PREPARATORY COMMITTEE FOR THE WORLD TRADE ORGANIZATION

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SUB-COMMITTEE ON TRADE AND ENVIRONMENT

REPORT OF THE MEETING HELD ON 23-24 NOVEMBER 1994

Note by the Secretariat

1. The Sub-Committee on Trade and Environment held its fifth meeting on 23-24 November 1994 under the chairmanship of Ambassador Luiz Felipe Lampreia of Brazil. The agenda for the meeting, contained in PC/AIR/39, was adopted.

2. The Chairman recalled agreement to devote this meeting to an initial exchange of views on the sixth item of the work programme, namely "the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions". He informed delegations that, as requested at earlier meetings, the Secretariat was in the process of preparing background documentation on the environmental benefits of removing trade restrictions and distortions. He noted that some initial discussion of these issues had been carried out in the Committee on Trade and Development (CTD) in the context of its UNCED follow-up work. An overview of that work was contained in the Report by the Chairman of that Committee on the UNCED follow-up work in document COM.TD/W/509. The Sub-Committee would revert, as necessary, to the first and then the third items of the work programme. It would then take up any other points that delegations wished to raise.

Item six of the work programme

3. The representative of Argentina said that to address the effects of environmental measures on market access was to address virtually all the issues dealt with in the Sub-Committee. Labelling, recycling and packaging requirements as well as charges and taxes for environmental purposes were closely related to market access. The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, whether unilateral or multilateral, also had repercussions on market access. But this item was the only opportunity to examine the environmental benefits of removing trade restrictions and distortions. The challenge before the Sub-Committee was to give a precise and convincing answer as to why and in what conditions free trade could benefit the environment.

4. In terms of economic theory, he explained that when the price of a product reflected the real cost of the factors involved in its production and distribution it may be assumed that resources had been efficiently allocated. The "real cost" of those factors, in a situation of perfect-competition equilibrium, was determined by the market, i.e., by the supply and demand. If the "real cost" was lower than the reproduction cost of the factors involved in the production process there would be a distortion in the price formation system, which would lead to overexploitation of the resource and, possibly, its premature depletion. In economic terms, its shadow price would be higher than its market price. The question was then what distortions in the price formation system could have a negative effect on the environment? Or what distortions in the price formation system would lead a natural resource to be exploited beyond its reproduction cost, i.e., overexploited? There were several and he gave the example of

commodities. Since they came at the top of the production chain, they may be particularly sensitive to the failure to internalize environmental costs and, at the same time, be able to affect a broad range of goods. For commodities, the most obvious distortion in the price formation system was subsidies.

5. In this regard, he quoted from an OECD publication entitled "The Environmental Effects of Trade": "Generally speaking, trade is not at the root of environmental problems, which are caused by both defects in the market (such as failure to internalize environmental costs) and policy defects (such as subsidies or trade barriers). Market defects occur when markets do not reflect environmental costs. Policy defects occur when public policies fail to correct, or create or exacerbate market defects". This publication approached the problem as it should be approached: how could progress be made towards the internalization of environmental costs in the price of the product? What should the first steps be towards ensuring that the market incorporated these costs?

6. It could not be assumed that all subsidies that affected commodities in one way or another necessarily had negative environmental externalities. One exception was incentives to speed technological changes that would incorporate environmentally sustainable production processes. Nor were subsidies necessarily the only distortion in the price formation system to obstruct the internalization of environmental costs in commodities. However, to deal seriously with the relationship between trade and the environment, it could not be overlooked that the environmental impact of the hundreds of millions of dollars allocated every year to subsidizing agriculture in industrialized countries was far from neutral. This example highlighted the magnitude of the problem. Other areas, such as fishery, which received approximately $54 billion in subsidies every year, illustrated the concern equally well, and perhaps less dramatically.

7. He asked how distortions in commodity trade affected the environment? How did they manage to affect, even though there may be no physical cross-border consequences, the environment in countries far remote from the place where such practices occurred? He noted at least the following three mechanisms which transferred or spread these effects immediately.

(a) Subsidies affecting commodities could, and in many cases did, encourage inefficient allocation of resources and, coming before the internalization of environmental costs in prices, they "created and exacerbated" a market defect, to use the OECD's expression. To allow certain producers to produce at a marginal cost that was higher than the price would be if there were no subsidy was doubly harmful to the environment. It encouraged overexploitation of the environmental resource used by the producers who purportedly benefitted from the subsidy. Even if the harm done to the environment had no physical cross-border implications, international trade transmitted the prices reduced by the subsidy and therefore producers in other countries were forced to overexploit their own environmental resources if they were to avoid being excluded from the market. In other words, in such circumstances international trade acted as a vector which multiplied and spread the negative environmental effects of inefficient allocation of resources in the subsidizing country.

