

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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ENVIRONMENTAL MEASURES AND INTERNATIONAL TRADE, TO THE
49TH SESSION OF THE CONTRACTING PARTIES**

1. This is the second report I submit under my own responsibility as Chairman of the Group on Environmental Measures and International Trade. It updates my report to the 48th Session of the CONTRACTING PARTIES in December 1992, and takes account of work accomplished by the Group last year.
2. A Chairman's report presented under my own responsibility allows me to attempt to reflect the remarkably constructive and cooperative spirit and open mindedness that has developed and continued this year in the Group despite the divergence of views and perspectives relating to some of the basic elements of the sensitive issues with which it has been dealing. Such divergence reflects the real world and has, in my judgement, enhanced the value of the work in this Group. In preparing my report, I have relied on guidance given by delegations, at my request, in particular at the last meeting of the Group. What follows is an account of the main developments and issues dealt with in the Group. I have taken the liberty to highlight some points I felt were of importance even though these may not coincide with the emphasis or importance placed by different delegations.

Introduction

3. The Group has met formally twelve times since it was activated in November 1991, when it adopted, for the present, a three-point work agenda (**Annex I**). In July 1993, in accordance with the Decision adopted by the CONTRACTING PARTIES at their 48th Session, the Group extended the scope of its discussions to cover matters raised in Agenda 21 of the UN Conference on Environment and Development (UNCED) with respect to making trade and environment policies mutually supportive (**Annex II**).
4. In 1993 the Group met five times formally, at intervals judged by delegations to afford them time for reflection as well as to maintain a certain pace of progress. Discussions were facilitated and advanced by many informal meetings, particularly early in the summer before the Group held its first substantive debate on the work assigned to it in relation to GATT follow-up on the UNCED recommendations. Examination of the matters covered by the third agenda item (trade effects of new packaging and labelling requirements aimed at protecting the environment) was assisted by presentations made at a meeting in May by experts from the International Trade Centre and the International Organisation for Standardisation. I would like, on behalf of the Group, to thank both organisations for their useful contributions.
5. The Group originally planned another formal meeting in 1993 to discuss UNCED follow-up and prepare for the GATT Council session on that subject. Due to the urgency placed by delegations on completing the Uruguay Round by its agreed deadline of December 15, these meetings were postponed by unanimous decision. Finishing the Round was by far the most significant and immediate contribution that governments could make through GATT to improving the climate for better environmental conservation and protection policies at both national and

international levels, as was recognized by the UNCED. It was also felt that distracting attention from the negotiations at such a critical juncture would not have served the interests of the Uruguay Round nor ensured a focused and constructive debate on UNCED follow-up.

6. In spite of this foreshortening of the Group's work programme, its discussions over the past two years have resulted in delegations being better informed of, and more comfortable with, the subject matter they are covering. That has made easier my own task of moving the debate along, and it has meant that an increasing number of delegations have been able to participate actively in the Group's work, with more confidence and in a spirit of mutual trust and cooperation.

7. The GATT Council, at the Group's request, has decided to de-restrict working documents prepared by the GATT secretariat, and these are now available to the public. These documents were prepared as background papers at the Group's request on a variety of issues that have arisen in the course of its discussions.¹ (For details of documents and the subject matter with which they deal see **Annex III**. For ready reference, I have added three other documents on environmental issues prepared by the GATT secretariat already available to the public). It is hoped that these papers will help to inform public debate on trade and environment issues and help to correct misconceptions about GATT's role. They should help also to indicate the complexity of the matters under examination and the scope of the Group's work.

8. The Group was not established as a negotiating forum. It has been a widely shared view that it would be premature to adopt a prescriptive approach until the dimensions of any problems that might exist have been more clearly identified, particularly with respect to the significance of the trade effects that are involved. The Group has therefore viewed its role as one of examining and analysing the issues covered by its agenda.

9. On the basis of work to date in the Group there is, it appears to me, wide acceptance and agreement on a number of points. The Group has been careful to ensure that the scope of its discussions remained well within its mandate and GATT's competence, namely the trade-related aspects of environment policies which may result in significant trade effects for GATT contracting parties. The GATT is not equipped to become involved in the tasks of reviewing national environmental priorities, setting environmental standards or developing global policies on the environment.

10. The work undertaken this year has strengthened further the conviction that there need not be, nor should be, any policy contradiction between upholding the values of the multilateral trading system on the one hand and acting individually or collectively for the protection of the environment and the acceleration of sustainable development on the other. If problems of policy coordination do occur, it is important to ensure that they are resolved in a way that does not undermine internationally agreed trade rules and disciplines that governments have spent the past seven years reinforcing through the Uruguay Round negotiations.

¹The GATT Secretariat has a tradition of reserved caution, rightly, on documentation where interpretation of existing GATT or prospective WTO rules and disciplines are concerned as this is regarded as the prerogative of the contracting parties. I wish to place on record that the secretariat in the listed documents was encouraged, in order to contribute to debate in the Group, to err on the side of boldness rather than caution. It should not be presumed, therefore, that all members of the Group agree necessarily with all of the views expressed by the Secretariat in these documents.

11. It is clearly important to ensure that the multilateral trade rules do not present an unjustified obstacle to environmental policy-making. An important point is the considerable extent to which the GATT rules already accommodate trade measures used in conjunction with environmental policies to protect national environmental resources. A review of the extensive use that is being made of trade-related environmental measures by contracting parties to protect their domestic environmental resources gives testimony to that fact. Furthermore, an open, secure and non-discriminatory trading system underwritten by the GATT rules and disciplines can facilitate environmental policy-making and environmental conservation and protection by helping to encourage more efficient resource allocation and to generate real income growth.

12. In what follows, I report on the Group's discussions on each of its agenda items and on UNCED follow-up.

Agenda Item 1: Trade provisions contained in existing multilateral environmental agreements vis-à-vis GATT principles and provisions.

13. There is concern that trade measures taken pursuant to multilateral environmental agreements (MEAs) can conceivably conflict with GATT provisions. There is also concern that the GATT provisions could work to inhibit if not prevent a desirable conclusion of a future MEA. While such concern, in the view of some in the Group more familiar with the tradition and practices of the GATT and its provisions, may be based at least in part on misunderstandings, it nevertheless exists.

