

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Group on Environmental Measures and International Trade

REPORT OF THE MEETING HELD ON 5-6 OCTOBER 1993

Note by the Secretariat

1. The Group on Environmental Measures and International Trade held its twelfth meeting on 5-6 October 1993 under the chairmanship of Ambassador H. Ukawa (Japan). The agenda for the meeting was contained in GATT/AIR/3475.
2. The Chairman informed the Group that the delegation of Chinese Taipei had asked to participate in the Group as an observer, and he welcomed them to the meeting.
3. The Chairman invited delegations, in the course of their interventions, to assist him in drawing up a possible progress report on the work of the Group by highlighting what they considered to be the main areas of importance in the Group's work so far. He introduced three new background documents, each relating to Agenda Item 1, that had been prepared by the secretariat since the last meeting: TRE/W/16 and Corr.1, TRE/W/17 and TRE/W/18.

Agenda Item 1

4. The representative of Austria introduced a new document that had been prepared by his delegation (TRE/W/19). Its aim was to contribute to focusing the discussion and also to review where the Group had reached in its discussions under this agenda item. It was not an attempt to set out Austria's national position in the discussions. His delegation had tried to incorporate UNCED principles wherever possible directly into the document.
5. By introducing the document now, his delegation had wanted to underline the importance it attached to the trade and environment issue. The document reflected Austria's opinion that the successful completion of the Uruguay Round would be a first, but important, contribution by GATT to the cause of the environment. It revealed also that a lot of work remained to be done but that solutions were possible, and his delegation was looking forward to an intensification of work on trade and environment in the post-Uruguay period.
6. He emphasized the importance his delegation attached to the preparation of the Chairman's progress report which should send a strong signal, not least to the public at large, that GATT had, even before the end of the Uruguay Round, undertaken substantial work on the interface of trade and environment and would continue to do so.
7. In TRE/W/19, his delegation concluded that the Group had clarified that there were basically no constraints in using trade measures for the protection of a country's own, domestic environment. Economic analysis seemed to indicate that when dealing with a purely domestic problem there was no room for discrimination against imports. An interesting distinction was made in academic literature between serious and non-serious damage to the environment, and TRE/W/19 listed certain criteria in that regard.

8. It seemed clear that unilateral measures should not be used as a means to harmonize standards, change standards in another country, or export domestic standards to another country, without any contractual basis. That then raised the issue of the level of participation in MEAs. As several delegations had pointed out, there may be good and legitimate reasons for a State not to join in an MEA. This was also implied in Principle 7 of the Rio Declaration which talked of "common, but differentiated responsibility". That Principle allowed for differentiation not only according to the state of development of a country but also to the nature of the environmental problem at hand. Distinctions between domestic, regional and global environmental problems were also important.

9. It was important for countries to cooperate in the solutions to transboundary environmental problems, and the Rio Principles 2, 7 and 12 all pointed in that direction. An interesting question in that context was could unjustifiable non-cooperation in attempting to solve an environmental problem legitimize unilateral action if a serious problem had to be solved?

10. Since trade measures should be based on an MEA, it was necessary to know what constituted an MEA to begin with. His delegation felt that the EC had already prepared the ground in that regard in TRE/W/5, where they used the term "genuine multilateral international environmental agreement". That could become a useful concept if it were possible to agree on appropriate criteria, and his delegation elaborated on this in TRE/W/19.

11. He drew the attention of the Group to paragraph 14 of TRE/W/19, which reflected the important principle that as a general rule trade measures should accompany environmental policy measures only if the latter did not suffice to realize a specific environmental goal. Also, in paragraph 16 his delegation pointed to what it considered was a useful guideline that had been proposed by Sweden, namely that GATT law should not be an obstacle but should provide for safeguards against the misuse of trade measures which were taken supposedly for environmental purposes only.

12. Paragraphs 18-26 of TRE/W/19 addressed framework, geographic scope, and level of participation of MEAs. His delegation did not see any particular problems in this regard, but it did consider the issues of transparency and specificity to be important. Transparency could be used to control discretionary leeway when implementing measures. There, his delegation saw a parallel in the context of, for example, labelling schemes; how could it be ensured that the mixing of products did not take place once a label had been attached and, therefore, that the consumer was not misled? The issue of specificity was whether the term "trade measure" was too unspecific to be used in MEAs; should a specific indication be given in an MEA of the kind of measure envisaged, such as import or export ban, tariff quota, or labelling scheme?

13. Section 4 of TRE/W/19 dealt with trade measures contained in MEAs and explored their relationship with the GATT in the event that differing membership of MEAs gave rise to differing interpretations, different obligations or outright conflict. It also addressed briefly the issues of extraterritoriality and discrimination.

14. His delegation believed that environmental conduct could become an interesting and even a key concept for future work. In the context of the free-rider problem, which was addressed in paragraph 37 of TRE/W/19, nullification of actions undertaken by signatories referred to actual environmental conduct as well as the justification of differential treatment in applying the concept where the same conditions prevailed. The concept was included in paragraph 42. Thus, the discrimination/necessity test, as outlined in paragraph 43, indicated that trade measures applied pursuant to an MEA should give different treatment to parties and non-parties only to the extent necessary to achieve the environmental goal and should be based on an actual difference in

environmental conduct. His delegation gave credit here to criteria and questions put forward by Hong Kong.

15. Paragraphs 49 and 50 dealt with the primary purpose test. Real environmental protection was well-intended and was in the interest of all. Thus, the primary purpose test, of looking at the motive of measures and at the context in which they were adopted and implemented, seemed to be particularly useful. Transparency and complementarity of trade measures appeared to be useful controlling elements to ensure that their real intention was pursued, i.e. environmental protection, and not trade or industrial protection.

16. Paragraphs 53-60 attempted to show that the term "environment", not only in daily use but also in various multilateral agreements, had a rather broad meaning which would necessarily give rise to conflict if used in an exception clause, such as GATT Article XX, that had to be interpreted narrowly. So, for example, if the first of the solutions outlined in paragraph 83 of TRE/W/19 were to be chosen, a clear understanding of the term "environment" would appear to be mandatory. However, the term "environment" seemed to be especially useful in the context of the precautionary approach, which was of special importance for preserving or keeping intact the environment. In that context it was possible to imagine a case when it would be necessary to take trade measures to limit or even prohibit activities which, taken individually, did not appear to aim directly at protecting human, animal or plant life or health (Article XX(b)) or related to the conservation of exhaustible natural resources (Article XX(g)). Nevertheless, the cumulative effects of individual actions over a period of time could have negative effects and therefore threaten the life or health of human, animal or plant life, or the eco-system; this was explored in paragraph 58 of the document.

17. Paragraph 60 drew attention to the post-Uruguay Round period when, in the context of the future General Agreement on Trade in Services, a working party would examine and report, with recommendations if any, on the relationship between services trade and the environment, including the issue of sustainable development.

18. Discussion of the necessity of trade measures raised the issues of the use of trade measures as sanctions and of cross-retaliation. The principles of proportionality, least-trade-restrictiveness, and least inconsistency with GATT provisions appeared to be useful guidelines for applying trade measures necessary to pursue an environmental goal or in searching and finding alternative measures to trade measures. As his delegation had stated in paragraph 70, trade measures applied pursuant to an MEA should be the least trade restrictive reasonably available. They should not be more severe and should not remain in force any longer than necessary to achieve the environmental goal of an MEA. Consideration of the degree of restrictiveness should be proportional to the risk of non-fulfilment of the objectives of an MEA.

19. In paragraphs 72-82 of TRE/W/19, his delegation provided a brief discussion of the issue of processes and production methods (PPMs), which was one of the most difficult since sovereignty was placed immediately at stake. Without wishing to start a discussion of sovereignty, it seemed worthwhile to recall the already existing, high degree of inter-dependency of international trade of goods and services which had been confirmed by recently released data on intra- and inter-regional trade. Starting from Principle 16 of the Rio Declaration calling for the internalization of environmental costs and the use of economic instruments, and taking into account that the polluter should, in principle, bear the costs of pollution, his delegation had examined whether the concept of like-products or recent developments in redrafting the Agreement on Technical Barriers to Trade (TBT) could lead, under certain circumstances, to an understanding that Article XX could eventually be construed to justify not only products-related

but also production-related measures if they were necessary to protect human, animal or plant life or health, or the environment.

20. Finally, in Section 5 of TRE/W/19, his delegation had attempted to list possible alternative solutions without giving preference to any of them.

21. The representative of Sweden, speaking on behalf of the Nordic countries, said that in view of the report that the Chairman would be making in due course to the CONTRACTING PARTIES, his intervention would cover the Group's achievements up to now under this agenda item and identify some issues that were appropriate to include in future work.

22. He said that the first result of the Group's deliberations had come at an early stage in its work with the realization that most of the policies that governments used to protect the environment dealt with local problems and could be executed in full compliance with the GATT. It did not require any explicit mention of the word "environment" in the GATT to accomplish that.

23. A second finding was that out of about two hundred MEAs in existence, only seventeen contained provisions dealing with trade, and few of those seemed to raise questions concerning compatibility between GATT and MEA provisions. However, this did not mean that the solution under this agenda item was necessarily a simple one. For one reason, the Group had been looking only at existing MEAs, but the ways in which governments chose to deal with environmental problems of a global or transboundary nature were continuously changing, as regional and global environmental problems were found to be increasingly numerous and serious. It could not simply be said that there was no issue because the problem of legal conformity of MEAs and the GATT had not arisen hitherto. Many governments were increasingly committed to strong international action in the environmental field, as had been demonstrated by the UNCED, and his delegation was convinced that there would be new and ambitious environmental agreements negotiated in the future, some of which might use measures that represented a challenge to present GATT rules.

24. Another way of explaining why his delegation thought that MEAs would pose an increasing challenge to present GATT rules had to do with the position many governments had taken on unilateralism. Their position was that national action to deal with global environmental problems must fully respect GATT rules on non-discrimination, national treatment and so on. That position was enshrined in Agenda 21. It had, however, a logical and political quid pro quo. To be against unilateralism implied and necessitated support for multilateralism. In more concrete terms that meant that there had to be a readiness to develop rules which could accommodate multilaterally-based trade measures for environmental purposes. The Nordic countries disapproved of unilateral measures of an extraterritorial nature and supported the creation of an "environmental window" in the GATT, based on carefully-defined criteria, for measures to deal with global or regional environmental problems.

25. The Nordic countries felt that using Article XX was a promising way to introduce an MEA-based environmental window into the GATT. It had already been used in the Uruguay Round in the form of the draft SPS Agreement for an objective not dissimilar to the protection of the environment. In exactly what form Article XX should be made use of, if that were to be the agreed approach, was at this point a rather unimportant matter. Various solutions could be envisaged, ranging from minor amendments of Article XX to interpretative notes to more or less formal, stand-alone side agreements of the SPS type. However, the issue of legal form seemed premature. It was more important for the Group to analyze which criteria could be incorporated into such a window. That was one of the key issues when considering how to incorporate into the

GATT a proper accommodating mechanism for multilaterally-agreed trade measures when dealing with global and regional environmental issues.

26. In the view of his delegation it could be an organizational advantage to divide criteria into two categories: procedural criteria and substantive criteria. With regard to the former, he said that the Group had recently discussed what constituted a multilateral consensus: how many governments should be signatories for an MEA to qualify as genuinely multilateral? Judging by the debate there seemed to be basic agreement that a general formula based on a simple numerical criterion had serious handicaps. Rather, there would be a need to take into consideration the particulars of each MEA, ensuring participation of relevant producers, consumers, etc. He suggested the Group should look into this more, as well as into the question of regional agreements dealing with regional problems.

27. There was then the important question of the link between an MEA and the individual measure that a government took in order to implement the objectives of the MEA. Did a measure taken by a contracting party and a signatory to an MEA in order to implement its MEA obligations have to be specified already in the MEA? He thanked all those delegations that had responded in July to some of the issues on treaty specificity that his delegation had introduced earlier into the debate, and said his delegation was prepared to give the issue further thought when the Group agreed to address it in a focused way.

28. Turning to the substantive criteria which would need to be satisfied if an individual measure taken pursuant to an MEA were to qualify for an exemption from normally prevailing GATT obligations, he said that the issue could be expressed in the following way: was any kind of measure acceptable as long as it was agreed upon in an MEA and was fully defined in the text of the MEA itself? This was a very important question. In effect, should the GATT give a blank cheque as soon as there existed a multilateral agreement that satisfied the procedural criteria on membership just referred to and that adequately specified the measure in question? What was GATT's role in that situation? That question merited careful attention. In the view of the Nordic countries, it was important that an "environmental window" was carefully defined and based to the largest degree practicable on pre-established criteria. Article XX already set out some criteria for those situations already covered by the Article. The inclination of his delegation towards the Article XX approach was based partly on its appreciation of the way in which that Article defined situations in which exceptions from GATT rules were allowed.

29. The Group had not yet had a focused discussion of criteria. If eventually it did, other delegations might take a differing view of the value of criteria. For example, he noted that at the last meeting Canada had stated, inter alia, that a waiver approach "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." The Nordic countries saw it as a considerable disadvantage not to know in advance under what criteria future MEA-based measures might depart from GATT obligations. Rather than relying on an emerging case law in this area, his delegation wished to create the greatest amount of predictability possible. Negotiators of future MEAs should know what tools they had at their disposal. It went without saying that criteria would necessarily be fairly general in nature and that there would sometimes arise a question of how to interpret them correctly in an individual case. But that was another matter.

