNCED follow-up in the GATT was already under way, and had begun before the Conference had taken place.

158. The Group's agenda covered many of the trade and environment issues subsequently addressed at UNCED. The significance of UNCED follow-up in the Group's work programme was emphasized at the last annual meeting of the CONTRACTING PARTIES where the Committee on Trade and Development was also invited to consider the elements in UNCED relating to the promotion of sustainable development through trade liberalization. With regard to the latter work, her delegation attached great importance to the development dimension of sustainable development; North/South cooperation would be central to the successful achievement of UNCED objectives, including in the trade and environment field.

159. Her delegation believed that UNCED follow-up needed to be pursued on two levels: (1) ensuring, as an overall theme, that the key principles and approaches agreed were fully reflected in GATT's treatment of the trade and environment issue; and (2) ensuring that the specific trade-related issues identified in Agenda 21 would be covered in the Group's discussions. On the first level, she considered that there were many basic principles and approaches set out in the various UNCED agreements and she highlighted a few fundamental ones that were recurrent throughout and were the essence of UNCED. She would also focus on more specific trade-related principles that were particularly relevant to the Group's work.

160. First she cited the overarching principle of cooperation and partnership, closely linked with consensus-building, as the approach to take at the interface of environment, trade and development. These principles were expressed in Chapter 2: Introduction and Section B. Specifically, the introduction began:

"In order to meet the challenges of environment and development, States have decided to establish a new global partnership ...

It is recognized that, for the success of this new partnership, it is important to overcome confrontation and to foster a climate of genuine cooperation and solidarity. It is equally important to strengthen national and international policies and multinational cooperation to adapt to the new realities."

The introduction then concluded:

"Therefore, it is the intent of governments that consensus-building at the intersection of the environmental and trade and development areas will be on-going in existing international fora as well as in the domestic policy of each country."

161. These basic principles must guide GATT's efforts, not only because they had already been endorsed by Heads of Government, but also because they were relevant for practical reasons. It was recognized at UNCED that the various international fora with a role to play, including the GATT, had to proceed "in accordance with their respective mandates and competences"; it had been agreed in the Group that GATT had no mandate nor expertise to develop environmental policy or standards and must remain neutral in that regard. GATT could only effectively address environmental agreements and measures that reflected international consensus on the underlying environmental issues. In the absence of such consensus, GATT's involvement could put it in the unfeasible and undesirable role of referee in disagreements between contracting parties on environmental matters. Therefore international cooperation and consensus on environmental policies and agreements, the goal of UNCED, must be the basis for the Group's work. One of its most important tasks would be to examine what was meant by international consensus, how to establish its existence and how it related to the international trade rules.

162. Additional key points under the "basis for action" paragraphs in Section B of Chapter 2 reflected additional concepts familiar in the Group's discussions, and should be central to its work. In particular, the importance of an open multilateral trading system as well as a multilateral approach to global environmental issues was affirmed. The principle that the root causes of environmental degradation should be addressed through environmental policy and regulation was also stated. The need to meet the conditions of necessity and effectiveness in any case involving the use of trade measures as well as the prevention of unjustified restrictions on trade, and the need to take account of the different circumstances of developing countries was also recognized. The application of these principles and concepts must be kept at the forefront of the Group's analysis, which would also have to address the fact that the application of these latter points would vary from one situation or issue to another.

163. She added that the Group should also bear in mind the principles and approaches endorsed in other sections of Agenda 21 that were equally relevant to the Group. For example, Chapter 17, on the protection of the oceans, drew on language contained in the Cartagena Declaration, adopted by UNCTAD VIII. This language recurred in other areas, such as the Rio Declaration. It included important guidance and constraints concerning the use of trade measures that would need to be addressed.

164. Other relevant principles were found outside Agenda 21. As an example, she mentioned a few pertinent points from the statement of forest principles which should be reflected in our deliberations:

"Trade in forest products should be based on non-discriminatory and multilaterally agreed rules and procedures consistent with international trade law and practices. In this context, open and free international trade in forest products should be facilitated."

and,

"Unilateral measures, incompatible with international obligations or agreements, to restrict and/or ban international trade in timber or other forest products should be removed or avoided, in order to attain long-term sustainable forest management."

165. On the second level of UNCED follow-up, ensuring that the Group covered the specific trade-related issues set out in Agenda 21, her delegation had indicated informally that the current mandate and agenda of the Group was sufficiently flexible to capture the specific issues reflected in paragraph 2.22. UNCED follow-up was also well under way in the work of the Group and the constructive deliberations over the past year under the three agenda items should be highlighted at the Council review in November.