14. This was part of the background to discussions under this agenda item which have been based on an examination of the use of trade provisions in existing MEAs. It has been noted that few of the more than 150 MEAs negotiated to date contain any trade provisions. This has led many delegations to view the use of trade provisions in MEAs as somewhat unusual and not a widespread phenomenon. Nevertheless, the Group has been mindful of the fact that the negotiation of MEAs will continue to be an active area of international environmental policy-making. Governments' efforts to seek co-operative, multilateral solutions to environmental problems of a transboundary or a global nature are very much welcomed by GATT contracting parties, for there are clear grounds for believing that this approach will prove more effective and durable than ad hoc resort to unilateral trade measures to try to deal with such problems.

15. Although at the outset reference was made in general terms to a possible hierarchy of international agreements under principles of international law, namely that if two agreements have the same membership on the same subject, the later and/or more specific one would take precedence, this approach was not pursued. As noted earlier, no challenge has been brought under the dispute settlement provisions of the GATT against trade measures applied in the context of an MEA. The Group was not requested nor designed to conduct an examination of the GATT consistency of trade provisions contained in existing MEAs. Rather, a forward-looking perspective has been adopted and work has proceeded on a generic basis, which has helped to ensure progress on this agenda item.

16. Possibilities of conflicts arising in the future over the trade provisions contained in MEAs will be minimised through better coordination between trade and environment officials in national capitals. That remains a sine qua non for cooperative action at the multilateral level. A process of enhanced policy coordination is underway already in many countries; it will certainly contribute to reducing unnecessary tensions in this area.

17. There is wide agreement in the Group that GATT does not prevent any contracting party from adopting appropriate domestic environmental policies by providing countries with very considerable scope to use trade-related policies to protect national environmental resources without calling into question their GATT obligations. As long as the policies are applied without discrimination to domestically produced and imported products (national treatment rule) and do not discriminate against imports from different sources (most favoured nation rule), they are very unlikely to face a challenge under the GATT. Where it is felt necessary to use trade measures in MEAs, many delegations have expressed the view that most often their design and implementation need not involve action which extends beyond that available to contracting parties under the GATT.

18. In addition, recourse can be taken to the provisions of Article XX of the GATT in exceptional circumstances. These provisions permit a contracting party to apply trade measures which could otherwise be considered inconsistent with its GATT obligations but which are felt to be necessary to protect human, animal or plant life or health or which relate to the conservation of exhaustible natural resources. However, such measures must not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail nor create a disguised restriction on international trade. Checks and balances such as these are needed as essential safeguards against protectionist abuse, which would be as detrimental to the environmental agenda as to trade, and to avoid unduly disturbing the balance of rights and obligations accruing to contracting parties from the GATT system.

19. Discussions in the Group have focused on two areas of possible conflict where the most challenging questions were raised. They relate to the use of trade measures to help protect environmental resources that do not fall within the national jurisdiction of any one or more contracting parties nor necessarily affect solely or directly their own environments, and on trade provisions of MEAs that apply separately to non-parties (i.e. countries not signatories to an MEA who for legitimate or other reasons have decided not to join). In this context, several delegations stressed the need for caution to be exercised in the negotiation of MEAs before including such trade provisions at all, and feel most particularly that it is generally undesirable and should not normally be necessary for contracting parties to use discriminatory trade restrictions against non-parties to an MEA. These delegations stress also that while trade measures may appear to be an attractive means of enforcing provisions of MEAs which relate directly to environmental resource management and conservation, their effectiveness is not always beyond doubt and the full costs of using them in this context, for example upon international resource allocation and the conditions of competition, can be high and need to be carefully taken into account.

20. The spirit of mutual confidence and cooperation which has prevailed in the discussions has enabled the Group to move forward in line with the dictum of not rejecting any notion out-of-hand, nor taking any concept at face value. While the Group clearly continued to focus on an analysis of the underlying issues, a number of delegations expressed views on different approaches for addressing a possible conflict.

21. It has been noted that it is already possible to consider in GATT the treatment of trade provisions contained in MEAs on a case-by-case basis, notably through the waiver provisions contained in Article XXV. This builds on the view that the GATT already provides considerable scope for using trade measures for environmental purposes, and reflects doubts that trade measures which would exceed the limitations of existing provisions are likely to prove efficient or effective policy tools for use in MEAs as well as concerns about disturbing the balance of rights and obligations conferred by the GATT on its contracting parties. Where doubts exist about the probable compatibility of trade measures in MEAs with the provisions of the GATT, or where it

proved necessary to move deliberately outside those limits, recourse could be taken to the waiver provisions of Article XXV.

22. The merit of this approach has been described in several ways. One is that the scale of the remedy fits the problem. There has not, to date, been any challenge under the GATT to the trade provisions of an MEA, and having recourse to a waiver would provide a measured, case-by-case response to any problems that might arise in the future. Under this approach, multilateral consensus would be established on the merits of each case; it could be presumed that if an MEA reflected a genuine multilateral consensus it would find broad support among GATT contracting parties and there need be little, if any, uncertainty about the chances of securing a waiver for it. The waiver approach would avoid the need for GATT contracting parties to elaborate and agree upon general criteria to apply to the use of trade provisions in any future MEA. It would not focus on an MEA but on the trade measures included in it. Finally, the onus to demonstrate and convince others of their case would remain the responsibility of those who were seeking the waiver. In the view of some delegations, therefore, this would be a response, in line with the time-honoured GATT tradition of flexibility, which through a combination of tolerance and safeguards would enable other objectives to be effectively realised without compromising the balance of rights and obligations accruing to contracting parties from the GATT system. The value of the GATT to contracting parties would not be reduced because they would play a positive role in determining the waiver.

23. A number of doubts have been raised about this approach. One is that it is a case-by-case approach, which might fail to provide negotiators of MEAs with the necessary degree of predictability or security that there would not be a GATT challenge if they felt the need to include trade provisions in an MEA. Some delegations feel it is desirable to provide clear guidelines to negotiators of MEAs so that they could know in advance what tools they have at their disposal, and that obtaining a waiver could be time-consuming and possibly cumbersome. Under the existing provisions, GATT waivers are also time-limited, as is made explicit in the Uruguay Round Final Act, whereas environmental problems are increasingly recognized as requiring long-term and global solutions. Also, in the absence of a clear hierarchy among different, self-standing international agreements, could not a formal denial of a waiver create an untenable conflict of international obligations for contracting party governments? Finally, it has been noted that Article XXV is meant to address exceptional circumstances and it is not clear that GATT would wish to treat MEAs as exceptions.