30. The most crucial of all the criteria found in Article XX was that of "necessity". It was a core criterion which had to be satisfied if a measure were to qualify for an exception, not in every but in most situations covered by Article XX. What did it mean? When was a measure for the purposes listed in Article XX "necessary"? Before going any further, he said that it was important to dispel any possible misunderstanding. His delegation was not referring to whether or

not an MEA itself was necessary. That was a task for governments to decide. The trading community should not pronounce on the validity of environmental objectives. Rather, when speaking of necessity his delegation was referring to the individual trade measures that might be undertaken in order to arrive at the objectives set in the MEA. The question was, were the measures necessary in order to reach the established objective?

31. There were other criteria mentioned in Article XX that could merit attention. At the last meeting other delegations had mentioned, inter alia, terms such as "proportionality", "non-arbitrariness" and "least trade-restrictive". These were examined in TRE/W/16 and Corr.1, and the conclusion of his delegation was that these were not concepts that were already well-known and well-defined in the GATT. That reinforced the need to examine what they meant - or should mean - in the MEA context, and the Nordic countries did not yet have any view on their appropriateness in this regard.

32. There were also some other issues related to MEAs that belonged to the analytical framework and that merited attention. One was the area of dispute settlement. What should be the role of GATT in dealing with disputes arising from the implementation of MEAs? In his delegation's view, the fundamental issue was not which mechanism was used to solve a dispute - i.e. that of an MEA or the GATT - but rather to ensure that the mechanisms themselves were as clear and efficient as possible. Thus, attention should be on the underlying material rules and the provisions contained in them, and not on whether the GATT was somehow to pass judgement on the appropriateness of the MEAs themselves. Obviously the latter must be avoided.

33. Nevertheless, dispute settlement contained aspects of a more technical nature that the Group would do well to penetrate, partly because dispute settlement so obviously belonged to any analysis of the relationship between MEAs and the GATT, and partly because this was an area of public interest. The peaceful settlement of disputes between governments was one of the GATT's success stories but it was largely unknown outside the realm of trade policy experts. He said that he could imagine situations where the environmental community, once it had come to understand the GATT system, would welcome a contribution from the GATT concerning certain types of disputes. This underlined the interest his delegation had in making sure that environmental experts could be associated with the work of GATT dispute panels.

34. There were other issues that it would be interesting to discuss in the Group. One was the issue of burden of proof, as it related to a future environmental window. It was well known that the material content of a rule was of primary importance when judging the impact of that rule but that procedural aspects could have considerable practical importance. His delegation would be interested, at a future meeting, to discuss burden of proof aspects as concerned the GATT's handling of trade measures taken pursuant to MEAs.

35. The representative of Canada said that this meeting offered a timely opportunity to take stock of the Group's progress to date on Agenda Item 1. She recalled that in the report made by the Chairman to the CONTRACTING PARTIES last year, the general agreement in the Group that environmental objectives and trade policy objectives need not conflict had been highlighted, as had the view that trade liberalization and the GATT system were supportive of better environmental protection at both the national and international levels. In this regard, concluding the Uruguay Round successfully would represent one of the most important contributions GATT contracting parties could make.

36. Other basic themes that had continued to recur in the Group's discussions this year included the widely shared view that GATT provisions allowed for an extensive variety of trade-related environmental measures, including exceptions for those that were inconsistent with basic

GATT rules. There had been strong agreement that the risk of environmental objectives being used as a basis for protectionist trade actions must be avoided. In this regard, the conditions contained in Article XX were seen as reflecting the checks and balances in the GATT system that were intended to prevent abuse which, it was recognized, would be as detrimental to the environmental agenda as to the trade agenda.

37. Another point on which there was virtual unanimity was that the work of the Group must remain within GATT's mandate and competence. The GATT was not an appropriate forum for debate on environmental policy issues. The GATT also should not become engaged in making judgements about contracting parties' environmental objectives and policies. Finally, an important and recurrent theme had been that unilateral, extraterritorial measures were not acceptable. Virtually all delegations had endorsed the message from UNCED and other fora that unilateralism was not the way to deal effectively with the international environmental agenda. The multilateral approach had to be the way forwards.

38. Against the background of those key themes, the work of the Group over the past year had become more focused on a number of the critical, substantive issues that underlay the trade and environment debate. For example, the rejection of unilateralism had sharpened the focus on the multilateral approach for addressing transboundary and global environmental issues. Also, the theme that there was already considerable scope and flexibility under the GATT rules to use trade measures for environmental purposes, including pursuant to an MEA, had led to a focus on what types of trade restrictions might, in fact, give rise to conflicts with GATT obligations. Her delegation and others had observed that the types of measures that could fall into this category included the use of discriminatory and/or extraterritorial trade restrictions as a tool for extending environmental policies and programmes to other countries or creating leverage to obtain participation in MEAs.

39. The Group had focused this year on two sub-items that had emerged as key elements in the debate: the treatment of non-parties under MEAs, especially regarding the use of discriminatory trade restrictions, and extraterritoriality. A common thread running through the analysis of both these items had been the necessity and effectiveness of such measures. The Group had already had a productive exchange on these points, although there was more analytical work to be done.

40. She then turned to highlight a few of the areas that seemed particularly significant to Canada and where there seemed to be a good deal of common ground in the Group.

41. In her view, the most challenging questions in the trade and environment debate related to the situation of countries seeking to pursue environmental objectives outside their own jurisdiction. This was true whether the problems related to circumstances or resources under another country's jurisdiction or in the global commons. Canada's view was that it was legitimate for countries to pursue improved environmental protection and resource management within and also beyond domestic jurisdiction, since all countries had a stake in the world environment. She did not believe that many would dispute the proposition that environmental issues extending beyond national borders could and should be a shared concern. In some cases, such issues could have an impact within national territories. Co-operating to address common concerns, while recognizing countries' sovereign rights, was what UNCED had been all about. The Group had now endorsed the results of UNCED and would be reflecting them in its work. So the issue was not whether but how governments should work together to pursue better environmental protection and resource management beyond their own borders.

42. The ideal situation occurred when countries decided on a common approach and co-ordinated their activities, perhaps in the context of an MEA. But what if there were disagreements between countries and not all were prepared to accept the programme or join the MEA? Canada had made the point that it must first be recognized that in MEAs with wide participation much could be done through the use of non-discriminatory trade restrictions, applied to both parties and non-parties, to implement effective controls on both domestic production as well as imports and exports of environmentally damaging goods or substances. Properly structured, such measures could be made consistent with GATT rules and no violations of GATT obligations need occur. This was well illustrated in the important contribution made by New Zealand on the use of trade measures in MEAs.

43. The question then became under what circumstances would discriminatory or other types of trade restrictions that were inconsistent with GATT obligations be used against non-parties and would such measures be necessary and effective? It had been recognized in the Group's discussion that a key objective in the possible use of discriminatory measures would be to create leverage to obtain acceptance of the MEA by non-parties or, on a related point, to extend to non-parties standards or programmes relating to PPMs or resource management. As Canada had observed before, it was here that the issues of the treatment of non-parties and extraterritoriality clearly came together. Many of the issues that arose had been identified in the Group's discussions. The crux of the matter was, should one country or a group of countries impose their environmental or conservation policies and regulations on others who did not agree, whether the resources were within the jurisdiction of those other countries or in the global commons? There were important issues of sovereignty there. The question of who decided could be particularly difficult when the environmental protection or conservation standards carried significant cost burdens or commercial benefits.

44. The question of who was to decide on the appropriate level of environmental protection or resource management measures that would apply and on what basis led to the question of on what basis could discriminatory trade restrictions be applied to non-parties to an MEA in an effort to obtain their participation? The Group had identified a range of key questions that arose in this regard. In the view of her delegation it was not at all clear that the GATT was the appropriate forum to seek answers to, or decisions on, many of the types of questions she had just mentioned.

45. In previous meetings this year, Canada had registered its views on the risks of extraterritoriality as well as trade discrimination. Canada had also recognized that a recurrent theme in the Group's discussions had been that a strong international consensus reflected in an international environmental agreement with wide participation and geographic representation might provide a basis for applying standards or programmes considered essential by the world community. The critical issues that arose in this regard included how such a consensus could be recognized in particular cases and what the justification for, and implications and effectiveness of, various types of trade measures would be. The issues of specificity of trade provisions in MEAs and dispute settlement had also been introduced in the discussion.

46. The more focused analytical work that had been undertaken in the past year had identified a number of key themes and advanced work significantly but, clearly, a good deal of further analysis was required, including with respect to the applicability of all the relevant GATT provisions. Additional issues would undoubtedly emerge.

47. The representative of New Zealand, in reflecting on the work done by the Group this year, said that much work remained to be done before any conclusions could be drawn. The first year of work in the Group had laid a solid foundation for consideration by GATT contracting parties of the trade and environment nexus. This year, analysis of identified issues had deepened

and additional issues had begun to be considered. A significant and valuable feature of work in the Group this year had been the increased participation in the discussions of a wider range of delegations, particularly those of developing countries. For the Chairman's report this year, therefore, there was an important body of factual and analytical material on which to draw.

48. In New Zealand's view, the debate about trade and environment revolved largely around two central questions or problems. The first of these was consistency; in the case of Agenda Item 1, between two different, or potentially different, sets of obligations, i.e. the rights and obligations arising from membership of the GATT and the rights and obligations arising out of membership of an MEA. The Group had continued this year to analyze a central nexus of issues relating to consistency, involving non-parties, non-discrimination and extraterritoriality. In doing so, further issues had emerged. In some cases these were detailed issues like the specificity of measures contained in MEAs; in others, such as the discussion of definition of criteria underlying the concept of an MEA, they were broader. Broader but no less important in relation to the scope of discussion was the issue of what was meant by the term "environment" in relation to this agenda item. Also, institutional issues such as dispute settlement had begun to be considered and Canada had reminded the Group that the discussion of the relevance of GATT provisions should not be too narrowly focused.

49. In considering the relationship between trade provisions in MEAs and GATT principles and provisions, a key question was whether it was necessary to go beyond existing GATT provisions, including its exceptions, in order to accommodate trade measures taken in the context of MEAs. As debate had shown, this question had two sides: first, and this could have implications for the way in which MEAs were drafted, an understanding of what could be done within existing GATT provisions and exceptions; and second, consideration of whether, when and in what ways it might be necessary to depart from the scope of GATT rules and exceptions in order to achieve the objectives of multilateral environmental co-operation. The GATT, from its inception, had a tradition of flexibility in accommodating measures necessary to the achievement of objectives outside the primary functions of the multilateral trading system. As had been pointed out by other delegations, this usually involved a combination of tolerance and safeguards; a delicate balance designed in an attempt to ensure that other objectives could be effectively realized without unduly compromising the balance of rights and obligations accruing to contracting parties from the GATT system.

50. The second major question or problem of the trade and environment debate was the delicate question of the purpose and the consequence of trade measures which were taken. A great anxiety that trade policy experts normally brought to this debate was that trade measures might be taken on environmental grounds but for protectionist motives - or that whatever the motives, the consequences for trade would be unnecessarily disruptive. The environment, protectionism and indeed competition questions were tied in this part of the debate.

51. A key concept frequently used in that respect was necessity. It seemed clearly logical that to be necessary a measure had to be effective in achieving its stated objective. Conversely, however, if a range of effective measures existed it again seemed logical that not all could be necessary in the strictest sense. In consideration of a particular measure this was perhaps not unrelated to the general principle of balance.

52. He recalled that in document TRE/W/8 his delegation had raised a number of questions relevant to the consideration of in what circumstances and to what extent it might be necessary to depart from the GATT principle of non-discrimination in seeking to achieve a multilateral environmental objective through use of trade measures. The analysis was not exhaustive, but several delegations had drawn attention to its possible implications for the degree to which it

would be appropriate to generally deem such a departure necessary. A number of approaches had been suggested under this agenda item to guide analysis and to envisage the conclusions which could be arrived at. TRE/W/19 listed seven, although his delegation was unsure of the extent to which the list was exhaustive or whether the seven approaches listed were all necessarily either distinct or mutually exclusive.

53. He put forward four general characterizations of suggested approaches: ex-ante or ex-post, and what might be termed "positive testing" (as in waivers) or "negative testing" (as in some form of codified exceptions). These could potentially be combined in a number of ways and it was instructive in this regard to examine closely the further clarifications of particular approaches which had been provided to the Group.

54. His delegation had generally felt that it was too early for the Group to be opting to follow one approach or another. It continued to hold strongly that view, firstly because it did not consider that the Group had yet done enough analysis of the underlying issues to be able to make any informed judgements (prescriptions could not solve problems unless those problems were first thoroughly understood), and secondly because it seemed that the underlying issues which had to be grappled with were broadly similar, whichever approach might eventually find favour with all delegations. Thus no delegation's position was compromised by issues-based analytical work, and the Group should not reject any idea out of hand nor accept any at face value.

55. His delegation believed there was more work to be done and that the Group must approach it vigorously. There was not the luxury of unlimited time before drawing conclusions. However, in his view, the exercise had already borne fruit. By bringing together the environment and trade communities in many countries, an important step had already been taken.