166. Of course, the CONTRACTING PARTIES committed the Group to explore all issues fully. Therefore, her delegation would be prepared to add new items, not explicitly covered by the current agenda, to the Group's work programme as appropriate, for example 2.22(e) and (i). However, for now, the most important use of time would be a more complete discussion of the current agenda; the Group should not engage itself in substantial consideration of new issues until the agenda had been dealt with more thoroughly.

167. Finally, her delegation supported the statement made by the Chairman of the Council in which he highlighted the importance of the Working Group on Domestically Prohibited Goods as an element of UNCED follow-up. She urged that work to begin. She concluded that the report to the November Council meeting should reflect the serious and substantive way GATT had taken up UNCED trade-related questions, and a cooperative and constructive spirit should continue to guide discussions.

168. The representative of Sweden, on behalf of the Nordic countries, underscored that the exercise within GATT on this issue must reflect the overriding objective of promoting an open, equitable, non-discriminatory and predictable multilateral trading system, consistent with the goal of sustainable development.

169. This exercise was to be twofold: first, to take stock of work so far in light of what UNCED required, and to make sure that no aspects were being neglected (bearing in mind that the Committee on Trade and Development and the Council were addressing different aspects of the UNCED follow-up); and second, to consider how GATT's response should be formulated, which topics should be focused on, and which future actions should be recommended.

170. He found several chapters in Agenda 21 to have implications for the multilateral trading system; the Group, however, was to concentrate on sub-paragraph 2.21(b) and a number of sub-paragraphs in paragraph 2.22. The former contained two objectives: it underlined the importance of clarifying the role of GATT, UNCTAD and other international organizations in dealing with trade and environment related issues; and it sought to clarify, where relevant, conciliation and dispute settlement procedures.

171. The issue of trade and environment had, for some time, been addressed by different organizations and, consequently, from different angles; the respective roles of each organization must now be examined more closely. GATT had an important role to play in the multilateral process of making trade and environment policies mutually supportive and contracting parties should make sure that GATT's comparative advantages were fully used in the multi-faceted and cross-institutional approach of this process. This did not mean that the GATT should not draw upon work done by other relevant organizations; on the contrary, it should make the maximum use of existing material from them.

172. His delegation believed dispute settlement to be covered by the Group's first existing agenda item, and was an area where further analysis should be undertaken. Further, most of the sub-paragraphs in Chapter 2.22 were covered by the existing agenda items and were actively being considered by the Group. Of particular interest was paragraph (i) which stated that "unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided", and that "measures addressing transborder or global environmental problems should, as far as possible, be based on international consensus". This principle should serve as a point of departure for all the Group's work as it expressed the meaning of multilateralism in the field of trade and environment.

173. Sub-paragraph 2.22(e) had not yet been discussed in the Group and was not covered by the present agenda. It stated that governments should "seek to avoid use of trade restrictions or distortions as a means to offset differences in cost arising from differences in environmental standards and regulations, since their application could lead to trade distortions and increase protectionist tendencies". Many countries were becoming concerned about possible distortions to trade that arose when products manufactured without environmental controls competed with products subject to environmental controls and full-cost pricing. This issue had to be addressed in the Group, with the wider question of PPMs, as well as the justification for border tax adjustments.

174. The implications of sub-paragraph (1) were not clear and needed to be further analyzed in order to determine which actions, if any, GATT should take in this respect. He urged that the Group devote its first fall meeting, not only to the existing three agenda items, but also to the additional UNCED issues which had been identified as not already covered. There was a need to show that GATT had, at least, started to consider the items referred to it.

175. In this context, the Group needed to address how it would report to the Council and to governments in general, as this was of utmost importance. His delegation found the Chairman's report to the Council last year of great value, and suggested that the Chairman produce another progress report reflecting the discussions and ideas raised in the Group, to be presented to the November Council meeting. It should be comprehensive and sufficiently detailed to properly reflect the different aspects of deliberations in the Group. It would also be helpful if some preliminary findings and conclusions of the work so far could be presented. Regarding transparency, for instance, which was relevant to sub-paragraph 2.22(c) of Agenda 21, deliberations clearly identified a number of common observations and preliminary conclusions, such as the value of ex ante notification.

176. This report should give a clear message to all governments that the GATT was actively working with the principles and propositions, described in Agenda 21, which were relevant to this organization. The report, or parts of it, should be made public so as to inform all interested parties that serious discussion was taking place and that progress had been made on these issues in the GATT.

177. The representative of the Republic of Korea considered that the Group had achieved considerable progress, specifically in identifying issues in relation to trade and environment. However, it was still exploring some fundamental issues, such as the question of non-parties, extraterritoriality, PPMs, like-products, etc., for which solutions would have to be found in the future. He considered that the Council report should describe both positive accomplishments and problems faced.

178. He stressed the importance of harmonization of environmental standards and internalization of environmental costs. He noted that Agenda 21, sub-paragraphs 2.22(g) and (i) clearly mentioned special factors affecting environment and trade policies in developing countries to avoid any inappropriate and unwarranted social cost for them.