24. A second approach that has been suggested by some delegations is to define conditions for the use of trade measures in the context of an MEA to address transboundary and global environmental problems which, as long as they were met, would ensure that the GATT would accommodate the measures. This approach has been described as creating an "environmental window" in the GATT. One formulation of it would involve a collective interpretation by GATT contracting parties of the applicability of the provisions of Article XX of the GATT in circumstances where trade measures are applied separately in an MEA to non-parties to the MEA (the provisions of Article XX of the GATT that have been mentioned in this regard are reproduced in **Annex IV**, and one of the GATT secretariat background papers that has just been derestricted - TRE/W/17/Rev.1 - provides additional information on Article XX(h)).

25. This "environmental window" approach has been described in terms of its *ex ante* nature, and the predictability and security it would bring for the negotiation of MEAs dealing with transboundary and global environmental problems, and of clarifying the relationship between the trade provisions contained in MEAs and GATT principles and provisions. Some delegations feel it would avoid the need to tackle explicitly the issue of extra-jurisdictional action, yet in the view of some delegations it would allow it to be made clear that the current provisions of the GATT,

and notably those of Article XX, do not permit unilateral action to address extra-jurisdictional environmental problems.

26. Doubts have been raised about this approach as well. At a general level there are doubts about the need at all to go beyond existing GATT provisions, including its exceptions, and to make special provision in GATT to accommodate trade provisions taken in the context of MEAs. A more specific concern is that this approach could upset the existing balance of GATT rights and obligations. GATT contracting parties, non-parties to an MEA, may wish to use their GATT rights if they believe they are suffering from unfair or unnecessary discrimination; the provisions of an MEA, or the judgement of parties to an MEA, should not be allowed to override those rights, especially without there being an obligation to explain the case for trade discrimination if there were to be a challenge under the GATT. Another basic doubt, of a more practical nature, is whether it would prove possible to find a single formula for implementing this approach that would, on the one hand, be general enough to encompass all legitimate requirements, present and future, for the use of trade measures in the context of MEAs and, on the other, would neither overstretch the basic concept of an exception clause which underlies this approach nor open the door to protectionist abuse. Also, some fear it might be difficult to establish criteria for implementing this approach without stepping outside the competence of the GATT and entering into an examination of the environmental justification for the use of trade provisions in an MEA. Would it not be more prudent to consider the individual merits of each case as it arose rather than pursuing concepts of general application, especially if they carry other problems with them?

27. The constructive atmosphere that has prevailed in the Group's work has permitted discussion to proceed on some of the details of this second, *ex ante*, approach. It is seen as critical even by those who favour it that if it is to gain a wide measure of support it should be based on carefully defined, pre-established criteria. They view the challenge as being able to strike the right balance between setting criteria that are sufficiently general to cover a broad range of, as yet unknown, circumstances that may arise in the negotiation of future MEAs while limiting the risk that trade measures in an MEA would be misused for protectionist purposes. A number of questions have been identified as being of particular importance, and these have been the subject of preliminary discussion.

28. One issue is what defines an MEA. Two factors have been mentioned in this regard. One is the need for a clear understanding of the meaning and coverage of the term "environment" in this context (which is yet to be pursued in depth). The other is what constitutes a genuine "multilateral" consensus in an MEA. This is important since a broad enough consensus is likely to produce a well-balanced multilateral agreement and a robust outcome. Although there may be no simple formula that can be applied to every case, preliminary discussions on this point have indicated that negotiation of and participation in an MEA should be open on equitable terms to all countries, and that the participation of interested countries should be numerous and broad in geographical terms and in terms of countries at varying levels of development. It has been suggested that consideration might also be given to adequate representation of consumer and producer nations of the products covered by an MEA among an MEA's signatories, or ensuring, as in commodity arrangements, that the bulk of international trade was represented by signatories.

29. Within this same context, and in the event that the MEA includes discriminatory trade measures against non-parties, another consideration that has been raised is the reasons why a non-party to an MEA would have taken the decision not to join the MEA, including the question of who judges the merits of that country's decision to opt out. It has been noted that there may be many reasons why a country decides not to join in multilateral action to address an environmental problem (it may find the scientific evidence is not persuasive, it may not be able to afford to join, or it may consider there are more pressing problems that deserve higher priority), and in this

regard mention has been made of the reference in Principle 7 of the Rio Declaration to "common but differentiated responsibility" of states in resolving environmental problems of a global nature. Emphasis has been placed by several delegations on the importance of looking at whether the environmental conduct of non-parties could be detrimental to the achievement of the environmental objectives of an MEA, and mention has been made in that regard of the need to develop a common understanding of the language in the headnote to Article XX of the GATT requiring that trade measures should not be applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail".

30. Another question that has been discussed is whether and to what extent a trade measure must be specified in an MEA if it is to be cleared under this approach. It has been pointed out that few MEAs to date include mandatory obligations for the use of specific trade measures. Even those that do, for example by directing signatories to use quantitative restrictions or import or export licensing schemes, still permit a wide range of individual discretion. In other words, should a "carte blanche" general exception be available in GATT for the use of trade measures in the context of an MEA when a contracting party asserts that the trade measure is linked to and is necessary for it to meet the objectives of the MEA, or should the measures be specifically mandated in the MEA, and if so to what extent?

31. The value of "specificity" lies in being able to predict how governments might use trade measures in the context of an MEA. Not being specific enough might risk giving excessive liberty without adequate safeguards under the GATT for using trade measures in this context. Demanding too high a degree of specificity, at the same time, might not be desirable or possible since in practice the trade measures contained in an MEA may have to be tailored by individual signatories to particular circumstances, and the conditions influencing their use of trade measures may change over the relatively long period of time that the MEA may need to be in effect.

32. Another element that has been raised is the "necessity" of using trade measures in an MEA. It should be emphasised that this does not refer to whether an MEA itself is necessary, but to the necessity of using trade measures to achieve the objectives of an MEA, in particular discriminatory trade measures. A general rule would seem to be that trade measures might be considered as an accompaniment to environmental policy measures only if the latter do not suffice to realise a specific environmental objective. Beyond that, for some, "necessity" is related to the use of the least trade-restrictive or distorting measure available, or the proportionality of the measure to the need for trade restriction to ensure the environmental objective is met. It has been pointed out that these concepts are relatively new in the GATT and they would need to be further elaborated. Others have emphasised the importance of these concepts, noting that they have been incorporated and endorsed in the Rio Declaration.

33. Safeguards against the protectionist abuse of trade measures taken in the context of an MEA are seen as being of critical importance. In this respect it would be necessary to clarify among other things what would constitute "a disguised restriction on international trade" within the meaning of Article XX of the GATT.