56. The representative of Mexico said that during its recent meetings, the Group had highlighted the existence of a wide range of environmental protection measures that countries may apply without entering into conflict with the provisions of the GATT. Such measures may be adopted by a national decision or under MEAs. Furthermore, the GATT also provided for the possibility that countries may adopt measures that were contrary to its provisions under Article XX. It had been made clear that the conditions laid down in that Article constituted a balanced approach so as to address environmental protection needs while at the same time avoiding indiscriminate abuse of such exceptions that could conceal trade protectionist interests. In fact, these conditions, which related to the concepts of non-arbitrariness, necessity and complementarity, inter alia, as well the principle of non-discrimination, were in line with the principles and recommendations of the UNCED, and they would, therefore, have to be observed. Hence, as the Group had pinpointed, out of the range of trade measures included in MEAs the only ones that might require clarification concerning their compatibility with GATT obligations were those aimed at tackling an environmental problem outside the jurisdiction of the country applying the measure and those that were applicable to countries that were not parties to an MEA on account of their possible discriminatory implications. Her delegation believed that the idea of focusing discussions on the aspects of extraterritoriality and the case of non-party countries had been most useful for advancing understanding of the problems with which the Group was concerned.

57. Her delegation agreed with the view that the Group should consider specifically discussing other important aspects, such as the definition of the term "multilateral" and the issue of "specificity". These were both fundamental aspects that had to be explored before any conclusions were drawn concerning the two focal issues to which she had referred.

58. Specificity, in particular, was an element in the light of which the Group should pursue its examination of the questions of extraterritoriality and non-parties. It raised a large number of questions that the Group had not taken up until recently. Some delegations had even advanced proposals for legal solutions without having covered this issue sufficiently. For example, the European Community's proposal on an interpretation of Article XX was aimed essentially at covering trade measures applied by GATT members which were not parties to an MEA, and it assumed that in the case of the application of trade measures among MEA member countries no problem whatsoever could arise as the participants had agreed to be bound by the MEA commitments even at the risk of losing trade rights they had already won. Many other delegations, including the Mexican delegation, had to some extent agreed with this and had stated that even the problem of extraterritoriality might disappear or become secondary when the measures in question were based on an agreement to which the parties concerned were members.

59. However, in the case of MEAs that did not specify the trade measures to be used and merely established the environmental objective, could participants in the agreement really be considered to have agreed on the use of the measures subsequently chosen individually by each party to achieve that objective? Many of the agreements reviewed in TRE/W/10 did not in fact specify measures; they only urged parties to take the "necessary action" to attain their objectives. Although no trade conflicts had yet arisen in connection with these agreements, the Group should take account of the possibility that this absence of specificity in MEAs might give rise to conflicts in the future, given the increasing tendency of certain countries to use trade restrictions in the name of the environment, thereby often also concealing protectionist ends. This problem was also important in the case of the application of measures to non-parties.

60. This led her delegation to raise various questions: the first was whether the GATT could or should "derogate" MEAs as such, as some delegations had suggested. In any case, what GATT could deal with were the trade measures included in them, but not the agreements themselves. What would then happen in the case of an agreement that did not prescribe measures but implicitly authorized them? What would happen in the case of a trade conflict stemming from the agreement either among parties or in relation to non-parties? The possibilities of abuse in the use of measures owing to the lack of specificity might be incalculable.

61. The delegation of the Nordic countries had raised as an alternative to specificity the possibility that an MEA might contain at least some explicit understanding as to what trade measures might be used in implementing it. That might sound fine in principle, but her delegation believed that it did not in any way guarantee predictability in trade. What would happen, for example, if a country, under an agreement of this kind, decided on its own initiative to apply trade restrictions based on the PPMs of another country? This extreme case could also arise where a country might decide that to oblige another country to observe an environmental objective it could use trade measures with regard to products or sectors that were not related to that objective. This alternative, then, might lend itself to the use of unilateral, arbitrary and unjustifiable measures as much as, or perhaps even more than, in the case of a total lack of specificity.

62. Her delegation therefore considered it doubly important to ensure that in the implementation of MEAs not only should the basic principles of the GATT, such as non-discrimination and national treatment be observed, but also other concepts that were of great importance in the treatment of environmental problems. These included proportionality, necessity and "least trade-restrictiveness". TRE/W/16 was enlightening and useful for a better understanding of those concepts, which although only recently applied in GATT, were extremely important for the treatment of environmental problems. She believed that the Group should analyze them in greater depth.

63. There was also much to be explored in the relationship of the issue of specificity to that of the definition of the term "multilateral". To begin with, it was worth asking whether the aim was merely to define what a multilateral agreement was, or whether it is above all necessary to understand what a multilaterally agreed measure was. Would it suffice that an agreement was considered "multilateral" to justify trade restrictions decided on unilaterally where the agreement lacked specificity. Her delegation's opinion on this question was that a measure might only be considered genuinely based on an MEA when it had been specifically agreed upon under that agreement, and in turn an agreement might be defined as multilateral only when countries that represented a genuine international consensus participated in it. In other words, when the agreement had global support. Here again, the delegation of the Nordic countries had given the Group some useful ideas on qualitative factors that could be taken into account. Her delegation believed that they were worth thinking about, as well as the factors recalled by the delegation of India concerning geographical representativeness and also representativeness of countries at different levels of development. TRE/W/17 might also inspire some ideas. Although the definition of an international commodity agreement was not the same as an MEA, the elements contained in paragraphs 5 and 22 of that document were enlightening, in particular the reference to "representation covering a substantial proportion of world trade" in the commodity covered by the agreement.

64. She said that as could be seen, there still remained major questions and a large number of elements to be clarified under this agenda item. Consequently, her delegation once again considered that it would be wrong at this stage to discuss any type of legal solution to a problem which had not yet been understood.

65. The representative of the Republic of Korea, said that in TRE/W/19 Austria had provided a careful synthesis of almost everything that the Group had accomplished during the preceding two years, and brought the Group to the next stage where it was time to begin to discuss what changes, if any, should be made to the GATT. Austria had presented seven alternatives for consideration. They could be divided into two categories. One was proposals that would require the revision of portions of the GATT. The second would allow environmental measures to be accommodated in the existing GATT framework, without revision to the GATT. Both had in common the potential to allow two very important considerations to be balanced - protection of the environment without the use of arbitrary measures that discriminated against trade. It was those two goals that the Group must keep in mind as it proceeded with its work.

66. With respect to the seven alternatives listed in TRE/W/19, his delegation felt that amending Article XX seemed to be the most problematic from the point of view of the work that would be required by each contracting party. While an amendment procedure could eventually be concluded, it would still leave the problem of defining the term "environment" and might eventually lead to many disputes with respect to whether a measure was a genuine environmental measure, or merely a measure disguised to protect a particular industry. Also, in order to make this alternative work, a further collective interpretation would eventually be required.

67. The second alternative of a collective interpretation provided many advantages and disadvantages. While it would allow the extent to which trade-related environmental measures were to be accommodated to be established quickly, it was also likely to result in increased dispute settlement proceedings; that was something that should be avoided. It was very unlikely that in formulating a collective interpretation it would be possible to accommodate every contingency. Substantial leeway would, therefore, be left to individual countries which would have to evaluate the collective interpretation in terms of their own experience.

68. The third alternative, the Trumping Clause, was an interesting approach, but it left a lot of discretion to the contracting parties that were negotiating multilateral agreements. While he believed that this alternative could be effective if combined with other alternatives, applied alone it would not solve all of the problems.

69. The fourth alternative, the waiver procedure, seemed to offer many possible advantages. First, it was tried and tested. Contracting Parties had a great deal of experience in using waivers and were familiar with the application of this approach. Second, it worked well with the existing and contemplated dispute settlement systems of GATT. Third, it would allow for review by contracting parties of particularly problematic environmental measures, while allowing leeway for the automatic application of environmental measures that did not violate or appear to violate the GATT. There was a disadvantage in that a waiver approach could be time-consuming, and that would have to be addressed in the future.

70. Alternative five, the introduction of an approval procedure, suffered from the same shortcomings as amendments to the GATT. Also, it was based on GATT Article XX(h), with which contracting parties had little experience. His delegation was hesitant to go along an untested path.

71. Alternative six, shifting the burden of proof, was another interesting alternative that could be used in combination, but it provided little certainty as to which measures were permissible and might result in continued dispute settlement proceedings.

72. Alternative seven, preservation of the status quo, seemed somewhat unacceptable in light of the pressure to establish a balance between trade and environmental concerns. While his delegation believed that to a great extent the GATT left sufficient room for the application of many trade-related environmental measures, by retaining the status quo the GATT would appear to be turning a blind eye to the concerns of many environmentalists.

73. In concluding, he stressed that whichever alternative, or a combination of alternatives, was accepted, the need to retain basic GATT principles must be borne in mind. In particular, the needs of the international trading system must be preserved. That could be done by providing a mechanism for environmental protection that would allow the application of the least restrictive and least trade-distorting measures.

74. The representative of Thailand, speaking on behalf of the ASEAN contracting parties, welcomed the submission of TRE/W/19 and said that her delegation needed more time to reflect carefully on it before making substantive comments.

75. Her delegation shared the view that with respect to trade measures under MEAs, the Group needed to continue focusing not only on measures that fell outside GATT rules but also on the types of measures not likely to cause conflict with GATT obligations. The purpose of doing so was to facilitate further examination in the Group of trade provisions in MEAs rather than attempting to undertake legal analysis of measures in those two categories. Canada had suggested that the Group could respond to environmental communities' requests by developing an indicative list of measures not in conflict with the GATT. The suggestion reflected valid concerns that while its work process was continuing, the Group should contribute in part to public relations in the context of an interface between trade and environment. ASEAN was prepared to examine and discuss further what the Group could do in that respect, and the idea of an indicative, positive list could be useful, but ASEAN also foresaw difficulties in concluding agreement on such a list.

76. ASEAN had not concluded what approach should be taken to address the use of trade measures in MEAs, but was in the process of elaborating details of each approach suggested for the Group's consideration. ASEAN wished, however, to emphasize that in examining a variety of approaches, the Group should also retain the basic approach that the language of Article XX was already broad enough to facilitate all legitimate trade-related environmental objectives and measures.

77. ASEAN considered that the Group remained in the information-gathering, problem-identifying stage of its work. That process allowed delegations to put forward their analytical views and contribute to more focused discussion in the Group. ASEAN was of the view that, so far, the Group had made considerable progress in a constructive manner. However, much work remained to be done and it would be premature for the Group to embark upon a concluding stage without complete information and thorough analysis of all issues involved. She agreed that the Group should not reject any idea or accept any idea at face value. The Chairman's report to the CONTRACTING PARTIES' next Session should fully reflect the present status of work in the Group without arriving at any substantive conclusion.

78. The representative of Switzerland said that the Group had discussed mainly two different approaches to clarifying the relationship between the GATT and trade measures taken pursuant to an MEA: a collective interpretation of Article XX, and the waiver approach under Article XXV. Valuable contributions on both approaches had made clear how difficult it was to clarify this rather new environmental dimension in GATT. There were still a lot of open questions on both approaches which merited answers. One example was a consensual definition of what could be regarded as a multilateral agreement for the purpose of linking it with GATT rules. Article XX provided, on the one hand, a conditional exception from obligations under the provisions of the GATT, and it provided, in that sense, for the application of trade measures not in conformity with GATT rules for moral, security and health reasons. Article XXV, on the other hand, provided rules for a collective derogation of the GATT rules.

79. Switzerland wished to give some reflections on the concept of the general exception approach which it considered a possible way of clarifying the relationship between the GATT and MEAs, although further clarification of some points was still needed, for instance, the definition of a multilateral agreement and the question of the specificity of the measures contained in MEAs.

80. He said that Article XX contained a general clause common for trade agreements. It provided the right to derogate in special circumstances and for special reasons from GATT rules. One sensitive point in Article XX lay in the fact that the conditions which had to be fulfilled for the invocation of the Article were relatively vague. Interpretations were necessary. However, was it possible to find one single interpretation for all the different cases, present and future, without overstraining the basic concept of the exception clause, which might have serious consequences also for dispute settlement? As environment became more important and the policies and measures, including trade and trade-related measures, taken pursuant to environmental protection tended to multiply, the Group should reflect on whether it was right to tackle environmental problems as exceptional problems in the GATT, or whether that risked undermining the original meaning of having a general clause for exceptional cases and creating an open door for undermining the whole legal framework of the GATT. Everyone was aware that there was a risk of misuse of trade measures for environmental purposes.

81. Concerning the waiver approach, his delegation had already expressed reservations. It was particularly inconvenient because waivers were granted for a specific, usually short, time period, whereas the nature of today's environmental problems required long-term and global solutions. Canada had suggested that only if contracting parties found themselves granting a

number of waivers for measures of a certain type, or measures taken under certain circumstances, would they be better positioned to modify the GATT to accommodate those specific measures or situations. His delegation was not convinced that such a long procedure was the adequate way of finding a solution. The fundamental question was whether delegations could afford to circle around the problem through resorting to waivers, or whether a solution should be found in the near future in order not to create a more complex problem than existed now. However, it was certainly important to proceed in a pragmatic way and profit from experience in different fields of the GATT.