179. The representative of Austria considered this discussion to be an opportunity to discuss the work that had been done so far within GATT, to take stock of how the Group had handled its task and to line up its future work. An intermediary objective was to present a report to the November Council devoted to UNCED. The Group should also be conscious of the fact that the first substantive session of the Commission on Sustainable Development had put the topic "Critical elements of sustainability, in particular Chapters 2 and 4 of Agenda 21" at the top of its agenda for its next session, to take place in the spring of 1994. The Commission on Sustainable Development would look for a substantial contribution by GATT covering trade-related aspects of

Agenda 21 in general, and Chapters 2 and 4 in particular. Thus, the Group should strive to deliver more than a simple progress report to the Council meeting.

180. Although the Council and the Committee on Trade and Development had been assigned other elements of UNCED follow-up, the Group could continue to reflect on the most effective way to deal with this work, and consider making necessary changes in the future if it would conclude that splitting up the work was not the most efficient way of working.

181. He outlined certain general principles regarding the way GATT should deal with the UNCED follow-up. The Group had already undertaken substantial work, and analytical reflections had taken it towards future conclusions. The Group had not yet reached the stage of concrete negotiations or even proposals for negotiations, and still needed to continue its work.

182. The structure and the general outline of the Group's agenda had been elaborated and agreed in November 1991, which essentially shaped the contents of the UNCED documents. Now the Group had to ask itself whether that programme of work still adequately reflected the requirements of the job to be done. In informal discussions, arguments had been advanced that this was the case. His delegation found that at least two issues in the UNCED text were not covered by the Group's agenda.

183. One was the issue of dispute settlement and conciliation. If the GATT panel procedure would play a role in future clarifications on the inter-relationship between trade and environment, certain changes would likely have to be introduced, such as the input of environmental expertise on the same footing with trade expertise to ensure a more even-handed outcome of panel proceedings. Traditional GATT law could not be the only yardstick against which the behaviour of parties was to be measured. It would be worth discussing how these issues could fit into the present agenda.

184. The Group's work had to be guided most by the basis for action which stated, inter alia, that "environment and trade policies should be mutually supportive" and that "a sound environment provides the ecological and other resources needed to sustain growth and underpin a continuing growth of trade". This emphasis on interdependence was also reinforced by the Rio Declaration, which contained several principles of particular importance to the Group's work - principles 2, 3, 8, 11, 12, 14, 15 and 16. Read with Chapter 2, especially the objectives in paragraph 2.21, the message that the issues related to trade and environment had to be examined in a holistic way was reinforced. The role of GATT in dealing with trade and environmentally-related issues had to be clarified, but a one-sided approach should be avoided. Sub-paragraphs 2.21(a) and (c) were also relevant and reinforced that the Group should not undertake analysis and work on UNCED follow-up by only concentrating on existing GATT rules and disciplines; the context in which Chapter 2 was found must be taken into account.

185. The Group should tackle sub-paragraphs 2.22(c)-(g), (i), (j) and (l). The questions addressed in sub-paragraphs (c) and (j) had started to be discussed in relation to agenda item 1 and those raised in connection with sub-paragraphs (e), (f), (g) and (l) had been discussed under agenda items 2 and 3. But the issues went further; for example, the terms and concepts "unjustified" and "arbitrary" or "necessity" should be dealt with.

186. He believed that the key to the Group's approach would have to be sub-paragraph (i) which contained several messages which, at first glance, appeared to be at odds with the rest of the sub-paragraph or indeed with other provisions. He referred specifically to the third phrase of that sub-paragraph which said, inter alia, "Domestic measures targeted to achieve certain

environmental objectives may need trade measures to render them effective", and "should trade policy measures be found necessary for the enforcement of environmental policies certain principles and rules should apply". This was a clear message that issues related to the UNCED follow-up should not be examined in isolation of the concept of "sustainable development". Other elements in Agenda 21 which should also be taken into consideration could be, for example, Chapter 4 (Consumption patterns), paragraphs 4.17, 4.18, 4.22; Chapter 9 (Protection of the atmosphere), paragraphs 9, 12, (f), (g), (j)-(l); Chapter 15 (Protection of biological diversity), paragraph 15.5; and Chapter 17 (Protection and use of oceans), paragraphs 17, 46, (b), (c). Other elements could be added.

187. One of the main questions to be dealt with by GATT, as it tried to clarify its relationship with the principles and concepts emanating from UNCED, would be whether GATT rules, as they are interpreted at present, still fully sufficed to meet this challenge. This question must eventually be answered by contracting parties and the Group's task would contribute to the answer. The Group must ask which philosophy should be the basis of such decisions. Should decisions be taken demanding that the actions of the international community to implement UNCED results be in conformity with the requirements of the GATT as it is interpreted at present, or should the Group be guided by the desire to contribute to the achievement of the UNCED objective, i.e. sustainable development?