34. Transparency is also considered to be a highly important element. This has been the focus of discussions under Agenda Item 2. With regard to trade measures taken in the context of an MEA, the general view is that these should not escape the transparency provisions of the GATT. It would appear that contracting parties bear an individual rather than a collective responsibility to meet GATT obligations on transparency, and obligations to notify measures that might affect the operation of the General Agreement are not materially altered by the context in which such measures are taken. While attention has been drawn to the possibility that measures might not need to be notified if they fall within the meaning of "international standards" in the Agreement

on Technical Barriers to Trade, this point requires further examination. The issue of transparency is also linked to the degree of "specificity" with which an MEA provides for the use of trade measures. While it has been suggested that the importance of ensuring transparency in GATT might vary inversely with the extent to which a trade measure is openly negotiated and clearly specified in an MEA, it has been pointed out that a high degree of transparency is desirable in all cases and would assist in minimising unintended trade effects and reducing the possibility of protectionist abuse.

35. A related institutional issue that has begun to be discussed but on which the Group has not yet properly focused is dispute settlement. It has been suggested that disputes involving GATT contracting parties could, in theory, be envisaged over the trade provisions contained in an MEA, either between two signatories to the MEA or between a signatory and a non-signatory. In the former case, the dispute could normally be settled under the provisions of the MEA, but the possibility has been raised that one party to the dispute might nevertheless seek recourse to GATT dispute settlement, particularly over the administration or implementation of trade measures which were not specified clearly in the MEA; evidently, if both parties agree to seek recourse to GATT dispute settlement, the provisions of Articles XXII and XXIII are available to them. In the second case involving a non-party to an MEA which could not have access to the dispute settlement mechanism of the MEA, the dispute would have to be raised in GATT.

36. The issue of regional environmental agreements, and the possible applicability to them of the two approaches described above, has been raised in the course of discussions but not yet discussed in a focused way. Some have suggested, nevertheless, that even greater care should be taken to ensure that regional agreements do not inadvertently provide a means for trade protectionism.

37. The majority of delegations have yet to elaborate their positions over what, if anything, needs to be done. Most have not yet come out in favour one way or another or taken a firm position, and even those that have indicated their preference have emphasised that they are still open to examining alternative propositions. Many questions remain, and further work needs to be done in analysing the underlying issues before well-informed judgements can be made. Those issues would appear to be broadly similar whatever approach is taken, and no delegation should consider its position would be compromised by further issues-based analytical work.

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

38. Much has been accomplished in the analytical work of the Group under this agenda item, and there appears to be broad agreement on several issues.

39. One is that current GATT provisions (notably Article X, the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, and the transparency provisions of various Tokyo Round Agreements, particularly the Agreement on Technical Barriers to Trade), especially once they have been supplemented by the new Uruguay Round provisions, create a broad basis for ensuring multilateral transparency. These provisions represent a negotiated result, and it is recognized that the GATT transparency mechanism should be administratively manageable to avoid creating compliance problems. The GATT regime by and large goes a long way to satisfying the concerns and/or issues raised under this agenda item in respect of measures with significant trade effects, which is what the Group is concerned with.

40. Nevertheless, some delegations have drawn attention to certain specific environmental measures which they feel may not be covered adequately by these provisions. A preliminary list of such measures has been compiled, and the list is to be updated, as necessary (see, in this regard, the GATT secretariat background document TRE/W/7). Of the measures contained in the current list, some delegations have concerns over the adequacy of transparency of economic instruments, measures taken by sub-federal government authorities and by the private sector, and voluntary measures.

41. Some other delegations consider that few, if any, of the measures on the list represent gaps in coverage under existing or prospective transparency provisions. They have pointed out the broad scope of Article X of the GATT, and cautioned against excessive ambition at a detailed level in this area, and particularly against over-extending notification requirements.

42. Effective compliance with the transparency provisions in the GATT is an essential aspect of ensuring transparency in practice, not only with respect to trade-related environmental measures but to all trade and trade-related measures, for the benefit of the trading system in general. The new Trade Policies Review Mechanism, which was agreed to in the Uruguay Round negotiations and which involves periodic reviews of the trade policies of each GATT contracting party, is already assisting in drawing attention to areas where compliance could be further improved.

43. There appears to be general agreement in the Group that transparency requirements in the area of environmental measures should not be more onerous than those in other areas of policy-making that affect trade.

44. Transparency, it has been stressed, is not an end in itself. It is a means to build confidence in and provide security and stability to the multilateral trading system, to minimise trade restriction and distortion, to assist private sector operators to adjust to changing trade policies, and to prevent trade disputes from arising.

45. Ex-ante notification (before adoption and implementation of trade-related measures), such as that required under the terms of the Agreement on Technical Barriers to Trade, could offer the opportunity for other interested Parties to provide input at the stage of development of new legislation and time for affected producers to adapt to new regulations. At the same time, ex post notification, which is the norm in GATT, when properly complied with, can go a long way towards meeting the objectives described above.

46. There has been considerable discussion regarding the suggestion that governments might consider establishing enquiry points (such as those established under the Agreement on Technical Barriers to Trade) open to all interested parties, public and private, to provide information on trade-related environmental measures, including those not subject to formal notification requirements under the GATT, and on changes in national environmental legislation. It has been suggested that such a system could also assist in increasing the transparency of private schemes (notably environmental labelling) and local and state government programmes.

47. However, some doubts about the practical aspects of implementing enquiry points have been expressed. One is the need to avoid raising problems of official responsibility within the particular circumstances of each contracting party. An official pledge of assistance to help find information upon request might prove equally valuable. This idea of enquiry points will clearly require further consideration.

48. Discussions under this agenda item have evolved from the scope of existing and future transparency provisions in GATT to the trade effects of different kinds of trade-related

environmental measures on a case-by-case basis, and the Group has begun examining the potential trade effects of various types of measures. The potential for a measure to have significant trade effects has been described as one of several "filters" through which the adequacy of existing transparency obligations might be examined. Further analytical work is needed in this area before the issues can be brought fully into focus in the Group.

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

49. Discussions in the Group on this agenda item have been enriched by the provision by Delegations on an individual and goodwill basis of information that reflects their own national experiences with these measures, both in terms of the environmental objectives that are being pursued and the trade effects that some countries are experiencing. Given the technical nature of the subject matter under this agenda item, the information has been particularly valuable. A co-operative approach to the sharing of information between governments on their environmental objectives and the development of their policies in this area can help to prevent trade problems from arising.

50. The environmental objectives or advantages of the measures involved have been described during the course of discussions in order that the Group should benefit from a full overview of the trade and environment interface in this area. A number of questions about the environmental impact of some forms of packaging and labelling requirements have been raised, in particular those based on processes and production methods which are not reflected in the characteristics of a product.