82. In conclusion, the Group had discussed two approaches which were based on existing GATT rules and procedures under this agenda item. His delegation could see merit in both approaches, but there were still a lot of open questions on both of them. The basic concern of his delegation remained what kind of trade-related environmental issues needed to be addressed in the framework of the GATT in order to avoid new barriers in international trade and new barriers to environmental protection? That fundamental substantive question should be elaborated in the light of Agenda 21. Only afterwards would the Group be in a better position to address in a constructive manner the related procedural aspects in the framework of GATT.

83. The representative of Japan expressed appreciation for TRE/W/19, and said his delegation would like to comment on it at a later stage.

84. He said that his delegation's view was that the Group had made considerable progress in examining the issues under Agenda Item 1. From the beginning, one of the major objectives of the Group had been to educate itself on both the trade side and the environmental side of the debate. As the Rio Declaration in UNCED had made clear, governments had agreed to a proposition that free trade and environmental protection were mutually supportive and the Group had been conducting analytical work on how to understand that proposition in various aspects. The Group's constructive spirit enabled delegations to address the complex and sensitive agenda item in a productive and pragmatic manner.

85. He recalled two themes which were emphasized at an early stage of the discussion and were largely shared. First, that environmental objectives can be attained without using trade measures and second, that the GATT is flexible and has significant scope for using trade measures to protect the environment, domestic, transboundary or global, under certain conditions. Those two themes should be kept in mind. In that context, he echoed the Canadian delegation's remarks at the last session that the Group was examining the issues of trade measures in MEAs in order to be assured that the current rules of the GATT provide sufficient scope to governments to achieve their environmental objectives in a multilateral context, while providing adequate disciplines against abuse.

86. The Group had benefitted from focusing on two sub-issues, extraterritoriality and non-parties to an MEA. These issues were closely related. On the sub-issue of extraterritoriality, his delegation had already posed questions which seemed central to it.

87. One was how to define the term "environment". TRE/W/19 analyzed the concept of "environment" by looking into various MEAs, and stated "Various international agreements offer some common features of the term "environment". Environment includes the human, animal and plant life or health, but also air, water and soil. The landscape and even cultural heritage are to be found in definitions". Environment seemed not to be limited to nature and natural resources but also to include human-made creations, and in this regard the social dimension of the environment might also deserve more attention in the future.

88. There was apparently no fixed definition or concept regarding the scope and nature of this term. If it were to influence the interpretation and application of GATT provisions, careful consideration would be needed to define its scope and nature. This task was complex and difficult, but he believed that the Group would merit from careful analysis of this issue.

89. Concerning the other sub-item, "non-parties", he recalled that the New Zealand delegation had made an insightful suggestion that discriminatory trade measures would not normally be required to achieve an MEA's objective (TRE/W/8). That theme, though it needed further analysis, could provide useful guidance for the future negotiation of MEAs.

90. Other issues had also been posed for analysis. Among them were the issues of defining the term "multilateral", and the "specificity" of the trade measures in an MEA, and the relationship of dispute settlement systems between an MEA and the GATT. On the last point, there seemed to be two sub-items to be focused on. One was the issue of "choice" between two dispute settlement fora, which related to the "specificity" of each forum, and the other was the issue of participation in each forum. His delegation was carefully examining the implication of the first sub-item, but it should be noted on the second sub-item that the existing GATT dispute settlement mechanism was designed to represent a wide range of interests and views for the benefit of all by allowing third parties an opportunity to express their views. This issue of "participation" should be examined with a view to strengthening the GATT dispute settlement mechanism, the existing one and the one coming after the Uruguay Round, by ensuring prompt, effective and impartial solution of disputes.

91. The representative of Hong Kong said that his delegation found TRE/W/19 contained many relevant points that would form a good basis for further discussion, but it was not in a position to make substantive comments now.

92. The representative of the United States said that Agenda Item 1 had produced a useful, if as yet inconclusive, consideration of the question of whether present GATT rules provided sufficient scope for governments to achieve their environmental objectives and to implement their obligations under MEAs. His delegation doubted strongly that it could make a convincing case in the affirmative, for many reasons that had already been cited by others in previous meetings. Those who suggested otherwise relied heavily on the assumption that the so-called waiver approach under Article XXV, in conjunction with the general exceptions under Article XX, were sufficient.

93. Some of the commonly-cited problems with ex-post treatment of environmental agreements in the GATT included uncertainty as to the outcome, the time-consuming and cumbersome nature of the process, and the possibility of arriving at legally untenable situations in terms of the inter-relationship of international laws. TRE/W/18 provided some useful insights on the background to, and use of, GATT waivers which added to his delegation's discomfort with the approach. Article XXV was meant to address "exceptional circumstances", and the document noted that the situations envisaged by the term "exceptional circumstances" were designed to address specific problems where an amendment would produce broader and more permanent application than required. It was not at all clear to his delegation that MEAs should be relegated to exceptional circumstances status or, for that matter, that their application should be time limited. The document also pointed out that, notwithstanding the existence of a waiver, measures enacted pursuant to a waiver might nonetheless be subject to non-violation nullification or impairment claims. Thus, MEAs could still fall short of obtaining a clear GATT bill of health, even after a waiver was granted. Perhaps as important as these valid legal/procedural concerns was the fundamental message from the GATT inherent in the "waiver" approach. It reinforced the unfortunate perception among non-GATT experts that the GATT now and in the future intended to

relegate the environment to an afterthought. His delegation questioned whether it was really tenable to have a situation where GATT appeared to sit in judgement over environmental agreements.

94. As for alternatives, his delegation had not settled on a single approach. There might, in fact, be no single approach. A number of ex-ante approaches had already been mentioned. One would be based on the concept of a joint interpretation of Article XX. It could address a certain number of situations, but it would not prove suitable to others where different answers might become evident as work proceeded.

95. It must be recognized that there were, in certain cases, some real practical limitations to multilaterally-based solutions. A number of delegations had had to confront such limitations. Obtaining an MEA took time, and there could be difficulty in reaching a multilateral agreement and in giving effect to such agreements as might be reached. The problems might be in need of urgent attention. Enforcement of an MEA without specific trade measures could present particular difficulties, and could lead one or several of the members of the agreement to conclude that the only available approach to give effect to the agreement was to consider trade measures. For example, members of a fishing agreement devoid of specific trade measures might find that the agreement's conservation objectives were being circumvented by non-members. In the face of an urgent problem, what should the members do if in their judgement the only viable solution would be to look at trade measures? Those sorts of problems needed to be considered further as work progressed.

96. With regard to other ex-ante approaches, his delegation had read with interest TRE/W/17, regarding Article XX(h). It illustrated a quasi ex-ante approach, admittedly limited to certain types of agreements. Austria, in TRE/W/19, had referred to the notion of reversing the burden of proof as meriting consideration. Other ideas had been, and would be, identified. They would all need further analysis. Finally, TRE/W/16 and Corr.1 confirmed his delegation's view that the term "least trade-restrictive" was not, contrary to what some had suggested, a long accepted GATT principle. In fact, the term was neither found in the GATT, nor was it an established concept in GATT jurisprudence. It had been used in one fairly recent panel report relating to the interpretation of Article XX, and, notably, another panel had approached the same interpretation issue and responded with different language.

97. The representative of the European Communities thanked the delegation of Austria for TRE/W/19. In his view, it might go a long way in the direction of an interesting analytical tool, although his delegation had not had time to study it carefully yet.

98. The focus of TRE/W/16 and Corr.1 was on the use in GATT and its related instruments and panels of the concepts of least trade-restrictiveness and proportionality. His delegation wished to point out that the concept of least trade-restrictiveness was used in Chapter 2B of Agenda 21, the analysis of which had been assigned to this Group by the CONTRACTING PARTIES. It felt that, especially since the concept there was used in relation to environmental policy, it was useful for the Group to keep in mind that at UNCED it had been agreed that if trade policy measures were found necessary for the enforcement of environmental policies, one should apply the principle that the trade measure chosen should be the least trade restrictive necessary to achieve the objective. Also, the document referred only to the TBT Agreement that was being negotiated at present in the Uruguay Round. His delegation noted that in the 1979 TBT Agreement there was also a similar reference to preventing or avoiding unnecessary obstacles to international trade and, in its view, it could be argued that that requirement could be very close to, or even effectively the same as, the principle of least trade-restrictiveness as it had now developed or was

developing in the GATT system. He suggested that the secretariat might study how the concept had been used under the present TBT Agreement.

99. With regard to TRE/W/17, his delegation stated that the CONTRACTING PARTIES had, in effect, from the outset accepted that exceptions from GATT rights and obligations could result from international agreements provided they conformed to principles which had been defined before the negotiation of those agreements, i.e. the principles referred to in the ECOSOC Resolution, which was annexed to the paper. That could be an inspiration for the Group to continue its work on ensuring the mutual supportiveness of trade policies and environmental policies in general, and of MEAs in the GATT system in particular. Also, the information that international commodity agreements found by the ITO to relate solely to the conservation of exhaustible resources were made exempt from a number of requirements was interesting. It made it clear that environmental agreements had, from the very beginning, enjoyed some special beneficial status under the GATT, through the interesting chain of references starting with Article XX(h) as it read until 1957, which was now the Interpretative Note to Article XX(h), through the reference in ECOSOC Resolution 30(IV), and ending with the exception for environmental agreements contained in Article XX of the Havana Charter, Chapter 6.

100. His delegation agreed with others who had stated that during the analytical phase of the Group's work no ideas should be accepted or rejected at face value. The aim of the Group's work had been well stated as ensuring that there was no conflict between GATT and MEAs, which must co-exist without interfering with the objectives of one another. It would seem preferable to avoid possible frictions before they occurred, rather than trying to resolve them after they had appeared, and this would indicate the value of the ex-ante approach, based on well-defined, pre-established criteria.

101. In that regard, he said that his delegation shared a lot of the concerns with an Article XXV approach that had been expressed. The waiver clause was primarily intended to apply in cases involving hardship to one particular member. He noted from TRE/W/18 that of 105 waivers granted until end-July 1993, only eight had been granted to measures of more than one contracting party, of which, de facto, none were currently any longer in force. This meant that GATT had very little experience in dealing with measures of the type that the Group was discussing - multilateral measures - through the waiver procedure. Also, waivers could be terminated or modified after having been granted, they were intended only to apply for a limited time period, and contracting parties might still invoke Article XXIII with regard to measures covered by waivers. His delegation felt that these and other aspects of the waiver route could prove to be difficult to combine with the aims of having a harmonious and long-term co-existence between GATT and MEAs.

102. As to general observations, his delegation had followed over the last year the discussion carefully and participated actively in it, particularly with respect to the discussion on levels of participation, and it had taken note of interesting ideas such as taking into account geographical spread and the level of participation by developing countries. The discussion on specificity had also helped his delegation to clarify its thinking. Nevertheless, its basic approach was still very much in line with TRE/W/5, both the general introduction and the specific part on the relationship between MEAs and GATT. He agreed that it should be stressed that there was a wide range of environmental measures which were allowed under the GATT system, specifically under Article XX(b), and also that unilateral extra-jurisdictional action should be avoided if an environmental problem did not have an impact on a country's territory. For that reason, the link that had been made between the necessity of having a multilateral window in order to make it practically possible to avoid unilateralism was important. That might, in some cases, be so and his delegation was in favour of an ex-ante multilateral window. That window should, of course, be

based on well-defined, pre-established criteria, but it should also give predictability and security to the international community when it dealt through cooperation with environmental problems.

Agenda Item 2

103. The representative of Sweden, speaking on behalf of the Nordic countries, said discussions under this agenda item had evolved from the scope of existing and future transparency provisions in GATT to trade effects of different environmental measures on a case-by-case basis. This evolution had been agreed upon by the Group and was natural, since it was difficult to examine existing or improved mechanisms without having a clear understanding of the trade effects that needed to be made transparent.

104. The Nordic countries believed that it would be beneficial now to evaluate what had been accomplished, and to try to inform the public of the results of the Group's work on the issue of transparency.

105. The Nordic countries believed that a lot had been accomplished under this agenda item and that there had been an emerging consensus in the Group regarding several transparency issues. They were that transparency requirements in the area of environment should not be more restrictive than in other areas; the idea of establishing environmental enquiry points, open to all interested parties (private and public) was an attractive way of improving transparency; the main concern for transparency should be measures with significant trade effects; trade measures taken under Article XX or under MEAs should not be considered exempt from GATT's transparency obligations; the draft TBT and SPS Agreements included provisions that could be used as models in developing transparency provisions which had been or would be found lacking in the area of environmental measures; effective ex-ante notification was important in enhancing predictability and providing opportunities for prior comments and consultations; environmental measures taken by local government and non-governmental organizations were potential gaps in transparency; and compliance with existing notification requirements should be improved, for instance by reviewing notification practices within the context of the TPRM exercise.

106. These points represented, according to the assessment of his delegation, a rather significant achievement in the Group's analytical work, which made them worth recording. They would form a solid basis for any further provisions that were needed in the GATT in order to ensure greater compatibility between trade and environmental policies.

107. The representative of Canada said that TRE/W/13 had been useful in identifying the trade effects that could result from the introduction of certain environmental measures. For example, it illustrated how the absence of transparency in the process of measures' development could result in their being heavily influenced by domestic industries' interests and domestic resources. As a result, such measures could inadvertently discriminate against foreign products. However, the Group had yet to gauge fully the magnitude of the problem. The paper did not attempt to predict the probability that the identified trade effects would occur, noting that the effects would vary with each specific set of circumstances. The Group should bear in mind that such trade effects might not, in fact, arise in the case of many environmental policies and programmes. Nonetheless, the existence of the potential for these kinds of effects to arise did reinforce the need to look at this issue closely.