188. His delegation thought the Group should be guided by the latter consideration. Therefore GATT should be further analyzed to determine whether there was scope for change. The greening of the GATT should not be a mere catchword; it should be the basis for the Group's further work.

189. The representative of Thailand, speaking on behalf of the ASEAN contracting parties, stated that the introductory paragraph of Chapter 2 of Agenda 21 stated that sustainable development should become the priority in the examination of environment and development issues. This meant that environmental concerns should not be considered in isolation, but should allow for continued economic growth of all countries, particularly developing countries, in a manner which provided for their present as well as future development needs. This was clearly stated in paragraph 2.2, i.e. "the policies and measures needed to create an international environment that is strongly supportive of national development efforts are thus vital".

190. Another fundamental principle highlighted in the UNCED recommendations was the need to preserve an open, multilateral trading system. Paragraph 2.19 of Part B recognized that "an open, multilateral trading system would make possible a more efficient allocation and use of resources and thereby contribute to an increase in production and incomes and to lessening demands on the environment". For ASEAN, this concept is crucial; as a Group of developing countries whose income was depending more and more on international trade, it was important for the interdependent trading community that environmental measures should not result in barriers to international trade. An open multilateral trading system was a necessary condition for developing countries to participate in efforts towards sustainable development. In this connection, certain elements of sub-paragraph 2.22(i), particularly principles and rules governing the use of trade measures deemed necessary for the enforcement of environmental policies, should be taken fully into account.

191. Another basic principle, spelled out in paragraph 2.22(g) was the special situation of developing countries. One priority for the Group would be to find effective ways and means to implement these recommendations within the context of its examination of environment and trade issues. The avoidance of unilateral action to deal with environmental challenges outside the jurisdiction of countries was another key principle to be adhered to. Her delegation underlined

that environmental measures addressing transborder or global environmental concerns should be based on international consensus.

192. On organizational aspects she considered that the Group's mandate from the GATT Council was precise. The Group should therefore carry out its assignments within this framework in a focused manner, with the aim, at this stage, of preparing for the Group's contribution to the November Council review.

193. She added that UNCED recommendations, adopted by consensus, laid down principles and guidelines of action for environmental protection as well as promotion of trade and sustainable development. These principles and guidelines needed to be adhered to and effectively implemented by governments. GATT's role was mainly to review and ensure effective implementation of the UNCED recommendations by contracting parties.

194. This could be done through means such as notification, monitoring, settlement of disputes, and establishing appropriate ways and means of co-operation with other organizations concerned. GATT's work should not lead to setting of environmental standards, an area which fell outside GATT competence.

195. The representative of Japan stated that the UNCED results, in particular Agenda 21, constituted an important basis to ensure that policies in the field of trade and environment are compatible and mutually enforcing. The Group had been working on "trade and environment" for over a year-and-a-half and had been successful in deepening understanding of the complexity of the issue. In addition to the three existing agenda items, the Group had now been assigned a new mandate on the UNCED follow-up.

196. During informal consultations there appeared to be general agreement that much of what it had been asked to examine was already being covered by the three existing agenda items. Taking the example of items such as paragraph 2.22(i) on unilateral action, the Group had already initiated analytical work and, after fairly substantive efforts, had been able to define which specific issues had to be addressed in the future.

197. The work that the Group had already carried out was its first contribution to the UNCED follow-up. Through the in-depth and wide-ranging, constructive and pragmatic deliberations, the Group had made progress in identifying and focusing on issues in this complex interface of environmental and trade policies. The process had not only helped to broaden knowledge on individual issues but also to enrich the dialogue between the trade and environment communities.

198. The issues assigned to the Group covered a wide range of subjects and some of the propositions and principles presented raised substantive questions from those that had already been discussed in the Group. The first task was not to engage in time-consuming, word-by-word examination of each document, but rather to promote constructive discussions with a view to achieving a greater understanding and consensus for the future course of action of the GATT.

199. His delegation thus welcomed a substantive (political) dialogue in the Group whose primary responsibility was to submit a collective and competent assessment of the issues to the CONTRACTING PARTIES through the November Council session on UNCED. His Government needed to further develop thoughts on each issue by taking into account the views expressed by other contracting parties, and he would elaborate and develop thoughts at future meetings.

200. The Introduction of Chapter 2 and the first two paragraphs of Section B provided the fundamental message from the UNCED on the interface of trade and environment. The core was the importance of sharing and materializing the basic concept of "sustainable development". It would not be useful to enter into detailed discussions on defining this concept. The first step would be to understand the important messages of relevance to the Group contained within it.