(b) The price formation system for commodities was actually distorted by failure to internalize environmental costs. If it were not distorted it would be difficult to explain why, as a rule, a product whose manufacture generated neutral or relatively less negative environmental externalities than a similar product, was frequently more expensive than the similar product whose manufacture generated negative or relatively more negative environmental externalities. In other words, the environmental impact generated by the production of a given product was often inversely proportionate to its price. The more negative the impact, the lower the price. A case in point was "organic" foods, whose

price was usually higher than the price of products produced with intensive use of fertilizers, pesticides and inputs to improve their appearance. This "green rent" generated by the consumers' growing concern for the environment and their own health could not easily be incorporated in the price. Such a "premium" was not sufficient to offset the failure to internalize environmental costs.

(c) The restrictions affecting market access for commodities could have direct or indirect negative environmental consequences. Direct consequences were that the loss of earnings to producers would force them to resort to practices that were harmful to the environment, such as abandoning crop rotation systems, incorporating marginal lands into production and resorting increasingly to intensive cropping practices. Indirect consequences were that the loss of earnings to exporters and producers meant that they would be unable to pursue environmentally friendly practices. Improving income levels in developing countries was, quoting from the same OECD publication, "a major prerequisite for investing in the necessary environmental regulation and securing broader support for improving the quality of the environment".

8. He was not claiming that raising the income of agricultural producers, in developing countries for example, was enough to guarantee better environmental practices but it was a prerequisite for implementing policies that encouraged ecologically sustainable farming practices. In conclusion, it was not enough simply to repeat that there was no contradiction between international trade and the environment. That was only a half truth. Nor could the Sub-Committee say that it was not prepared to accept environmental measures that distorted international trade without accepting at the same time the elimination of the environmental distortions transmitted through international trade. To deal seriously with the relationship between trade and the environment, the first logical, obvious and indispensable step was to identify and agree on a framework to eliminate those subsidies that had negative environmental externalities in the commodity production process. He was not discussing the distorting effects that subsidies could have on international trade. This aspect was treated, with limited success, in the framework of the Uruguay Round. He was discussing the environmental benefits to be derived from the elimination of this type of trade distortion. This was what now concerned the Sub-Committee.

9. By defining the problem in these terms, he was not overlooking the difficulties of eliminating policies on subsidies and the limitation of market access for countries that applied them. Nor was he overlooking what was already being done in terms of "set aside" and the correction of many agricultural protection measures. He was simply pointing out that such policies had distorted and would continue to distort world trade in agriculture, and at the same time were destroying the environment in the countries that applied them, with negative consequences for the environment of other countries. In other words, he was adding sound environmental reasons to sound trade reasons for stepping up efforts to eliminate such policies.

10. The representative of Australia considered that this item demanded reflection on the positive contribution which the multilateral trading system may make to furthering the objective of sustainable development. This was clearly stated in the second part of this item, calling for an examination of the "environmental benefits of removing trade restrictions and distortions". The positive contribution to sustainable development was just as important in relation to the first part on "the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them". This agenda item recalled that the examination of the relationship between trade measures and environmental measures must start from an appreciation of the contribution which both trade and environmental policies could make to promoting sustainable development. It was this appreciation which underpinned the aim of making trade and environmental policies mutually supportive that was highlighted in the

Committee's mandate. The challenge was to identify the contribution which the multilateral trading system could make to putting this goal into practice.

11. The complexities of achieving this should not be underestimated. Environmental measures which restricted market access and reduced the trading opportunities of third countries, particularly of developing countries, may, on balance, make little contribution to promoting sustainable development or even to improved environmental outcomes at the global level. This may occur if the restriction imposed on trade was disproportionate to the environmental objective being pursued, and if the trade restriction adversely impacted development opportunities in third countries. International cooperation to minimise the scope for environmental measures to have unintended, unnecessary, or unwarranted effects on market access should be valued as positive contributions to furthering sustainable development. Both the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures had important roles to play in this area.