108. She said that as the Group explored each item on its agenda, it became evident that all others overlapped with the issue of transparency. This illustrated the breadth of the transparency issue and its centrality to the discussions. Her delegation wished to explore some of those

linkages, and in doing so point to some of the different aspects of the concept of transparency that had emerged.

109. She said that the linkages between Agenda Items 2 and 3 had become evident in the Group's work. When discussing issues related to packaging and labelling, it became increasingly clear that more transparency in the developmental phase of policies and programmes could help to minimize unintended trade effects. There had also been overlap between discussions on transparency and on Agenda Item 1. Some delegations had indicated that they did not see the need to notify trade measures taken under MEAs to the GATT on the grounds that those agreements were similar to international standards. Her delegation had already noted that it was not clear that this analogy was appropriate. While Canada believed that the GATT's transparency requirements were the same whether or not a measure was taken pursuant to an MEA, it might be useful to explore further the means by which transparency was achieved, and, in particular, how this was related to the issue of specificity. That issue had come to be recognized as critical to discussions about trade measures in MEAs. That, of course, was only one aspect of the much broader transparency issue. It could be imagined that the degree to which the adoption of a measure was specified in an MEA could have an impact on the nature of notification needs related to it because presumably the development of the measure occurred in the public domain.

110. She illustrated this connection using the example of measures related to an MEA. It may be that a broadly-based MEA contained trade measures that were clearly specified and represented obligations to its Parties. In some other situation, the trade-related measures might be suggested by the MEA, but their specific application might purposefully be left flexible. Another possibility was that the MEA did not itself contain trade measures but a party to the MEA introduced trade measures claiming they were in support of its MEA obligations. In all cases, contracting parties should notify all specific legislation or regulations they intended to introduce domestically to implement those trade measures. This notification should be provided in sufficient time to allow interested parties to provide comments. The public comment period for such measures might be the minimum time established by the GATT under its notification procedures in cases where a high degree of transparency had already been achieved during the negotiation of the MEA. The public comment period may need to be longer than the minimum called for by the GATT in cases where a high degree of transparency was not achieved during negotiations. In the case of measures clearly specified or suggested, some transparency might have been achieved by the negotiating process which led to the MEA. However, the first case might involve a limited number of countries and, therefore, more time might be required to allow for input from interested contracting parties. Likewise, in the second case there might not have been extensive discussions about what type of measure or actions would be acceptable. In the third case, it was quite possible that there would have been only limited or even no discussion during the negotiations and transparency would, therefore, not have been achieved by the negotiation process.

111. She said that each point on this spectrum symbolized some level of transparency. If the GATT lens was set aside for a moment, and thought were given to what it meant to be transparent in a literal sense, the spectrum seemed to converge on one end point at which all measures with potentially significant trade effects should be developed through an open process. If it were assumed that governments acted on the basis of goodwill and that there was no intention to discriminate with the introduction of new programmes, policy developers whose interest was the development of the best possible programmes should welcome opening up their processes, to the extent feasible, to allow for consideration of others' concerns. This increased transparency would both assist policy-makers to minimize programmes' unintended effects and would reduce the possibility of their being abused for protectionist purposes. Therefore, measures arising from an MEA should be as transparent, generally, as those other measures not related to an MEA.

112. In order to achieve the objective of minimizing the unintended trade effects of environmental measures, transparency was required within those processes that resulted in environmental measures; namely, within MEAs, standards-setting organizations and governments. Of course, to some extent the detail of how this could be achieved went beyond the scope of this Group. Nevertheless some valuable suggestions have been made, including the increased use of enquiry points. It is also encouraging to note that the Uruguay Round text of the TBT Agreement set out a Code of Good Practice that encouraged non-governmental standards-setting organizations to notify "expected standardization activities." The acceptance and implementation of this Agreement by all GATT Contracting Parties would represent a meaningful step forward in the achievement of greater transparency.

113. She concluded by saying that there was still a lot of work to do on Agenda Item 2. In particular, it would be important to continue the work of examining the trade effects of different types of environmental measures with a view to arriving at an understanding of where transparency was most important to the minimization of unintended trade effects. The Group may then wish to give further consideration to methods by which a desirable level of transparency might be ensured, while bearing in mind that it was not its intent to create more onerous transparency requirements for environmental measures that affected trade than for any other measures that affected trade.

114. The representative of New Zealand said that reflection on Agenda Item 2 depended to some extent on one's perspective. If it were confined to the principle of transparency, it was perhaps possible to point to a considerable amount of work which had been done. It seemed logical to also consider transparency obligations from the various "filters" in relation to the objectives of the GATT, and one of those "filters" which would seem to be relevant would be the potential for a measure to have trade effects. In this respect, work was perhaps not so well advanced. A more systematic case study approach remained to be undertaken.

115. The representative of the United States reacted to statements that had just been made. First, his delegation felt the suggestion of the Nordic countries to try to identify specific areas of emerging consensus was one that could have merit and it wanted to reflect further on the substance of it. For instance, while there appeared to be broad agreement in the Group on the point that transparency requirements should not be stricter for environmental measures than for others, he questioned whether the proposal that enquiry points be established for environmental measures was consistent with that point. This was not to say that enquiry points were a bad idea or that his delegation opposed them, but the relationship between the two was important. He recalled a point raised by his delegation in previous meetings that it was unusual for the GATT to establish transparency mechanisms based on the purpose of a measure as opposed to its nature.

116. With respect to the transparency of measures covered by Article XX, it was not clear to his delegation that the Group was at the point where it would want to be suggesting consensus on interpretations of an Article in a way that could have implications beyond the work of the Group. He was not disagreeing necessarily with the point that the Nordic countries had made, but he did feel it important to bear in mind broader implications.

117. His delegation had commented earlier on the transparency of trade measures taken in the context of MEAs. The extent to which under GATT there might be an exemption for such measures was tightly circumscribed by the terms of the agreements and notification provisions. If an MEA developed what would fit the definition of a standard under the TBT Agreement, it would not have to be notified. He did not know to what extent that was the case, but he thought that where it was it would be explicitly provided for in the texts of the notification provisions.

118. With respect to ex-ante consultation provisions, his delegation certainly saw value in the concept but he noted that contracting parties seemed rarely to have agreed to undertake obligations in this respect. He noted also that many delegations had raised as an area of concern the transparency of state and local government measures, and he asked for clarification from other delegations of how they understood such measures were treated in current or envisaged Uruguay Round obligations relating to transparency. His delegation agreed fully that compliance with existing transparency obligations was important. It agreed also with the delegation of Canada that the key to transparency was whether the process was open in such a way that all interested parties could have access to it at the point where they could still influence it. Ex-ante information and ex-ante opportunity for comment was of little value if decisions had already been taken and could not be influenced further.

119. The representative of the European Communities said that his delegation had already made up its mind on certain issues but was still reflecting on how others could or should be resolved. He noted that there was already an extensive system of transparency requirements in place in GATT that was relevant to a number of measures taken for environmental reasons. He did not exclude that some improvements might be considered desirable, but he agreed that transparency requirements in the area of environmental measures should not be stricter than in other areas. Nor should those requirements be overburdening. There should be no administratively unmanageable systems that would create compliance problems. If improvements were considered desirable it would seem preferable to have prior notifications, but ex-post notification could be very useful in certain cases as well. The idea of enquiry points for environmental regulations having significant trade effects similar to those established under Article 10 of the TBT Agreement was an interesting idea and needed further exploration.

120. Finally, with regard to the relationship between the transparency provisions of GATT and MEAs, his delegation would be hesitant to come to conclusions now; it would want to make sure that no conflicting international obligations would arise, and to study further the possible application of the TBT Agreement in this area.

121. The representative of Mexico said that with regard to the first four points referred to by the Nordic countries, the view of her delegation was that a certain measure of understanding seemed to be emerging amongst a large number of delegations, and there was considerable convergent of view on the gaps which had been identified in these areas. However, her delegation did not believe it was the time to come up with conclusions on this particular item of the agenda.

122. She said that she did not share the view of the US delegation on the possibility that there might be a contradiction between stating that transparency requirements in this area should not be more stringent than in other areas and exploring the possibility of setting up environmental enquiry points. The understanding of her delegation was that enquiry points would cover only those areas where there were considerable gaps in transparency, for instance for types of measures of a voluntary nature such as labelling measures. She did agree, however, that further discussion was needed on these points.

123. With regard to measures covered by Article XX and measures applied in the context of MEAs, she agreed with the US delegation that there remained a lot of work to be done. However, the opinion of her delegation was that, in principle, these measures should not remain outside the overall framework of required transparency.

124. The representative of Brazil said that, as his delegation had stated in the past, it considered that environmental measures should not be subject to notification obligations which

were stricter than those for other measures. However, it was important to differentiate between notification obligations and transparency in a more general sense. It could be useful, then, to have other mechanisms that would contribute to greater transparency of environmental measures, and the issue of enquiry points arose in that context. His delegation therefore did not see an incompatibility between the first two points listed by the Nordic countries, since enquiry points would be used to supplement the limitations of notifications. There would not be an extra burden in terms of notification, which he agreed could be an important consideration and which could generate compliance problems. He added that in his view, and with respect to the statement by the Mexican delegation, enquiry points would have obligations in terms of transparency also in relation to voluntary measures. He agreed there was need for further discussion of the idea of enquiry points, and he recalled some suggestions his delegation had made in the past in relation to the possible role of enquiry points in assisting in particular developing countries and in identifying for them where there were new possibilities for trade that were a consequence of new environmental measures.

Agenda Item 3

125. The representative of Chile said that voluntary eco-labelling measures should be evaluated principally in terms of new consumer demand for more environment-friendly products and the need of developing countries to improve their living conditions through the reasonable expansion of their international trade. It was essential to move forward with internationally acceptable environmental certification schemes in order to ensure the efficiency of eco-labels. Unless a certification scheme could be devised which provided scientific proof of the environmental advantages obtained by the adoption of the labels, their use for a given product could entail unnecessary costs for certain countries without producing clear long-term advantages for any. In order to avoid this situation, it would be necessary to involve the public sector and relevant international institutions in the process of developing, granting and controlling eco-labels. At the same time, the lack of internationally agreed guidelines on the environmental impact of products could result in a certain amount of arbitrariness and subjectivity. His delegation was particularly concerned that unilateral criteria might be established with respect to PPMs which would impose the domestic standards of certain countries upon others. He said that since there was a tendency for eco-labelling to develop into a national or community standard, it would have to conform to the requirements set forth in Article 2:3 of the TBT Agreement which stipulated that Parties should participate in the preparation by appropriate international standardizing bodies of international standards for products for which they either had adopted, or expected to adopt, technical regulations or standards.

126. Another source of concern to his delegation was the situation created by new packaging regulations in force in certain developed countries. Packaging definitely had a significant impact on exports, and on fruit exports in particular. The Packaging Ordinance described in document TRE/W/15, which allowed the market to determine the packaging materials to be used, did not in itself necessarily ensure effective protection of the environment in that it discriminated against the use of certain materials on the basis of the cost of disposal or recycling. In fact, the disposal of wooden packaging cost twice as much in the country concerned as the disposal of an equivalent amount of cardboard packaging. That strictly economic criterion appeared to be in conflict with environmental standards according to which the production of wooden crates was less harmful to the environment than the production of cardboard boxes.

127. The representative of Brazil recalled that at the last meeting his delegation had presented a general analysis of the problems that might be posed to exporters, especially in developing countries, by eco-labelling systems based on life-cycle analysis. It wished now to expand a little on that, based on the specific example of a label system presently in the final phase of definition

of criteria which had attracted the attention and preoccupation of the Brazilian paper and pulp industry. In doing so, he said he would like to make clear that his intention was solely to contribute to the debate and that the views presented should not be construed as a position of his Government with regard to the GATT compatibility of the measures. Also, since his delegation received very recently additional material on the issue, it might come back to it in the future.

128. He said that as was widely known, the EEC was implementing an ambitious programme of eco-labelling. Among the products chosen to be covered by the initiative were toilet paper, kitchen rolls, copying paper and writing paper. He did not wish to comment today on the structure of the preparation process or the related transparency problems that were faced up to now. The fact was that a proposal on the functioning of the system and the criteria to be used for the first two of the products mentioned was under discussion. This proposal presented a number of problems from the point of view of Brazilian exporters. As his delegation had stated last time, adaptation to local conditions due to industry influence in the preparation process might have unjustified protective consequences and negative environmental effects if requirements included criteria on PPMs. In this case, exporters might need to fulfil the criteria of the importing country scheme irrespective of local environmental or socio-economic conditions and ignoring the priorities of local environmental policies and development needs. This seemed to be the case in a number of areas of the proposal in question.