201. One message was that an open multilateral trading system would have a positive impact on the environment and would contribute to sustainable development. During deliberations on the three existing agenda items it was recognized that a wide range of measures could be taken for the protection of the environment in conformity with the provisions of the GATT.

202. His delegation believed that the objectives of the multilateral trading system, embodied in the GATT, and of environmental policies could be mutually supportive. The misperception that the trading regime, based on the GATT, undermined the efforts to preserve the global environment needed to be dispelled. He emphasized that broadly-based trade liberalization efforts, like the Uruguay Round negotiations, as well as the maintenance of an open, non-discriminatory trading system, could make significant contributions to sustainable development.

203. Another important message was the importance of international co-operation. As stressed in paragraph 2.1 of Chapter 2, it was important to avoid confrontation and to foster genuine co-operation, as well as to strengthen multilateral cooperation to adapt to the new realities.

204. During the course of past discussions, his delegation was pleased that many delegations shared a view of the importance of international co-operation for dealing with global environmental problems, and that trade-related environmental measures to address global concerns were best pursued by cooperative, multilateral efforts. A greater integration of trade and environmental policies at national levels, and parallel efforts to promote international cooperation based on multilateral rules, were also called for.

205. The Group had been actively engaged in the three existing agenda items to clarify the role of trade policies in general and the GATT in particular. The issue of conciliation procedures and dispute settlement had been raised, but never discussed in-depth. The dispute settlement system was important to settle differences of views on rights and obligations among parties amicably and effectively. An effective and impartial dispute settlement system was a cornerstone to providing security and predictability and thus preserving the credibility of the multilateral trading system. The GATT system was designed to preserve the rights and obligations of contracting parties and to clarify the existing provisions of the GATT. It was essential to ensure impartial and effective panel proceedings, but his delegation was aware of the environmental community's concern regarding panel proceedings.

206. The existing dispute settlement system provided interested contracting parties with the opportunity to present their views to the panel. Not only those parties directly involved in a dispute were given the opportunity, but also any third contracting party which had a substantial interest had an opportunity to present its views. In this respect, his delegation believed that the views expressed by interested contracting parties within the GATT dispute settlement system could represent a wide range of interests and views for the benefit of all. He added that the dispute settlement system within the multilateral trading regime needed to be strengthened by ensuring prompt, effective and impartial resolution of disputes. He hoped, therefore, that new dispute settlement procedures in the Uruguay Round would be agreed upon and implemented as soon as possible.

207. Under agenda item 2, substantive work had been conducted which had enabled identification of issues and progress in examining the adequacy of the coverage of the

transparency mechanism, both in the GATT and in the prospective Uruguay Round negotiated package. Transparency was a means to provide security and stability to the multilateral trading system and, by helping private sector operators to adjust to changing trade-related requirements, contributed to the expansion of trade while minimizing friction.

208. Sub-paragraphs 2.22(d), (f) and (j) were closely related to all the agenda items, especially items 1 and 3. He hoped the analytical work in progress under these agenda items would be able to provide some concrete input to the UNCED follow-up process. Sub-paragraph 2.22(e) set out an important message but also posed a broad range of complex issues. His delegation believed that environmental regulations did not necessarily affect adversely the international competitiveness of domestic industry, and the correlation between industrial competitiveness and domestic environmental regulations or standards needed to be thoroughly examined from all angles. A common understanding on this needed to be built, bearing in mind that concerted multilateral efforts would best deal with global environmental problems.

209. Paragraph 2.22(i) contained the fundamental principles and propositions in this area:

- "unilateral actions to deal with environmental problems outside the jurisdiction shall be avoided"; and
- "should trade policy measures be found necessary, certain principles, such as "non-discrimination" or "least trade-restrictive", must be applied".

210. The Group shared the view, his delegation believed, that the core questions it was confronting in the field of trade and environment were the relevance of trade measures in dealing with environmental problems outside the jurisdiction of an importing country, and how best trade measures could be disciplined and administered. The key answer to the second question was "international consensus".

211. During deliberations under agenda item 1, examination of the relationship between the trade provisions of multilateral environmental agreements and the GATT provisions had led to examination of the key characteristics of an international agreement. The basic question that arose from the discussion was, under what conditions was "international consensus" considered to exist? A thorough examination of agenda item 1 should assist in this regard.

212. The Group needed to start thinking of a work programme before the November Council session in order to make the necessary contribution by reporting on any prior progress made, and to provide the Council with a useful basis for considering its future work. It was essential to dispel any misperceptions that the GATT contradicted or put in jeopardy collective efforts to address environmental problems. The seriousness shown during the past meetings testified that environmental concerns were shared by all and that there was a sincere desire to search for constructive solutions. To show the Group's seriousness to the outside, it would be useful to present collectively a certain convergence of views on some key questions.