51. To assist the Group in its discussions, presentations were made by representatives of the International Trade Centre and the International Organisation for Standardisation. They were most informative and highly appreciated.

52. New packaging and labelling requirements aimed at protecting the environment are rapidly evolving in the real world and are being used by an increasing number of countries. Discussions in the Group have concentrated on trying to identify the trade effects of these measures and to analyse to what extent they might differ from the trade-related technical regulations and standards that are more familiar to GATT contracting parties.

53. GATT contracting parties have had considerable experience with the Agreement on Technical Barriers to Trade (TBT), which is designed to ensure that technical regulations and standards, including packaging and labelling requirements, do not create unnecessary obstacles to trade. The operation of the TBT Agreement points to the key importance of the disciplines of non-discrimination (both MFN and national treatment) and a high degree of transparency in the design and preparation stage of a measure, including providing real opportunities for taking into account the trade interests of foreign suppliers, as well as in its implementation and administration stage. They point also to the significant role that can be played by international standardisation or harmonisation and mutual recognition (acceptance that another country's standards are equivalent even though they are not the same) in reducing technical barriers to trade and tackling the market fragmentation that can result from a great diversity of national standards. They make clear the importance attached to the right to maintain product regulations and standards of national choice when international standards are found to be unsuitable, but also to the obligation to ensure that these do not create unnecessary barriers to trade. Attention has been drawn also to the provision of the TBT Agreement which states that regulations and requirements should be specified, wherever appropriate, in terms of performance rather than of design or descriptive characteristics;

this may have particular application in ensuring that requirements designed with domestic environmental conditions primarily in view do not unnecessarily disrupt market access for overseas suppliers.

54. Many references have been made in the course of discussions welcoming the improvements to the TBT Agreement that have been made in the Uruguay Round negotiations, and in particular the introduction of the principle of "no more trade restrictive than necessary" and the new Code of Good Practice for the Preparation, Adoption and Application of Standards, which aims to ensure that voluntary standards (such as voluntary packaging and labelling requirements aimed at the environment) do not create unnecessary obstacles to international trade. More generally, it has been observed that the rules and disciplines of the TBT Agreement, even in the new Uruguay Round Agreement, apply less strictly to voluntary standards that have little or no government involvement than to mandatory technical regulations.

55. In the case of packaging and labelling requirements that incorporate criteria based on a product's processes and production methods (PPMs), it has also been suggested that applying the requirement of national treatment in a narrowly defined sense may not be sufficient to ensure that unnecessary obstacles to trade are avoided; applying the same PPM standards to products will not necessarily result in imported products being treated no less favourably than domestically produced products if the PPM in question is not suitable to the conditions (including the environmental conditions) that prevail in the imported product's country of origin.

56. The Group has begun to identify generic issues for further analysis, many of which are common to both packaging and labelling requirements. They include: the practical distinction between voluntary and mandatory measures and their implications for trade; approaches to the setting of criteria and threshold levels in the design of the measures; the scope for standardisation or harmonisation and mutual recognition; complications that can arise for trade through the setting of requirements in terms of product PPMs rather than product characteristics; and special difficulties and costs that may face small-size foreign suppliers, in particular from developing countries. Discussions have moved further on some of these issues than on others, but overall they have moved ahead constructively and in a way that has helped considerably to improve understanding of the often complex trade effects that are involved.

57. Some delegations have identified, in a preliminary way, a number of filters, such as the significance of the trade effects involved and whether they might be termed unnecessary or unjustifiably discriminatory, which can help to focus further discussions under this agenda item. These filters will also need refinement as work proceeds.

Packaging requirements

58. Discussions have focused on the trade effects of two types of packaging requirements: those that stipulate what kinds of packaging can (or cannot) be used in a particular market, and those that prescribe the recovery, re-use, recycling or disposal of packaging once it has served its original purpose.

59. GATT is relatively familiar with the first type. Many technical regulations lay down product characteristics that must be fulfilled if a product is to be assured of market access, and experience with them gained through the operation of the TBT Agreement has permitted a relatively thorough understanding of their potential trade effects. Particular attention has been paid in the Group to recycled content requirements for packaging. Several delegations have expressed concern over their potential for restricting trade in both packaged goods and packaging

material from countries where recycled material is not readily available or is costly, and questioned whether these measures need also be applied to imports, in view of their limited effectiveness in achieving the stated environmental objectives of reducing pressure on waste disposal facilities in the countries imposing them. Doubts have also been expressed by some delegations about using trade measures to reduce the resource-intensity of packaging, both because of questions this raises about one country imposing its environmental standards on another, and the danger of presuming that the same resource endowments and constraints apply to all countries.

60. GATT is less familiar with the second type of packaging requirement. These are applied not only through technical regulations and standards but also through economic measures such as deposit refund schemes, taxes, charges, and fees for accessing waste handling systems in the country of destination.

61. A number of recurring themes have arisen in the discussions on these measures. One is whether, a priori, conclusions of general application can be drawn about the likely trade effects of different categories of measures, such as market-based instruments or command-and-control regulations. It has been suggested that some generalisations might be possible, for example in terms of whether the measures impact primarily on market access or on the conditions of competition within a market. However, it would appear that the particular market circumstances in which the measures operate, the precise way in which they are applied, and other factors too can influence their trade effects to a considerable extent: in that respect, further case-by-case examination of different measures and their trade effects would seem to be indicated as the most effective way for the Group to move forward with its analysis.

62. A second theme relates to the observation that since domestically produced goods usually generate the most important proportion of local packaging waste, it is natural for packaging requirements to be chosen and formulated with the most common forms of domestically generated packaging waste and with domestic waste disposal facilities and priorities in mind. Domestic industry has in some cases been assigned a key role in standard setting and in implementing recycling schemes. At the same time, in many cases it is foreign suppliers, facing the longest transport distances to markets, who need to use the most packaging per unit of product supplied. Some of the most significant trade effects can therefore occur where appropriate disposal facilities are not available, or are available only at high cost, for the kinds of packaging favoured (among other things, use of natural products on environmental grounds over artificially manufactured products) by foreign suppliers, especially small suppliers and those from developing countries for whom the costs of adapting to diverse packaging requirements in their overseas markets can be the most burdensome. In such cases, market access opportunities can be very seriously impaired.