12. In regard to the second aspect of this agenda item, it was well recognized that a range of trade distortions and access barriers had direct adverse environmental consequences. This was clearly the case in relation to agriculture and natural resource based products. Distorted price signals for farmers in the major industrialized countries had not only led to high levels of uneconomic production, which had adversely affected farmers in other parts of the world through export subsidization and restrictive access barriers. They had also encouraged environmentally damaging agricultural practices. For example, there was a strong correlation between high levels of agricultural subsidization and high levels of use of agricultural inputs raising environmental concerns, such as chemical fertilizers and pesticides. The high levels of farm support and associated increase in agricultural output had also increased production of waste material and expanded farm production into ecologically sensitive areas. High levels of agricultural support in the major industrialized countries had reinforced the fact that the prices of inputs and outputs in agricultural markets too often did not fully reflect the environmental costs of agricultural production. Consumers and taxpayers had effectively been penalized twice by having to bear the cost of agricultural support and the resulting environmental costs.

13. It was also important to reflect on the relationship between distorted world agricultural markets, involving depressed prices and restricted access opportunities, and reduced economic opportunities in efficient agricultural producing countries. The significant linkages between depressed world prices, reduced agricultural earnings and rural poverty in many countries, and the close association between rural poverty and environmental degradation should also be noted. Depressed rural returns meant that farmers faced with land degradation and other environmental problems had little money to pay for remedial works or to finance changes to more sustainable agricultural practices. The Uruguay Round Agreement on Agriculture was an important first step towards a more rational and fairer world agricultural political economy, from both a trade and development perspective and an environmental perspective. But major trade distortions would remain and there was considerable scope to build on the Uruguay Round Agreement to realize the contribution which agricultural trade liberalization could make to furthering sustainable development.

14. Further reform in other areas of the multilateral trading system would also have positive environmental benefits. While the reduction in trade distortions in respect of agriculture should have direct environmental benefits, in many other areas the effects may be more indirect but still important. More liberalized trading conditions for natural resource based products could support countries in their efforts to promote sustainabie management of these resources and to internalize the environmental costs of their use. In addition, reduced tariff escalation for processed products and improved trading opportunities for a wide range of industrial products could assist countries

seeking to diversify their economies and lessen their dependence on environmentally-sensitive commodity production. The extent to which the member countries of the multilateral trading system worked together to minimize unwarranted effects of environmental measures on market access and seriously responded to the need to remove trade restrictions and distortions would be an important test of the commitment to finding equitable and cooperative solutions to advancing environmental goals and the objective of sustainable development.

15. The representative of the United States, commenting preliminarily, considered that market access was a central theme permeating most of the work of the Sub-Committee, including both items of the work programme dealt with to date. He considered that there were two specific aspects of market access called for under this item: the effects of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them; and the environmental benefits of removing trade restrictions and distortions.

16. Economic theory held that trade liberalization produced greater efficiencies and higher standards of living. This in turn could be expected to produce environmental benefits: first, in the form of more efficient utilization of scarce resources and second, evidence suggested that as per capital income increased countries would be more able and willing to devote resources to controlling pollution. On the other hand, trade *per se* did not always carry positive environmental consequences. Much depended on the context in which trade liberalization occurred. Without adequate attention to the utilization of scarce resources, increased trade could result in amplifying problems that may exist with respect to over exploitation and unsustainable development. The effectiveness of trade in creating environmental benefits, or its contribution to harm, depended on factors such as whether the possible impacts were anticipated and responded to, or mitigated. It depended on how liberalization was promoted and whether it was being promoted effectively.

17. The Uruguay Round made an important and widely recognized contribution to trade liberalization and market access. It should result in important economic advantages for developed and developing countries, which would contribute positively from the environmental perspective. His delegation's analyses, economic and environmental, of the Round, and the commitment to address environmental issues in this Sub-Committee, suggested there was cause to be optimistic. Despite the progress, concerns remained. For example, tariff structures evidencing tariff escalation may promote inefficient production, or false efficiencies. This phenomenon was of particular concern to natural resource sectors, which in turn were of particular but not exclusive concern to developing countries. One specific example of continuing concern was wood products. Although the Uruguay Round came close to reaching agreement on tariff elimination in the sector, efforts were thwarted in the end. The result was that effective rates of tariff protection still reached close to 30 per cent. This was a serious disappointment, not the least because it decreased the value of forest resources and impeded efforts to invest in sustainable forest management.

18. Therefore, trade liberalization was necessary but not necessarily sufficient to create the conditions for sustainable development. How effective it was depended on whether, as the multilateral trading system evolved, it was ensured that environmental considerations in promoting growth and development were adequately taken into account. He added that the effects of environmental compliance costs were relatively small in comparison to those of other factors of production. Furthermore, although costs of compliance did exist, and they may in some circumstances imply significant investment outlays, in the long term some of these may produce not only environmental but also economic benefits, especially where standards encouraged more efficient processes. Important analytical work in this area continued to be carried out in other fora, which should be taken into account as work progressed.