213. However, given the complexity of the issues involved and the significant implications the Group's work would have on the multilateral trading system in the future, the Group had to be careful not to be too hasty. The progress which the Group would be able to make under the three existing agenda items, as well as that under the UNCED follow-up, would provide the Commission on Sustainable Development with some useful material which it needed to take fully into account.

214. The representative of the European Communities observed that the international community should note that it had already taken up a large part of the work expected of it, which was progressing in a constructive manner. The Group had proved to be an outstanding forum for exchanges of information and views and for analytical work. With respect to work being done in other fora, he noted the OECD June 1993 Joint Report on Trade and Environment from the Trade and Environment Policy Committees.

215. When discussing UNCED follow-up, the Group should be aware that two meetings were expected to take place in the relatively near future where input from the Group would be expected. First was the November GATT Council on UNCED follow-up, and second, as indicated in paragraphs 7 and 8 of TRE/W/14, was the Commission on Sustainable Development's 1994 Session. It was perhaps too early to reflect on how GATT could provide input to that latter meeting, but the Group should keep it in mind when setting its agenda.

216. The November Council meeting would review and, as necessary, supplement the work on UNCED follow-up in GATT. The Group was expected to report to the Council on the progress it was making in its discussion on the parts it had been requested to handle. This meant that the Group should report to the Council on the state of the discussions on all items, although on some the work may not have reached a stage where conclusions could be drawn. However, the Group should recognize that the most urgent discussions had taken place in the context of points 2.22(i) and specifically (j) of Agenda 21 under agenda item 1. This issue had gone far beyond the educational phase and could be near a phase in which operational conclusions could be drawn. Here there was a need to examine how the Group should make its output more operational and conclusive.

217. Acknowledging that the Group had already covered a number of issues raised in Part B of Chapter 2, he identified some issues that had so far not been directly focused, but which perhaps should be in the future. He added that the Group should aim to deal with all aspects of its UNCED assignment in a comprehensive manner. Also, he clarified that his delegation was open to exploring other suggestions with regard to focus.

218. He considered that one of the principal objectives should be to clarify the role of GATT in dealing with trade and environment-related issues. This clarification should be comprehensive, although paragraph 2.21(b) specifically mentioned conciliation procedures and dispute settlement as important sub-issues. The Group had already touched upon some aspects in the context of agenda item 1, but these only related to certain aspects of conciliation methods and dispute settlement. It could be useful to focus on these issues more comprehensively; in doing so, the Group could examine work already done on this issue in OECD.

219. Other issues that the Group might devote more time to were touched upon in subparagraphs 2.21(e), (f) and (g), which may relate to regulations and standards on production and processing methods. Discussions on this issue should take all UNCED orientations into account, including those in (e), (f) and (g), which aim to seek avoidance of the use of trade restrictions to offset cost differences arising from differences in environmental standards and to ensure that developing countries' interests are borne in mind in the application of such standards, noting that standards in more advanced countries may be inappropriate for less advanced ones. These notions would and should, therefore, receive continuous and proper attention in all discussions on production and processing methods.

220. There were some issues that could usefully be discussed in the specific context of subparagraph 2.22(e), again without losing sight of the relevance of other UNCED conclusions. These were environmental taxes and, more specifically, border tax adjustments that may be contemplated in relation to such taxes. Not only would the GATT as a whole benefit from a

careful analysis of the existing rules and disciplines in this area, but the Group could do useful work in providing input into the international discussion of an issue that may become important in the future.

221. The Group had done much work on sub-paragraph 2.21(j) and might, therefore, consider entering into a new phase of its discussion while keeping it at the forefront of discussions. It is closely related to sub-paragraph 2.21(i), which contains notions that should continuously guide the Group in its discussions.

222. The representative of the United States noted that the parts of UNCED that the Group had been tasked to follow constituted one part of a larger whole; therefore, before getting into detail, it would be useful to reflect on the broader context it established, which must be taken fully into account in the Group's work.

223. A central message was that policy integration of environment, development and trade was overdue. Countering previous thought that economic development and, by implication, trade was inherently antithetical to the environment, UNCED responded that, with the appropriate mix of rules and policies in the three areas, sustainable economic development was an important part of the solution to environmental degradation.

224. From the perspective of the GATT, the central objective of UNCED follow-up was to ensure that the rules of the trading system supported sustainable development. This had two sides to it. One was continuing to build and maintain an open multilateral trading system that promoted sustainable development. In this connection, UNCED recognized the important contribution that successful completion of the Uruguay Round could make to sustainable development. His delegation also attached great importance to this and shared the commitment to ensure that protectionist forces could not pursue their agenda by calling their proposals environmental measures.

225. The second side of GATT's task was to ensure that the rules of the trading system did not interfere with contracting parties' ability to effectively deal with environmental challenges. In this regard, commitment to minimize green-cloaked protectionism must not obscure recognition of legitimate environmental concerns with the trading system.