63. Requiring suppliers to recover their packaging waste from overseas markets is not considered in most instances a commercially viable option and it could lead to economic inefficiency. In his presentation to the Group, the ITC representative cited several examples of developing country exports being affected by recycling schemes in developed countries which did not accept the packaging they used. Exports may be affected because smaller industries cannot afford the costs associated with take-back requirements or with the necessary adjustments in the packaging materials. Possible harmonisation of the characteristics of packaging among countries has been discussed, and it has been noted that this might be valuable, particularly if operated within a system of mutual recognition, in reducing the trade effects caused by the diversity of different packaging requirements in different overseas markets. However, this is not seen as a panacea for all the potential trade problems in this area.

64. The trade effects arising from waste recycling and final disposal schemes have also been discussed. It has been suggested that the trade effects of these schemes may be influenced, in

particular, by: the extent to which responsibility for defining the criteria governing the schemes is delegated to domestic industry groups and tailored to domestic industry preferences; effective access for foreign suppliers to ensure their trade concerns are taken into account at the stage of design and preparation of the schemes; the extent to which packaging favoured by overseas suppliers is accepted by the schemes; costs of participation in the schemes; the availability of adequate information for foreign suppliers on schemes in effect; and the provision of adequate advance notification to foreign suppliers of new schemes or changes in existing ones.

65. A point that has been the subject of preliminary discussions is whether and how these types of packaging requirements might be covered by existing GATT provisions. Certain doubts have been expressed by some delegations about whether recovery, re-use or recycling requirements fall within the definition of measures covered by the TBT Agreement, and questions have been raised about how deposit refund schemes and disposal taxes, charges and fees might be treated in GATT terms. A suggestion has also been made that discussions might in the future take up from a GATT perspective the trade impact of environmental taxes in general, not only in the context of packaging requirements.

Labelling requirements

66. UNCED recognized the potential usefulness of labelling requirements aimed at protecting the environment (eco-labelling) in terms of them providing information that can assist consumers to make environmentally-sound purchasing decisions.

67. The majority of the eco-labelling schemes examined in the Group, on the basis of information provided by individual delegations, are voluntary in nature. While not mandatory, since they are designed to differentiate products on the basis of their environmental characteristics they can have a major influence on conditions of competition in a market.

68. As in the case of packaging requirements, many delegations have emphasised the importance of the transparency of eco-labelling schemes for overseas suppliers (the desirability of ex ante transparency has been stressed) and of adequate time allowed for foreign suppliers to adjust.

69. An unlabelled product, whether tested or not, may face a market disadvantage by conveying the impression that it has environmental shortcomings. Attention in the discussions has therefore focused on effective access for foreign suppliers to domestic labelling schemes, namely having the opportunity to participate and raise their trade concerns, as necessary, in the process through which product criteria and threshold levels for awarding eco-labels are decided, and their products having access to certification systems and the awarding of labels on the same terms as domestically produced goods.

70. The choice of products to be labelled and the criteria that a product must meet to obtain an eco-label are viewed as generally being the most critical aspects of a labelling programme. It has been noted that both tend normally to reflect local environmental conditions, such as resource constraints and local preferences for specific environmental product attributes, which may prove difficult for foreign producers to meet or result in overlooking positive environmental qualities of imported products. Local industry influence in the choice of products or criteria should not result in inadvertent protective consequences, and the importance of basing the criteria on sound scientific evidence has been stressed. Some saw a need for a greater role for public authorities in certain aspects of the process of developing and granting eco-labels.

71. Life-cycle analysis of a product's environmental qualities are increasingly being used in eco-labelling schemes, although in practice these may tend to highlight only a few of a product's environmental attributes. The choice made will inevitably involve value judgements and can have an important influence on the trade effects of the measures. For this reason, the desirability of providing foreign suppliers access at the design stage of the scheme to allow their trade concerns to be taken into account was stressed.

72. Eco-labelling criteria based on processes and production methods (PPMs) which are put in place using a single formula may prove particularly difficult, and even environmentally inappropriate, for overseas suppliers to meet. PPM problems can vary from one country to another, and they raise a number of complex issues in respect of the trade effects of eco-labels.

73. Foreign suppliers' access to an eco-label may be restricted if their own preferred PPMs do not coincide with those required in the overseas market, or if establishing that they meet the process standard involves substantial additional cost. Criteria based on PPMs may also require that confidential business information be disclosed in order to gain an eco-label. Although not discussed in any detail, concerns have been registered that specifying trade restrictions in terms of PPMs can amount to exporting domestic environmental standards (and raise, in the view of some, issues of extraterritorial application). However, in the view of some delegations if an eco-label is awarded on the basis of life-cycle analysis of the environmental impact of a product - which they consider is often the case - it seems inevitable to them that it will need to take the environmental impact of the PPMs used into account, no matter where they have their environmental effect.

74. Attention has also been called to the special problems that developing countries may face. In particular, it has been suggested that they may use very different PPMs from those considered acceptable in their main markets for gaining an eco-label, and they may lack the capital and the technology to adapt their PPMs accordingly.

75. Diversity of eco-labelling schemes in different markets, and the problems that this can cause for all multi-market suppliers, especially those of relatively small size, were raised. Doubts were expressed as to whether standardisation has an effective role in reducing this diversity: it is probably neither desirable nor possible to try to standardise differences in environmental conditions, tastes and priorities in different countries. More potential was seen for harmonisation and mutual recognition of criteria used to award eco-labels and of the eco-labels themselves.

UNCED Follow-up

76. As noted in the introduction to this report, the CONTRACTING PARTIES at their 48th Session in December 1992 asked the Group to cover matters raised in Agenda 21 of UNCED with respect to making trade and environmental policies mutually supportive. (For details see **Annex II**). The Group has formally discussed substantively UNCED follow-up in two of its sessions pursuant to preparations in earlier informal meetings.

77. The Group has been informed of the results of the discussions on UNCED follow-up that took place in the UNCTAD Trade and Development Board last autumn (see GATT Secretariat background document L/6892/Add.3). It has also kept abreast of work underway in other international organisations on the topic raised in Chapter 2B of Agenda 21 of making trade and environment policies mutually supportive.

78. As was also noted earlier in this report, the Group's intention of holding further discussions on UNCED follow-up last year were not realised. Further work is thus required

before a more comprehensive assessment can be made of progress in the Group's task in this respect, but some general observations based on an emerging meeting of minds in the Group appears to be in order.