129. The first problem was the strong bias of the programme in favour of recycled content. In terms of qualifying for the label, the use of pulp made of waste paper had a practically absolute advantage in relation to the use of pulp made from wood, irrespective of whether this came from sustainably managed or planted forests. Pulp from sustainably managed forests had an advantage over other kinds of wood in the scheme, but the definition of sustainable management was not based on internationally agreed criteria and it discriminated against planted forests through a requirement of diversity of species of trees, since planted forests were normally based on a single species. That did not take into consideration fauna bio-diversity present in those forests. In this way planted forests, especially those in the centre-south of Brazil which had an important environmental and socio-economic role, were in fact punished by the proposed criteria. Insufficient account was taken of planted forests as additional carbon sinks. Criteria on energy consumption were based on the negative environmental impact of fossil fuels and therefore ignored the differences between the European energy matrix and the Brazilian one, where hydroelectric power was predominant. At the same time, the fact that some Brazilian industries produced their own chemicals would increase their energy penalties, therefore augmenting their disadvantages in relation to less integrated EEC industries without a corresponding negative environmental effects differential.

130. Emission standards were also in question in the proposal, having as a consequence the distortions normally present when there was a transfer of criteria tailored to one environmental reality from that reality to another. Sulphur emissions were penalized, something that responded to the European acid rain problem. Here, it was easy to see that if Brazilian producers tried to adapt themselves to this requirement, they would be directing their efforts to a problem that did not exist in Brazil, maybe causing a reduction of resources directed to real Brazilian environmental problems. Also Brazilian producers had expressed concern over the lack of scientific basis for the established levels of chlorine chemicals tolerated. Additionally, his delegation recalled that the scheme in question was one of those which relied on the scarcity of concession. As he had explained last time, there were potential problems and unproven advantages related to this option, and its effects needed to be maintained under review.

131. He said that his delegation remained conscious of the voluntary character of eco-labelling schemes and the potential usefulness of the approach. He had tried, nevertheless, to exemplify the

kind of problems that could be generated. Most of them related to PPMs and they gave an idea of the potential for trouble and mistakes in terms of promoting sustainable development whether one was talking about mandatory measures or about voluntary eco-label schemes with those characteristics which were in practice endorsed, for instance, through government procurement practices. He recalled, in this regard, the interest his delegation had already expressed in knowing more about the solution adopted by the Canadian Environmental Choice Program, which apparently assumed as a criterion the fulfilment of foreign legislation in relation to process standards in the case of imported products. In the case of the EEC program, quite to the contrary, the fact that the directive which created it asked for the same parameters to be met by the whole community had been presented as the reason for non-adaptation to local producing conditions.

132. His delegation considered that when discussing eco-labelling and packaging, the Group should not be limited to a discussion of compatibility with GATT obligations, but, within the realm of GATT compatibility, it should examine the possibility of aiming to attain some principles or guidelines to help to ensure that the trade and environmental aspects involved were mutually supportive.

133. The representative of the European Communities said that, with respect to the EC eco-labelling programme referred to by the delegate from Brazil, no decision on the programme had been adopted yet. His delegation intended to come back to Brazil on the points raised on a bilateral basis. He said that his delegation would like to reiterate that one of the conclusions of UNCED was that it would be helpful to give information that could assist individuals to make environmentally-sound purchasing decisions. His delegation felt that voluntary and positive eco-labelling systems could help, and it wanted to ensure they were applied in the least trade-restrictive ways. It had already noted that if labels were granted to foreign products they would actually have a competitive advantage over domestic products that were not granted a label. He felt the Group's work should be aimed at identifying ways in which wherever possible the application of eco-labelling avoided unnecessary trade restriction.

134. The representative of Canada said that beyond transparency as a response to the trade effects of packaging and labelling programmes, the Group had focused much of its attention on the design of the programmes themselves and their relative trade effects. An example of this kind of comparative examination was found in the TRE/W/13, which was to be used as one element of input into a case-by-case approach to this agenda item. Paragraph 8 of the paper reported that, with respect to packaging programmes, "the effects of economic instruments (such as taxes) are likely to be more predictable than those of regulatory measures". Her delegation doubted that the Group had a sufficient analytical basis to make such a statement. Analytical evidence did indicate that there were some situations in which certain economic instruments were potentially more cost-efficient and less intrusive than regulatory approaches, but that was a different issue from predictability. In actual fact, the predictability of economic instruments would depend heavily, in many cases, on how accurately the costs they were intended to internalize were estimated and translated.

135. Similarly, the Group should be careful not to make generalizations about the trade effects of economic instruments. As suggested by TRE/W/13 and its intent to support a case-by-case approach, the use of different economic instruments could result in varying degrees of trade effects and the use of the same instrument, applied differently, could cause different effects. For example, the trade effects could depend on how broadly the instruments were based.

136. She explored this variation with an example, looking at two disposal fees based on the volume of packaging, each applied to both domestic and imported goods, and designed to reduce

landfill waste. Both disposal fees in this example would be charged to packaged-goods producers. For illustrative purposes, the levy on imports would be charged at the border. The first disposal fee in the example would be narrowly targeted, levied on packaged goods based on the volume of paper packaging used, and designed to reduce paper packaging waste. The second fee would be levied on all packaged goods based on the volume of packaging regardless of the material used, and designed to reduce packaging waste overall. In each case the levy would be intended to provide an incentive to both domestic and foreign producers to minimize the packaging used on products sold in the domestic market in order to minimize the waste, resulting from consumption, that was delivered to domestic landfill sites. It would be difficult to predict the impact of either measure without knowing the relationship between the rate of the levy and the cost of development of packaging with lower volume. However, if it were assumed the appropriate rate was applied to cause the desired behaviour - the use of less packaging - the following kinds of trade effects could be expected.

137. For example, neither the broadly based nor the targeted disposal fee would legislate imports out of the domestic market as a regulated recycled content level could, nor would they price imports out of the market as could be the case with an eco-tax based on recycled content. The broadly based programme could, however, disadvantage imports because transport packaging could be more difficult to reduce or eliminate. The paper-based fee would discriminate between goods packaged differently and encourage substitution with other packaging materials that were not subject to disposal charges, possibly even with those that were potentially less environmentally friendly. This would unnecessarily disadvantage both domestic and foreign paper packaging producers. These substitution effects were described in document TRE/W/13. The more broadly based fee would not result in these types of substitution effects because all types of packaging would be treated equally.

138. She said she had briefly reviewed these economic instruments to illustrate their respective trade effects. A difficult issue that would arise with the implementation of either type of levy was how it could be designed to apply only to those packaging materials not reused or recycled. Clearly significant trade issues would arise if a levy were applied to packaging for all imported goods when only a portion of their packaging actually went to landfill. Nevertheless, it could be seen from this example that the breadth of the base for an otherwise identically designed disposal fee would have a significant impact on the trade effects of the programme. This illustrated why it was important not to refer to economic instruments as a homogeneous group of policy tools.

139. At the Group's meeting in March, her delegation had explored some variances in effects when charges were applied to different elements of the production process, namely to emissions, inputs and outputs. Another variable that the Group might want to explore in the future was producer versus consumer targeted instruments and their relative trade effects. It would also want to keep a close eye on the good work being done on this issue in other international fora.

140. With regard to the issue of eco-labelling, TRE/W/12 raised some interesting issues. It drew attention, once again, to the more complicated questions associated with the design of labelling programmes, particularly those based on life-cycle analysis, if an effective programme were to have a minimum of trade effects. For example, if a particular process or production method were contributing to a serious local environmental problem, it could be the focus of local labelling criteria. In such a situation, designers of the labelling programme would be faced with the problem of how to treat imports. Would imports be eligible for the label? It might be presumed they would have to be or else they would automatically be disadvantaged because consumers would assume that no label meant they did not meet the standards. Should all imports obtain the label regardless of the process by which they were produced? The answer to this might be no because this would put more onerous requirements on domestic industry than on exporters.

So in order for imported products to obtain the label, would they need to meet domestic criteria or should the criteria be somehow based on conditions in the exporting country as well as the importing country? And indeed, would the latter approach even be feasible? Another question that arose was whether it might be useful to consider the combination of a number of different approaches in order to address the variance in countries' circumstances. One of the alternatives that had been discussed in the past was the development of a system of mutual recognition for labelling programmes. This approach appeared to have several advantages. It did not, however, provide a means to deal with the labelling of products from those countries that had no labelling programme set up.

141. She said that the fact that her delegation had so many questions to ask indicated the difficulty of some of the issues before the Group, and that her delegation was still in the preliminary stages of its analysis. It also suggested the need for the Group to be very careful and objective in its analysis, not to jump to conclusions prematurely, and to take care when choosing its terminology. The Group should, for example, be careful not to impute to eco-labelling programmes the intent to treat imports less favourably than domestic products. In addition, the Group must not lose sight of the voluntary nature of these programmes, which had as their primary objective the provision of information to consumers for their consideration in making purchasing decisions, and of how this differed from mandatory requirements, although the trade effects of both could, in at least some cases, be similar.

142. The representative of New Zealand said that on this agenda item he thought it was generally recognized that the Group was considering subject matter which was rapidly evolving in the real world. Packaging and labelling measures were being implemented or contemplated in ever increasing numbers, some of which might have the potential to significantly affect trade. The Group had so far followed something of a twin track approach to this item. First, in order to have a better understanding of the dimensions of the agenda item there had been what might be broadly termed a data collection exercise. TRE/W/3 and its addenda and ongoing contributions from delegations, including TRE/W/15, were most valuable in that respect. Hopefully this information flow would continue and, in a context of contributions on structure, orientation and objectives of analysis, to which he had referred in his previous intervention, might provide background material for further case-study analysis of potentially significant trade-effects of various types of measures.

143. The Group had begun to identify generic issues on which further analysis was warranted. TRE/W/9 and TRE/W/12 provided valuable introductory material on which to base the Group's work. The Group was also receiving a wealth of detailed information from particular delegations which would require careful study. Included amongst the issues so far identified by delegations were such issues as the relationship between market-based and regulatory approaches, the extent of distinction between voluntary and mandatory measures, scope for harmonization or mutual recognition and approaches to setting of criteria, threshold levels and testing in establishing eco-labelling systems. Some delegations had also referred to life-cycle approaches to packaging and labelling which subsumed in part the issue of PPMs unrelated to product characteristics. In this respect his delegation had been interested to note the observations by the delegation of the United States at the last meeting on the complexities of life-cycle analysis and the potentially different implications that might follow from consideration of different sub-sets of a product's life-cycle. These and other issues raised under this agenda item clearly required considerable further analytical work.

Agenda Item 4: UNCED follow-up

144. The Chairman invited Ambassador Hynninen of Finland, who had chaired recently Sessional Committee 1 of the UNCTAD Trade and Development Board, to inform the Group of developments there.

145. Ambassador Hynninen expressed thanks for this possibility to address the Group, in his capacity as Chairman of Sessional Committee 1 at the recently concluded Trade and Development Board (TDB), on UNCTAD's role in trade and environment, the debate of the TDB and the conclusions drawn there from. He expressed the hope that his report would be of value and interest to the Group, remembering that both GATT and UNCTAD had been requested in the relevant section of Agenda 21 to clarify their roles. He recalled also that the follow-up to UNCED required horizontal coordination in all areas, not least in trade and environment, and that many delegations emphasized the importance of broad international cooperation at the Group's meeting in July.

146. He said that like in GATT, active consideration in UNCTAD of issues related to trade and environment had started already before the Rio Conference. The so-called Cartagena Commitment from UNCTAD VIII in February 1992 included specific paragraphs calling upon the organization to undertake a number of activities in the area. But the main thrust had been provided by UNCED. Several parts of Agenda 21 were of relevance to UNCTAD. The full scope appeared in UNCTAD's report to the Commission on Sustainable Development (CSD), which was reproduced in Annex II of GATT document TRE/W/14. Thus, a clear focus had been set in UNCTAD on trade and environment.

147. At the second part of its 39th Session last spring, the TDB had decided firstly, that it would consider the specific issue "Trends in the field of trade and environment within the framework of international cooperation" at the first part of its 40th Session, secondly that the specific issues to be discussed under this theme at subsequent autumn sessions should be determined later, and thirdly that another theme or themes on sustainable development should be discussed at each of the spring sessions. Meanwhile, the UNCTAD Secretariat was pursuing studies and projects on trade and environment largely supported by external funds. An outline of those activities was also presented in the Annex to TRE/W/14. The studies were on specific themes, for instance eco-labelling, and on country cases. The latter also sought to analyze on certain occasions the impact of trade liberalization on the environment.

148. The first part of the 40th Session of the TDB was the first time, to his knowledge, that any United Nations body had discussed the single item "trade and environment". The substantive introduction to the debate took place in two forms. The Secretariat had prepared a basic document TD/B(40)1/6, that delegations found of excellent quality and that he recommended for reading. Secondly, one afternoon had been dedicated to a panel-type informal discussion where short introductions were presented by invited experts from the United States, Poland, Zimbabwe, Finland and UNEP.

149. Agenda 21, paragraphs 2.21 and 2.22 proposed that Governments should seek to clarify the role of GATT, UNCTAD and other international organizations and encourage these bodies to examine a number of propositions and principles. As Chairman of the relevant Sessional Committee at TDB he had tried to gear the debate and the subsequent consultations towards providing, to the extent possible, an answer also to a third question, namely the future work of UNCTAD.