226. UNCED follow-up posed a special challenge for the Group which, composed of national representatives to the GATT, formed a natural constituency for trade which had been recognized as inextricably linked to development, both for developing and developed countries. UNCED called on GATT to pay special attention to the environmental dimension of its work, which was highly complex and, for many, outside the area of expertise. Nevertheless, it was an essential task, because environmental and trade issues frequently intersected.

227. Trade rules could have a direct bearing on the options available to environmental policy-makers. Also, policies to achieve important environmental protection objectives could and did have direct effects on trade. Therefore, it was incumbent to develop an adequate understanding of the trade and environment interface so as to enhance the mutual compatibility of both policies and to avoid unintended consequences.

228. At the first meeting of the U.N. Commission on Sustainable Development, ministers expressed an interest in these issues, in the context of their broad mandate for promoting sustainable development. Nevertheless, discussions in the Group had already brought it to a level of understanding that provided a firm basis for its continued major role in these issues.

229. The Group's work on its agenda already anticipated and responded to a number of points in Chapter 2. Agenda item 1 covered the important substance of paragraph 2.22(j) and agenda item 2 covered the transparency aspect of paragraph 2.22(c). Other elements had been touched on, but in a less comprehensive way, and others had not been touched on at all. Not wishing to repeat the enumeration of elements that needed further work, his delegation considered it important to take on broad areas that the Group had not addressed to date to ensure comprehensive follow-up.

230. He doubted that it would be productive to get into a legalistic debate, attempting to define all the issues to cover. Rather, for now, the best approach would be to identify a non-exhaustive list of issues requiring examination, and to begin to add these to the Group's work.

231. The representative of Hong Kong considered that this discussion needed to accomplish two objectives: to clarify what sort of message the Group should send to the public through the November Council devoted to UNCED; and to shape the future work of the Group. On the latter, he agreed with India, Mexico, Canada, and Japan that the tone for future discussions should be non-confrontational, work towards a consensus, and pursue a balanced approach with caution.

232. Bearing in mind these two objectives, the Group should reconcile several fundamental points. The first was that Agenda 21, and even paragraph 2.22, was not elaborated exclusively for the GATT. The second point was that the message to the outside should include the fact that the Group had already done a great deal to answer various points in paragraph 2.22. He added that this message should be positive and reflect that the Group had been working and making progress. It should also note that time taken was necessary because the GATT worked by consensus which implied time to build confidence, to know the issues and to exchange views.

233. Regarding the coverage of this follow-up work, his delegation was concerned that the Group not lose sight of the need to get its priorities right. For example, he asked whether it was really the right time to address PPMs, harmonization of standards, and eco-dumping. Until there was broad-based participation in the debate on the more fundamental points, like 2.22(i), (f), (g), (d), and (c), and minimum guarantees for developing countries, it would not be constructive to take on such new subjects. His delegation was not closed to addressing new items, but he hoped the non-confrontational atmosphere would prevail.

234. He considered that 2.22(e) was the most controversial point, but at the same time, required the least work or discussion. It could not be understood differently from the way it was presented; operationalizing it would only require changing the term "should" to "shall". Section 2.22 of Chapter 2 was not exactly a mandate but served as guidance; the Group was not obliged to follow mechanically the full list of items. For example, item 2.22(l) may be beyond the competence of the GATT as it required addressing environmental policy. He concluded that the next discussion of UNCED follow-up in the Group could be in an informal setting.

235. The representative of Colombia noted that his delegation had participated actively in the UNCED. He agreed with India and Mexico, particularly concerning the importance of subparagraphs 2.22(e), (g), and (i). His delegation shared the view of Brazil regarding the integrity of the commitments made in UNCED. Consideration of these results should be on the basis of real clarification and the need to have interdependency of all the aspects touched on in Agenda 21. He stressed the importance of the spirit of UNCED and considered that sustainable development was its ultimate objective, which would only be possible with international consensus.

236. Regarding the interrelationship between trade and development, international cooperation was necessary in environment as well as in trade. The multilateral trading system had a very important role to play in the promotion of sustainable development by providing a fair and non-

discriminatory system. GATT's competence was limited to trade policies, specifically those aspects that had to do with environmental prospects that would result from trade policies. Contracting parties were not equipped to examine environmental policies or priorities as such; this was understood by the UNCED and reflected in the preambular paragraphs of Chapter 2 of Agenda 21. Also, the Rio Declaration and Agenda 21 made an appeal to the GATT contracting parties to successfully conclude the Uruguay Round.

237. His delegation considered that the contribution to the November Council meeting, which would probably go to the next meeting of the Commission on Sustainable Development in the spring, should reiterate the principles and rules of GATT and include a market access package which would result from the Uruguay Round.