79. First, as noted earlier, many references have been made in the Group to the basic compatibility of UNCED guiding principles with the underlying philosophy of the GATT. Section B of Chapter 2 of Agenda 21 states "An open, multilateral trading system makes possible a more efficient allocation and use of resources and thereby contributes to an increase in production and incomes and to lessening demands on the environment". It was also noted that UNCED results were agreed by international consensus at the highest level and the principles and recommendations should be taken as a common basis and point of departure for the work of this Group. There was an overwhelming endorsement of UNCED recommendations in the Group that successfully concluding the Uruguay Round negotiations represented the single, most important and immediate contribution that governments can make through GATT to the achievement of sustainable development.

80. Similarly, paragraph 22(i) of Chapter 2 of Agenda 21 states that: "Domestic measures targeted to achieve certain environmental objectives may need trade measures to render them effective. Should trade policy measures be found necessary for the enforcement of environmental policies, certain principles and rules should apply. These could include, *inter alia*, the principle of non-discrimination; the principle that the trade measure chosen should be the least trade-restrictive necessary to achieve the objectives; an obligation to ensure transparency in the use of trade measures related to the environment and to provide adequate notification of national regulations; and the need to give consideration to the special conditions and developmental requirements of developing countries as they move towards internationally-agreed environmental objectives."

81. The invitation in paragraph 2.1 for States to overcome confrontation and foster a climate of genuine cooperation and solidarity is not new to GATT traditions nor foreign at all to the workings of this Group that have been characterised by consensus building and open mindedness.

82. Many delegations have emphasised, and it appears to be a widely shared view, that the Group's original, three-point agenda and its work under that agenda anticipated many points of international concern in relation to the trade and environment interface which are included in the UNCED results. These points cover a significant portion, as delegations have observed, of the detailed recommendations from UNCED, for example paragraphs 2.22(c), relating to transparency: "In those cases when trade measures related to environment are used, ensure transparency and compatibility with international obligations."; 2.22(f), relating to environmental regulations or standards such as packaging and labelling requirements: "Ensure that environment-related regulations or standards, including those related to health and safety standards, do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade."; and 2.22(j), relating to the relationship between GATT provisions and multilateral environmental agreements: "Develop more precision, where necessary, and clarify the relationship between GATT provisions and some of the multilateral measures adopted in the environment area."

83. There are also other areas where many delegations have pointed out the overlap that exists between the UNCED recommendations and the work already underway in the Group. As has been stressed by many delegations, past deliberations and work by the Group can be considered as efforts already made by GATT as a contribution to UNCED follow-up activities.

84. Clearly, there is still work to do on the original agenda which can be regarded as the basis for the Group's contribution to UNCED follow-up. Discussion pointed to some of the elements

warranting further attention, such as 2.21(b), relating to dispute settlement: "To clarify the role of GATT, UNCTAD and other international organisations in dealing with trade and environment-related issues, including, where relevant, conciliation procedure and dispute settlement."; 2.22(e) relating to the avoidance of using trade restrictions to offset differences in cost arising from differences in environmental standards: "Seek to avoid the use of trade restrictions or distortions as a means to offset differences in cost arising from differences in environmental standards and regulations since their application could lead to trade distortions and increase protectionist tendencies."; 2.22(g) relating to the special factors affecting environment and trade policies in developing countries: "Ensure that special factors affecting environment and trade policies in the developing countries are borne in mind in the application of environmental standards, as well as in the use of any trade measures. It is worth noting that standards that are valid in the most advanced countries may be inappropriate and of unwarranted social cost for the developing countries." and 2.22(i) which has been referred to in part above but which also states: "Avoid unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country. Environmental measures addressing transborder or global environmental problems should, as far as possible, be based on an international consensus." Most delegations have stated that they wholeheartedly endorse this proposition and that they consider that unilateral action of this nature is not allowed under the GATT rules.

85. It has been noted by several delegations that Paragraph 2.22(e) covers a particularly delicate subject warranting careful attention since the use of trade measures to counter notions of "eco-dumping", if legitimised and put into practice, could undermine the very foundations of the international trading system.

86. Other suggestions that have been made by some delegations for further work that needs to be undertaken in the context of this agenda item include clarifying the trade effects of PPM-based environmental measures and exploring their link to the GATT concept of "like product", examining the potential trade effects of economic instruments such as environmental taxes and subsidies, and the impact of environmental protection on competitiveness.

87. Several references have been made to other UNCED concepts and principles and the importance these might have for issues that the Group has been asked to address. Most particularly, it has been suggested that the concepts of sustainable development and the need to address specifically the problems of developing countries, where the prescription for achieving sustainable development may be different from that of other countries, should be an important part of the Group's work.

88. Work in some of the areas described above is not necessarily viewed as a priority by all delegations. Some have suggested that the Group should first confirm basic principles and recommendations contained in Agenda 21, such as, in their view, the rejection of extraterritoriality and unilateralism, as the common basis and point of departure for further work in the Group. It has been stated in this respect that there is an obligation on those delegations proposing the addition of new items to the Group's work programme to state the problem and to explain more clearly what they are seeking from a discussion of them.

89. Some delegations consider that attention needs also to be paid to ensuring that the GATT more generally will support effectively the objectives and implementation of Agenda 21.

90. The work of the Group has been characterised by the shared view of delegations regarding the importance of making trade and environment mutually supportive. The new task assigned it - to examine the principles and propositions enumerated in Section B of Chapter 2 of Agenda 21 in accordance with its mandate and competence as part of an international effort and to give them

appropriate operational effectiveness - will require more dedicated work by contracting parties and continued imaginative input by delegations.

91. In an attempt to present as complete a picture as possible of GATT activities on environment, while outside the competence of this Group, I have taken the liberty to attach the recent TNC Decision to draw up a work programme on environment adopted at the time of conclusion of the Uruguay Round (see **Annex V**).

92. In presenting this account of the Group's work in 1993, I wish to take this occasion to thank delegations and members of the secretariat for their patience and support.

ANNEX I

The Group has adopted, for the present, the following three items as its agenda:

- (a) trade provisions contained in existing multilateral environmental agreements (e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer, the Washington Convention on International Trade in Endangered Species and the Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal) vis-à-vis GATT principles and provisions;
- (b) multilateral transparency of national environmental regulations likely to have trade effects;
- (c) trade effects of new packaging and labelling requirements aimed at protecting the environment.