150. The general debate had been lively and demonstrated a deepening knowledge of the subject matter. It was begun by an excellent presentation by Ambassador Zahran, Chairman of the GATT Committee on Trade and Development, on relevant work of that Committee. Delegations welcomed trade and environment as a priority item in UNCTAD's work, indeed a new dimension in it. The approaches in the discussion varied, some delegations focusing on the Secretariat analysis while others reviewed national experiences. Recurring themes in many of the statements were the problems related to the internalization of cost, the trade impact of the use of environmentally motivated economic policy measures such as those on packaging, labelling and recycling, and the provision of technical assistance. On the last point, the possibilities offered by the International Trade Centre were mentioned. The necessity to avoid overlapping in the work of various international organizations was underlined, and a large number of proposals for further studies was presented.

151. Following informal but transparent consultations by the Chairman, the Sessional Committee had been able to arrive at conclusions without much delay. The conclusions were divided into three parts. The first part presented the Chairman's conclusions on elements on which a broad convergence of views had emerged. By and large, they responded to the request in paragraph 2.22 of Agenda 21 to examine certain propositions and principles. The second part of the conclusions established the Committee's, and subsequently the TDB's, agreement of the specific elements that were of particular relevance for the further work of UNCTAD. The third part contained a recommendation, later adopted by the TDB as a decision, as to the specific themes for consideration by the TDB at its spring and autumn sessions of 1994.

152. He drew the Group's attention especially to paragraphs 8 to 14 of the conclusions. He believed that they established fairly well that there would only be limited overlapping between GATT and UNCTAD in their work programmes and that a clear distinction existed between the two organizations as to the character and methods of work. The relevant paragraphs also sought to establish a closer interaction between the international organizations concerned, including specifically OECD. He pointed out that the two themes chosen for discussion in 1994 called for rather substantive further studies. In that sense, they determined the new features in the work programme of the UNCTAD Secretariat.

153. Many delegations thanked Ambassador Hynninen for his presentation and said it was important to avoid duplication of work in different fora.

154. The representative of Sweden, speaking on behalf of the Nordic countries, recalled with appreciation the Group's first discussion on UNCED follow-up last July. Many interesting viewpoints and suggestions had been put forward during that meeting, and the discussions had contributed greatly to a better understanding of where the Group should be heading in its work in the field of trade and environment. There was, however, a need to place in order of priority the items and areas suggested in Chapter 2B of Agenda 21 and to select a few to be elaborated upon in work in the near future. In the context of the UNCED follow-up, the Nordic countries wanted the Group to take a closer look particularly at the use of economic instruments and the trade effects that they might have. Economic instruments, such as environmental taxes and charges including border tax adjustments, subsidies or more regulatory systems and standards were increasingly being used to achieve environmental policy goals. Relevant work in the analysis of economic instruments had been and was being done in other international organizations. Trade aspects were, however, not fully covered in the analysis made in the work done elsewhere. This was very much within the competence of the GATT and his delegation therefore thought the Group had an important role to play here.

155. It was widely recognized that economic instruments and standards and other regulatory measures might have trade effects. It was also true that it could not be said that one category was by definition less trade-distorting than the other. The trade effects very much depended on how the measures were constructed and applied. This was consequently an area that needed further study. Valuable work has already been done, and TRE/W/13 was a good starting point for discussion on economic instruments.

156. His delegation saw a special need to clarify the effects of border tax adjustments. The 1971 Working Group on Border Tax Adjustments could be a starting point for this analysis. This Working Group had, however, made its recommendations in a period when environment had not been a prime consideration. His delegation would therefore find it helpful if the secretariat could produce a paper on the issue of economic instruments and pay special attention to the issue of border tax adjustments. He had in mind something similar to what had been done recently on Articles XX(h) and XXV.

157. The representative of Austria recalled that his delegation had already spoken about UNCED follow-up in some detail at the last meeting, which had brought forward interesting arguments by many delegations. He wished to add a few additional thoughts to that intervention. He recalled that he had already expressed the view, in TRE/W/19, that his delegation saw merit in incorporating UNCED ideas wherever possible in the ongoing discussion of the Group's agenda items, as they reflected to a large degree principles entirely compatible with GATT and directly related to the Group's agenda items. There seemed to be no contradiction between the underlying thoughts of the UNCED and the basic philosophy of GATT. That was especially true for general principles like international cooperation, respect for trade policies of other trading partners, compatibility with international obligations and preference for actions based on international consensus when addressing transborder or global problems. The principles of the UNCED, especially those in paragraph 2.22(i) drew on GATT experience. One of the core messages of the UNCED process seemed to be the call for the internalization of environmental costs, and Principle 16 of the Rio Declaration was very clear in that respect: "National authorities should endeavour to promote the internalization of environmental costs and use of economic instruments, taking into account the approach that the polluter should, in principle, bear the costs of pollution with due regard to the public interest and without distorting international trade and investment".

158. It seemed to follow that, if all States were to make sure that environmental costs were internalized and thus reflected in the price of the product or service, a major source of friction in the trade and environment discussion would be eliminated. Most prominently, the eco-dumping/countervailing argument in the realm of competitiveness was no longer necessary and also the thorny issues of PPMs could be solved much more easily. Furthermore, economic instruments, not only respecting but using the market mechanism, could be used prominently, thus avoiding policies leading to state intervention and to some form of managed trade. He was, of course, aware that this rather new approach of internalization of externalities was not easy to implement because of lack of analysis and experience. A few of these difficulties, which politics had to help to overcome, were education of people to recognize that a sound environment had a price, establishment of markets and of property rights where they did not exist yet, and the development of an understanding of the mechanism to ensure that, in economic terms, the optimal level of environmental protection or pollution was found.

159. This route appeared to be a promising one, in the interests of developing and developed contracting parties. He understood that the Swedish proposal went in that direction, and his delegation was also in favour of a secretariat study on economic instruments, focusing on their trade effects.

160. The openness of international markets would be a key factor to support sound environmental policies, especially but not exclusively in developing countries. For the latter, improved commodity prices in terms of trade, transfer of financial resources and "green technologies" would be important factors. UNCED called for the integration of trade, environment and sustainable development. GATT, of course, had a long-standing experience in dealing with trade, but it had also taken on board development concerns relatively early - for example in Part IV of GATT - and the GATT was in the process of learning how to deal with environmental problems. In order to be effective, GATT had to focus on issues at the intersection of international trade and environment, while, at the same time, paying tribute to all the three elements just mentioned. In this context, an important new factor was the need to ensure that on the level of policy makers, mutually supportive trade and environmental policies were designed and implemented because they were an important factor to reach sustainable development. Environmental policies had to make sure that the natural resources and eco-system were preserved, developed, or if necessary, improved, so that economic growth, for which trade was an essential factor, produced the knowledge and the resources necessary for environmental protection and financial assistance. These policies were to be implemented in the spirit of Principle 7 of the Rio Declaration, calling for "common but differentiated responsibilities of States" and "equitable sharing of the costs to protect the environment".

161. The representative of the United States said that, in reflecting on this agenda item for today's discussion, this delegation had thought it would take a slightly different angle from that taken in previous discussions of the subject. At the last meeting, many delegations had raised specific points relating to UNCED follow-up that they thought needed further consideration or needed to be introduced into the discussion of this Group. His delegation would not repeat those points, but it had been inspired by TRE/W/14, which reported on the discussion of UNCED follow-up in the CSD, as providing another important point of reference for the Group to keep in mind under this particular agenda item.

162. His delegation considered that one way to develop the discussion on UNCED follow-up in the Group was to begin thinking about the elements of the Group's contribution to the GATT's report to the CSD. It would appear from TRE/W/14 that at its session in 1994 the Commission expected a significant submission from the GATT reporting on its activities on follow-up on UNCED. TRE/W/14 mentioned, among other things, the following elements for the GATT's report:

- an assessment of the progress in implementing the relevant chapters of Agenda 21;
- the fact that the next high-level meeting "... may wish to discuss the extent to which sustainability considerations are being taken into account in ongoing discussions on (a) trade policies in the GATT...";
- the need to take into account the results of the special GATT Council to follow-up UNCED.

He offered the following observations, saying that they should be read in conjunction with the statement his delegation had made in July under the same agenda item.

163. In the view of his delegation, elements of the Group's contribution to the eventual GATT Report to the CSD ought to include a factual status or progress report of the Group's work; a reference to aspects of the current discussion under the agenda items that would need further work; and identification of additional areas for further work, which could refer to the many

points from Agenda 21 cited at the Group's last meeting. For example, reference had been made to dispute settlement and to PPM related problems.

164. His delegation hoped, of course, that a successful conclusion to the Uruguay Round would feature prominently in GATT's report on activities to promote sustainable development by expanding market access and developing sound multilateral rules. It also hoped that GATT would be able to point to other issues of concern to the environmental community that participants would have been able to address in the Final Act. Finally, it hoped it would be possible to point to a strong political commitment of the contracting parties to continuing the GATT's consideration of trade and environment issues.

165. In reviewing the comments made under this agenda item at the last meeting, his delegation had been struck by a point made by several delegations concerning questions to be dealt with by the GATT. One in particular, that of Austria, was worth recalling:

"... One of the main points to be addressed by the GATT, as it tries to clarify its relationship with the set of principles and concepts that emanated from UNCED, will be whether GATT rules as they are interpreted at present still fully suffice to meet this challenge. This question must eventually be answered by the contracting parties. Our task will be to contribute to the answers..."

This seems to his delegation to be a very important point to convey to the CSD, and to the outside world. The GATT was taking its UNCED follow-up responsibilities seriously, comprehensively, and open-mindedly. GATT was not merely engaged in a reflective effort to explain why the existing rules should be seen as being adequate to the task; rather, it had embarked on a process of serious analysis.

166. The representative of Japan said his delegation did not have much to add to what it had said at the last meeting, except to emphasize that it believed that successful conclusion of the Uruguay Round would be the most important contribution to the world economy. Trade liberalization stemming from the Uruguay Round would have a positive effect on the protection of the domestic, transboundary and global environment. This was also mentioned in paragraph 3 of the conclusion of Sessional Committee 1 of the TDB of UNCTAD. His delegation therefore wanted to emphasize again that the concentration of delegations' energy on successfully concluding the Uruguay Round by the end of the year was an important contribution which the GATT could make to the objectives of the UNCED follow-up.

167. The representative of Switzerland said that the Group had had a good discussion on UNCED at its last meeting when it had focused on the efforts and measures that ought to be undertaken in order to realize sustainable development. Her delegation detected a general understanding among delegates that GATT, as other international fora, had to contribute to the objective of sustainable development. However, delegates had underlined that there were different ways and means of achieving such a goal. The exchange of views on UNCED at the last meeting had provided also a good overview of the range of issues which delegations considered should be analyzed in depth. The Group had widely recognized international cooperation as a general guiding principle for the achievement of sustainable development. There was also broad agreement among delegations that the most significant contribution GATT could make to sustainable development would be a successful conclusion of the Uruguay Round, which would ensure greater market access for all contracting parties, particularly developing countries, and thereby promote development. The Round was a prerequisite. However, appropriate measures for better protection of the environment were still needed.

168. Some delegations had presented at the last meeting priorities of a specific nature that could be analyzed in future work. In that context, Switzerland had underlined that close consideration should be given to the clarification of the concept of PPMs and its narrow link to the concept of like-products, and she proceeded to elaborate the reasons for her delegation's position of this issue. She said that the concept of PPMs was not explicitly mentioned in Agenda 21, Chapter 2B, but there were certain principles and propositions listed under the heading of activities there which were connected closely with aspects of PPMs: point 2.22(e), for example, said that governments should seek 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. The relation with the concept of PPMs was evident and lay, in the view of her delegation, especially in the question of whether a contracting party might establish standards on product processing and manufacturing and restrict or tax imports of like-products not meeting those standards. However, the present GATT system did not, in principle, allow the application of trade measures to products not in themselves, by their physical attributes, harmful to the environment. The core of the Group's debate on trade measures for environmental purposes lay in the types of measures that were based on PPM standards and that addressed the environmental effects of a product during the manufacturing process.

169. It was known that there was room for abuse for protectionist purposes. The temptation was often considerable and a more liberalized trade world did not provide for an absolute guarantee against the protection of national industries for political and economic reasons. It was therefore, in her delegation's view, worthwhile clarifying especially the following questions. First, for what kind of environmental goods were some specific and multilaterally agreed PPM standards needed? Were specific PPM standards needed to protect global commons? Secondly, in cases where there were different PPM standards, was there an apparent need to harmonize them in order to achieve a common environmental objective? Thirdly, where different PPM standards existed, were there other means than the harmonization of PPM standards to avoid trade distortion? Fourthly, when there was a multilateral agreement on specific PPM standards, how were countries with lower environmental standards treated? And finally, were there only trade restrictive instruments such as countervailing duties or anti-dumping duties to reduce negative impacts on trade? Were trade measures per se the right instrument to deal with different PPM standards?

170. She said that closely connected with the question of PPMs was the concept of a like-product. The definition of like-product emerged inter alia from dispute settlement cases in the GATT. The economic value, the nature and quality of a product, the tariff classification etc., were all elements which characterized a product as a like-product at the border of a country. Until now, products were considered to be like-products regardless of the different production methods used. However, in that context, a group of countries had once underlined that a product could be seen not only through the traditional glasses of international trade but also through more environmental glasses. This would mean that at the border a product could not only be judged by its physical attributes but also by its PPMs. The question was, therefore, whether multilaterally agreed PPM standards which did not directly change the physical attributes of a product and therefore could not be detected by custom officials should be relevant for the definition of a like-product.