238. The representative of India noted his delegation's reservations about the approach suggested to expand the Group's agenda, not only with reference to its original agenda, but with reference to UNCED follow-up. The Group had been mandated to look at certain identified aspects. The backdrop had to be considered, and that was the whole of the UNCED result.

239. The representative of Switzerland considered that the Group should bear in mind its mandate in this area, and be ready to initiate an in-depth, analytical discussion of a number of issues contained in Agenda 21. Some of these issues had already been examined under the Group's agenda; others, however, were raised by delegations in this discussion.

240. The Group's task would be a complex and long one because it entailed rendering Agenda 21 operational. It was essential to keep this in mind, particularly for the November Council where the Group would have to deliver a message to the outside world indicating that it was dealing with trade and development as an essential instrument and that the contracting parties intended to follow-up on Agenda 21 as well as on the Group's original agenda. This was important, particularly from the standpoint of the Uruguay Round. Also, the November meeting would make it possible to take stock of the Group's work on its two facets: UNCED follow-up and the three agenda items. Positions should not be crystallized, as this would limit the range of the Group's work which should be as broad as possible.

241. The Chairman took note of the statements made. He suggested that the secretariat consult informally with the aim of finding agreement regarding preparation of factual documents on Articles XXV and XX(h), and on the two concepts of "least trade-restrictive" and "proportionality".

242. He summarized his first impressions of the discussion on the UNCED follow-up (see Appendix). The next meeting of the Group would be on 5 and 6 October 1993, and would take up agenda items 1, 2, 3 and UNCED follow-up, in that order. He invited delegations to reflect upon holding a further meeting during the week of 15 November, just prior to the November Council session on UNCED

APPENDIX

Chairman's Concluding Statement on UNCED follow-up work

1. Let me share with you my first impressions of the discussions we held on the UNCED follow-up. Yesterday's discussion, representing the Group's first formal exchange of views on UNCED follow-up, provided a valuable overview of the range of issues before us. I found there was a general thrust to many of the interventions made by delegations on several themes that, I believe, could form a backdrop for the work related to our follow-up task, which the Group will carry forward in its future work.
2. Many delegations, as you would recall, have referred to the importance of international cooperation. This concept is not at all foreign to the GATT, nor to our work in the Group, and I would consider it an essential element to guide our future work. This theme, I believe, goes hand-in-hand with consensus-building, which the Group has been successful in fostering and which is one of the aims towards which we will work in the analytical phase of UNCED follow-up.
3. A third theme, to which many delegations have referred, is the concept of sustainable development which, I believe, should permeate our UNCED follow-up activities. One of the challenges we face in GATT is to pursue the linkage between development, trade and environment in our work. Yesterday's discussion showed, I think, a clear and overwhelming endorsement of UNCED's recommendation that the single, most significant contribution GATT could make towards sustainable development would be a successful conclusion to the Uruguay Round which would ensure greater market access for all contracting parties, particularly developing countries, thereby promoting development and concomitant protection for the environment.
4. I felt it was clear from the discussion yesterday that our task is a formidable one, but one that we are all committed to pursuing. In that regard, I believe that the Group should carry forward its UNCED follow-up work as a single item on its normal agenda of work, keeping in mind the request by CONTRACTING PARTIES that "the Group ... be closely involved, within the scope of its terms of reference, in work in GATT on the UNCED follow-up with respect to making trade and environment policies mutually supportive", specifically the Introduction and Section B of Chapter 2 of Agenda 21.
5. What to me appeared also clear from yesterday's discussion was that, in a sense, the Group's original agenda and its work under it had anticipated many points of international concern in relation to the trade and environment interface which are included in the UNCED results. These points cover a significant portion, as delegations have observed, of the detailed recommendations from UNCED, for example paragraphs 2.22(c) relating to transparency, (f) relating to environmental regulations or standards such as packaging and labelling requirements, and (j) relating to the relationship between GATT provisions and multilateral environmental agreements. There are also other areas where many delegations have pointed out the overlap that exists between the UNCED recommendations and the work already underway in the Group. I believe that we can consider our past deliberations and work as efforts already made by GATT as a contribution to UNCED follow-up activities.

6. Clearly, we still have work to do on our original mandate and, in this regard, I would not like to get distracted from our existing agenda. So I would suggest that we look upon our original agenda as the basis for our contribution to UNCED follow-up. In this regard, yesterday's discussion pointed to some of the elements warranting further attention. These could be points 2.21(b) relating to dispute settlement, 2.22(e) relating to the avoidance of using trade restrictions to offset differences in cost arising from differences in environmental standards, 2.22(g) relating to the special factors affecting environment and trade policies in developing countries, and 2.22(i) which lays out general parameters within which trade measures should or should not be used for environmental objectives.