ANNEX II

30 November 1992

Statement by the Chairman of the Council of Representatives

Follow-up in GATT to the results of the UNCED

1. It will be recalled that the Council of Representatives was informed at its meeting in July of the results of the United Nations Conference on Environment and Development (UNCED) as they relate to trade and the multilateral trading system; these were reported on by the Secretariat in L/6892/Add.3. In my capacity as current Chairman of the Council of Representatives, and following extensive consultations with Council members, I am pleased to be in a position to make the following statement on how we should proceed in GATT by way of a follow-up to the recommendations of the UNCED in the area of trade.
2. It is clear that GATT Contracting Parties welcome warmly the Rio Declaration and the progress that has been made by the UNCED in fostering further multilateral cooperation, and are determined that GATT should play its full part in ensuring that policies in the fields of trade, the environment and sustainable development are compatible and mutually reinforcing.
3. GATT's competence is limited to trade policies and those trade-related aspects of environment policies which may result in significant trade effects for GATT Contracting Parties. In respect neither of its vocation nor of its competence is the GATT equipped to become involved in the tasks of reviewing national environmental priorities, setting environmental standards or developing global policies on the environment.
4. Nevertheless, the multilateral trading system does have a central role to play in supporting an open international economic system and fostering economic growth and sustainable development, especially in the developing countries, to help address the problems of environmental degradation and the over-exploitation of natural resources.
5. The importance attached by the UNCED to a successful outcome of the Uruguay Round negotiations is particularly welcome. That remains the top priority for GATT Contracting Parties. It holds the key to the liberalisation of trade and the maintenance of an open, non-discriminatory multilateral trading system, which are main elements of the framework for international cooperation that are being sought to protect the environment and to accelerate sustainable development in developing countries.
6. Also, the special concerns that have been raised by the UNCED about the need to improve market access for developing countries' exports, particularly by reducing tariff and non-tariff impediments, including tariff escalation, and to improve the functioning of commodity markets are well recognised.
7. The Committee on Trade and Development has a role to play in the UNCED follow-up in GATT. The Committee should, at the invitation of the CONTRACTING PARTIES, take on board within the scope of its terms of reference, including the decision of the CONTRACTING PARTIES at their Thirty-Fifth Session (1979) to strengthen the Committee's role, those matters raised by the UNCED in the context of promoting sustainable development through trade liberalisation (Agenda 21, Chapter 2: Introduction and Section A).

8. The Group on Environmental Measures and International Trade should be closely involved, within the scope of its terms of reference, in work in GATT on the UNCED follow-up with respect to making trade and environment policies mutually supportive (Agenda 21, Chapter 2: Introduction and Section B). Keeping in view that Chapter 2 of Agenda 21 relates to accelerating sustainable development, and giving close attention to the objectives set out for governments in Chapter 2.21, particularly sub-paragraph 2.21(b), the Group should examine and take into account the propositions and principles enumerated in Chapter 2.22 of Agenda 21, bearing in mind that the Council of Representatives, in discharging the responsibilities of the CONTRACTING PARTIES between Sessions, is the responsible GATT body for matters relating to inter-institutional and other external relations (Chapter 2.22 (a), (b), (h), and (k) of Agenda 21).

9. The Council of Representative's decision (C/M/251) to extend the mandate of the Working Group on Export of Domestically Prohibited Goods and Other Hazardous Substances for a period of three months, beginning from the date of the Group's next meeting, and to authorise the Chairman of the Council of Representatives to consult on the timing of that meeting should also be recalled in the context of the UNCED follow-up.

10. Within twelve months, the Council of Representatives should hold a Council meeting devoted to this issue to review, and as necessary supplement, the work that is underway in GATT relating to the follow-up to the UNCED. The Committee on Trade and Development and the Group on Environmental Measures and International Trade should contribute to that review by reporting to the special session on the progress they are making with the matters referred to them above.

ANNEX III

1. At its meeting on 17 December 1993, the Council agreed that the following documents be derestricted on 25 January 1994:

- TRE/W/1/Rev.1 - Describes and reviews the specific trade provisions contained in 18 multilateral environmental agreements
- TRE/W/2 - Summarises issues raised in the course of the Group's discussions on the multilateral transparency of national environmental regulations
- TRE/W/3, and Add.1 and Add.2 - A generic summary of packaging and labelling requirements based on publicly available information and information submitted to the secretariat by delegations
- TRE/W/4 - A generic description of environmental policy instruments to supplement information contained in TRE/W/2
- TRE/W/7 - Generic list of national environmental regulations likely to have trade effects that may not be covered adequately or at all by GATT transparency provisions
- TRE/W/9 - Trade effects and concerns that could arise from new forms of packaging requirements
- TRE/W/10/Rev.1 - Notification requirements that exist in multilateral environmental agreements
- TRE/W/12 - Trade effects and concerns that could arise from new forms of labelling requirements
- TRE/W/13 - Outline analysis of the trade effects of various environmental measures
- TRE/W/14 - Report on the results of the first session of the Commission on Sustainable Development
- TRE/W/16/Rev. 1 - Review of the use in GATT of the concepts of "least trade-restrictive" and "proportionality"
- TRE/W/17/Rev.1 - Description of the negotiating history of GATT Article XX(h) and its application
- TRE/W/18 - Description of the application of GATT Article XXV:5 and of the potential of its existing provisions

2. Below are the references to three additional documents on environmental issues that have already been derestricted:

- L/6896 - Factual note describing the establishment of the Group on Environmental Measures and International Trade in 1971, information on other work in GATT on environmental issues, and description of the trade provisions of various multilateral environmental agreements and related GATT provisions
- L/6892/Add.3 - Report by the Secretariat to GATT Contracting Parties on the UNCED results that relate to trade.
- "International Trade", 1990-91, Volume 1, Chapter 2. Commentary by the GATT Secretariat, on its own responsibility, on the trade and environment links.

ANNEX IV

GATT ARTICLE XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) ...
- (b) necessary to protect human, animal or plant life or health;
- (c) ...
- ...
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- ...

ANNEX V

TRADE AND ENVIRONMENT

Decision

(adopted 15 December 1993)

The Trade Negotiations Committee,

Noting:

- (a) the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 48th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, and of the Committee on Trade and Development;
- (b) the work programme envisaged in the Decision concerning Article XIV:B of the Services Agreement; and
- (c) the relevant provisions of the TRIPs Agreement;

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable Multilateral Trading System on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other;

Desiring to coordinate the policies in the field of Trade and Environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environment policies which may result in significant trade effects for its members;

Decides to draw up a programme of work:

- (a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;
- (b) to make appropriate recommendations on whether any modifications of the provisions of the Multilateral Trading System are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular:

- the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and
- the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure the responsiveness of the Multilateral Trading System to environmental objectives, including Principle 12 of the Rio Declaration; and
- surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;

Agrees to present the programme of work, and recommendations on an institutional structure for its execution, for adoption as soon as possible and no later than at the Ministerial Conference of April 1994.