171. Her delegation had also mentioned in its last intervention on UNCED that it felt some clarification was necessary of the concept of so called "eco-dumping", roughly defined as competitive advantages that were achieved at the expense of the environment. Eco-dumping as such was not explicitly mentioned in Agenda 21, Chapter 2B. However, it was certainly related to the concept of PPM and like-product and therefore closely connected with point 2.22(e). The

important question to be answered in that context was whether the practice of eco-dumping really existed. If so, what were the reasons for practising eco-dumping and what means were available to use against such practices?

172. These were her delegation's preferences for the future analytical work on UNCED. There were certainly other important issues such as, for instance, dispute settlement which had to be analyzed in the near future and which were not sufficiently covered by the Group's present agenda. However, the Group could consider its work to date as a useful contribution to the UNCED follow-up.

173. The representative of Mexico recalled that in the course of discussions on GATT's follow-up to UNCED, particularly in the Committee on Trade and Development, several delegations had stressed the need to avoid duplication of the work being carried out in other organizations. Her delegation thought that GATT should keep an eye on the progress of work in this area in UNCTAD both for that reason and, also because it was complementary to that underway in GATT. She recalled also her delegation's comments and viewpoints at the last meeting on the way in which the Group should deal with the various aspects of UNCED follow-up, and added that they remained valid. She had in mind in particular her delegation's position that priority should be attached to the consideration and development, as a basis for the work of the Group, of the principles, concepts and basic recommendations emanating from the Rio conference. Those included the achievement of sustainable development, the rejection of unilateralism and extra-jurisdictional action, and the search for international cooperation and consensus in dealing with environmental problems, especially those with cross-border or global effects.

174. The most important elements that her delegation felt should be included in the Group's report on this matter, which she said should be factual in nature, were that it should be recognized that the work carried out by the Group on the basis of its current agenda represented an important step forward. Indeed, the great majority of items raised in the context of UNCED follow-up were already covered by the current agenda. One element worth highlighting was the extensive participation and constructive spirit which had characterized the discussions. It should also be noted that the Group showed great seriousness and commitment in dealing with the subject under consideration. The task was serious and highly complex, and the results achieved would have very important repercussions. That was why the Group must adopt a cautious approach and try not to jump to conclusions that might be incomplete or to take on new subjects without first laying the necessary foundations.

175. She said that some delegations had expressed a desire to broaden the scope of the current agenda. However, the three original items which it covered still called for an in-depth analysis. Important questions remained open under Agenda Item 1, which would have to be resolved in order to determine whether there were, indeed, new items to be considered, and if so, what these items were and how they should best be approached. Dispute settlement was a case in point: the exploration of this subject had only just begun within the framework of MEAs, and already certain delegations were proposing that it should be discussed in another context. Measures aimed at controlling PPMs was another subject which had not been broached at all in the framework of MEAs. Her delegation questioned, therefore, whether this was the right moment to bring up these items in an isolated context. In particular with regard to PPMs and the supposed impact of environment protection on competitiveness, which several delegations had insisted on discussing, her delegation agreed with the view that these were highly delicate matters whose discussion at this point would not produce much in the way of constructive results. Before these subjects could be considered, the Group would have to have thoroughly discussed and understood, in particular, the various elements and aspects of paragraphs (i), (f), (g), (d) and (c) of Chapter 2, Section B of Agenda 21. That should be the priority.

176. Overall, the report should reflect the actual progress of discussions, perhaps indicating the points on which some common ground had been found by a large number of participating countries, but avoiding any preliminary conclusions. The progress thus reflected would provide useful material which could serve as a basis for GATT's contribution to the meeting of the CSD to be held next year. Her delegation agreed that the successful conclusion of the Uruguay Round would constitute an important contribution by GATT in this respect.

177. The representative of the European Communities shared what seemed to be the general feeling of the Group that a large number of propositions and principles contained in Chapter 2B of Agenda 21 were already under discussion by the Group under its current agenda items. On the other hand, it seemed to his delegation that at the last meeting there was also some consensus in the Group that there were a number of the UNCED propositions and principles which the GATT Council had asked the Group to examine that were not yet so fully covered. His delegation shared that perception and it had already suggested a number of UNCED propositions and principles that GATT could usefully focus upon in the future. However, many delegations had also made other suggestions which were very useful. His delegation could agree with point 6 of the Chairman's concluding statement at the last meeting, as it had been reproduced in TRE/12, on the issues on which there seemed to be some convergence of views that they would warrant further attention, and his delegation would be prepared to work further to discuss those issues in a more focused manner in GATT, preferably after having narrowed them down into a number of sub-issues. Finally, he agreed with the remarks of the US delegation on the importance of the contribution of GATT to the meeting of the CSD in May 1994, and said, in that respect, that it was important to take up comprehensive analysis of UNCED follow-up in the Group as soon as possible.

178. The representative of New Zealand said his delegation agreed with the way the Chairman had characterized the Group's last discussion, noting in particular the relationship between the Group's work on UNCED follow-up and its work on other agenda items. It was interesting to consider issues such as internalization of costs, PPMs, and eco-dumping and to realize the considerable complexity of those issues. He thought, as the European Community had just said, that it would be necessary to engage in a focused analysis of those types of issues, bearing in mind the type of comparative advantages that there were in GATT, and also enriching the analysis by considering work which was being done elsewhere.

179. The representative of the Republic of Korea said that trade and environmental interests were wholly reconcilable, and a non-discriminatory trading system would pave the way for environmental improvements and the achievements of UNCED's goal of sustainable development. His delegation viewed trade and environment as mutually supportive, and it agreed that the completion of the Uruguay Round was important for both environmental and developmental interests.

180. Generally speaking, his delegation remained a proponent of multilateral efforts to protect the environment. Particularly, with respect to transnational environmental problems, multilateral approaches seemed to offer the most viable method of confronting global concerns. Multilateral approaches also appeared to be easier to reconcile with the needs and goals of the GATT-based trading system. With respect to MEAs, there was a need to follow certain guidelines and general principles. For example, his delegation found it easier to support MEAs that spelled out, clearly and specifically, trade measures that were permissible for the fulfilment of environmental goals. It also supported the rather prominently held view that such environmental measures should be effective, fully transparent and the least trade-restrictive in nature. While these principles seem important from the GATT perspective, it was still necessary to convince those outside the GATT of their value and validity.

181. He said that in addressing environmental concerns, many environmental disputes could be expected to arise in the GATT, although currently there were not many cases. It appeared that there were some important, unanswered questions concerning the application of dispute settlement procedures in environmental disputes. First, among these questions, as the Nordic countries had pointed out, was whether such disputes should be heard in a GATT forum, and if yes whether the present or envisioned dispute settlement procedures were sufficient.

182. His delegation supported the proposal that the Group review and discuss further economic instruments. The issue of government assistance to aid sustainable production was beginning to attract a lot of attention and it was one of the issues that he believed merited more discussion.

183. The representative of Brazil said that any GATT report to the CSD should take into consideration both the discussions which were taking place in the Group and in the Committee on Trade and Development. In his delegation's statement at the last meeting it had been recognized that, although many of the discussion issues which were raised in Agenda 21 were already being discussed in the Group or in the CTD, there still were some specific issues that would merit further discussion. His delegation was open to a discussion of which those issues were. His delegation was impressed by the number of issues and their complexity. This required further discussion, and in his view they should not be mentioned in the report since the Group had not had time to address and review them and to see whether they warranted further discussion. Some delegations had mentioned the question of the different costs related to different environmental regulations which was dealt with in item 2.22(e) of Agenda 21. For the time being, his delegation thought that what was written there was good enough because it reflected the absence of concrete data that would prove that different environmental regulations had a significant impact on the costs of industries. Therefore "eco-dumping", in his view, did not exist for the time being. He reiterated that his delegation was open to discussion of what were the items that the Group should deal with in the future under this agenda item.

184. The representative of Australia said that his comments were not specific to the UNCED follow-up process, but were relevant to the work that the Group had done since its inception and to the future work process. It was his delegation's view that an important part of the Group process should be to allow all countries the opportunity to make their concerns and problems known and have them discussed and analyzed, but that there was an obligation on those proposing the addition of issues to the work programme to clarify what their problems were and what they were seeking. His delegation's general impression of the discussion of the Group was that, apart from the important issue of packaging and labelling which would need at some stage to be dealt with more substantially in the GATT, there needed to be more focus on what the practical problems were in a GATT context.

185. The issue of some technical inconsistencies with respect to MEAs had been discussed at length. While this probably did not require a solution in the GATT, one could be found, although it would take some debate on the precise characteristics of a covered MEA if the exception route was chosen. TRE/W/17 showed the lack of explicit use of the exception in Article XX(h); that was a salutary lesson about the likely practical relationships between the GATT and any future or existing MEA. It was a highly unlikely event that some urgent solution would be required. Then, it would always be within the power of the CONTRACTING PARTIES to give a waiver. The issues of unilateralism and extraterritoriality had been dealt with at UNCED as being inappropriate, and virtually all would agree that these would never be given GATT coverage because of the lasting damage that would or could be caused to the fabric of the GATT. Transparency was important and again it was clear from a technical point of view that there were many problems that were susceptible to solution.

186. The GATT system was going to have a full agenda of work over the second half of the decade and it did not need to seek out more issues for discussion. Thus it was important that debate in the EMIT Group focus on real problems, in particular on perceptions about potential deficiencies in the GATT rules arising from changes in global and national approaches to environmental issues, including Objective 2.21(a) of Chapter 2 of Agenda 21. This was, of course, not a static issue but one that might need to be taken up periodically as many issues had been in the past in the GATT, with rules being adapted and improved upon as required over time.

187. Accordingly, the view of his delegation was that the Group needed to focus on those issues for which it could make a sensible contribution rather than simply seeking to add more to the generalized rhetorical debate on the importance of trade and environmental issues. It was incumbent upon countries that wished to extend this debate to give more specificity to what their objectives were and the way in which they saw them being achieved. In particular, it was his delegation's view that there was no point in trying to attribute to the GATT competence and responsibility for issues that it simply did not have. There was a certain amount of the now standard ploy of blaming the GATT for preventing the introduction of policies for which there were actually sound reasons to avoid. His delegation remained concerned at times about the apparent lack of understanding of the implications of the GATT in dialogues between the non-government trade, development and environmental communities. In line with Section 2.22(b) of Chapter 2, the GATT, contracting parties and the secretariat would need to continue to work for a greater public understanding of the implications of the GATT system.

188. The representative of Colombia said that his delegation thought the work of all international organizations and agencies was an important complement to the work being done in the Group. In that sense, it was important to have the Group informed of what was being done in other fora.

189. With respect to the Group's report on UNCED follow-up, although his delegation agreed with the Chairman's summary in the appendix to TRE/12 it wanted to point to the additional fact that in the Group and in GATT work the conclusions of the Rio meeting must be respected. The Group should therefore try to balance those results with the scope of competence of the GATT itself. That, he thought, was central to the real points to be taken into account in the Group's work. In that context, he pointed to the principles of international cooperation and sustainable development as a guide for work within GATT. It must be recognized, as was recognized in Rio, that trade in itself was not an end, but merely a vehicle for obtaining sustainable development.

190. As had been indicated in his delegation's statement on this subject in July, emphasis should be placed on the need for more in-depth treatment of the issues covered in Chapter 2.22 of Agenda 21, sub-paragraphs (e) and (i). Also, his delegation was convinced that there was a need to deal with other specific subjects, such as the whole question of eco-dumping. Nevertheless, the greatest contribution that could be made by the GATT, in the context of UNCED follow-up, was to finish the Uruguay Round and establish a set of substantive results with regard to market access.

191. Before adjourning the meeting the Chairman reminded delegations of the invitation he had made at the July 1992 meeting that they, individually and on a goodwill-basis, should submit to the secretariat for its use information that reflected their own national experiences with packaging and labelling requirements. He also invited delegations to be in touch informally with the secretariat if they had any views on some of the suggestions made at this meeting on the work the secretariat would be undertaking.

192. He informed the Group that he intended to make a report, on his own responsibility as Chairman of the Group, to the 49th Session of the CONTRACTING PARTIES on the progress that had been made in the Group this year. He recalled that he had made a similar report to the last session of the CONTRACTING PARTIES at the end of 1992, and he said he would try to follow suit on what he had done then and he hoped that he could produce a report that would be acceptable to all delegations. He would be writing to the Chairman of the Council of Representatives to inform him of his intention to make that progress report to the next CONTRACTING PARTIES' Session and to request him to inform the Council accordingly.

193. He invited the Group to agree to recommend to the Council of Representatives that working documents prepared by the secretariat in the TRE/W/-series be derestricted at the same time his report was made to the 49th Session of the CONTRACTING PARTIES. His reason for making this suggestion was that he believed the documents contained a large amount of useful, factual information which would be of considerable benefit if it was made available outside the GATT in helping to better inform the general public of the kind of issues which had been under consideration in the Group. The GATT documents that he was referring to in the TRE/W/-series were numbers 1, 2, 3 and Add. 1 and 2, 4, 7, 9, 10, 12, 13, 14, 16 and Corr.1, 17 and 18. He added that they would be reviewed and, as necessary, revised by the secretariat to ensure factual corrections were taken into account.

194. Finally, he said that the date of the next meeting would depend on the progress made with the Uruguay Round negotiations and would be fixed after further consultations.