19. Furthermore, potential adverse consequences of environmental measures could be mitigated by positive measures. Both the multilateral trading system and the growing network of MEAs recognized this important need through specific provisions addressed to the particular situation of developing countries. One crucial ingredient highlighted by all analytical work was effective transparency. This meant not-just-after-the-fact dissemination of information, but meaningful participation of all affected players throughout the process of developing environmental measures.

20. In conclusion, he summarized four main points: market access permeated most of the Sub-Committee's work; on the whole, it seemed that to date environmental measures had not had a significant adverse impact on market access, including in relation to developing countries, but areas of concern needed careful and balanced examination; trade liberalization was a necessary ingredient for development, which in turn could contribute effectively to sustainable development if the right conditions were created, and it was the task of this Sub-Committee to contribute towards ensuring that they were; and progress had been made, especially through the Uruguay Round, but it had been uneven.

21. The representative of Venezuela said that this item was very broad and gave the opportunity of alluding to a range of measures which could be applied in order to achieve environmental objectives as well as to their effects on market access. Generally, this subject covered regulations such as requirements on labelling and packaging, as well as technical regulations applicable to products or processes and production methods (PPMs). It could also include economic-type incentives aimed at incorporating environmental costs. First, it should be emphasized that, in principle, environmental measures should be applied in conformity with the non-discrimination principles contained in the multilateral trading system, although of course this depended on the transboundary or domestic nature of the environmental damage to be remedied or prevented. Consideration should also focus on the incentives necessary for exports of environmentally friendly products from developing countries and on mutual recognition or harmonization of environmental standards. These subjects were analyzed in detail in the Sub-Committee's work programme and had an impact on market access for exports from developing countries.

22. He concentrated on the second part of this item, namely, the environmental benefits of removing trade restrictions and distortions. His delegation considered that the elimination of trade distortions and restrictions could have positive effects on environmental conservation, the basic reason being the rational and efficient allocation of production resources. This did not mean that the degree of openness of an economy or its extension towards international trade determined more healthy environmental policies; these must be implemented in parallel. The environmental benefits of removing international trade distortions could be seen at the national level when, in the absence of price support mechanisms or production subsidies, there was a reduction in environmental damage caused by intensive use of production resources and promotion of the production of substitute goods together with the utilization of technologies that were environmentally more efficient. In agriculture for example, this could take the form of decreased use of fertilizers and pesticides. These effects were exacerbated in countries which were competing on international markets for highly subsidized agricultural products.

23. This type of government intervention in markets had an effect on global production patterns and prejudiced sustainable development of societies because it placed a higher value on production than on the conservation of the environment. It should also be noted that the subsidies war taking place on international markets for certain agricultural products not only had a negative effect on countries which did not have the same capacity to subsidize exports but also diverted a large amount of resources which could be allocated to alternative activities that enhanced the

absorption capacity of the processes of internalizing environmental costs. Countries which imported subsidized agricultural products were also indirectly affected by this situation from the environmental point of view. Ironically, in countries which benefitted from the low prices of subsidized imports, consumption was diverted from domestic substitute products to the imported product. This had negative effects on the economy and generation of wealth. Empirical evidence showed that per capita contamination levels decreased at the same rate as income increased. The negative economic and social effects in importing countries decreased their capacity to implement environmental conservation policies.

24. Government action should focus on economic instruments which promoted the reduction of contamination by market agents. There had been a number of explicit statements on this subject during the Sub-Committee's discussions. In environmental policy, government action should strengthen the development of less contaminating technologies and, at the international level, promote mechanisms for the transfer of resources and technology to developing countries. If not, the goals of UNCED could not be achieved. For the above reasons, the subject of trade distortions and restrictions should be considered carefully by this Sub-Committee and other intergovernmental forums in order to establish a link between trade and the environment which would bring the objective of sustainable development nearer.

25. The representative of Egypt believed that integrating the objectives of trade liberalization with the idea of sustainable development was one of the biggest and most complex challenges to face. A crucial part of this effort was the construction of democratic solutions on an international level, to deal with the complex political decisions that concerned trade and the environment. Nevertheless, the experience of the past few years seemed to indicate that the environmental question was being increasingly used as an artificial barrier to impede developing countries' access to developed countries' markets. Many country studies prepared by different international and regional organizations indicated that the environmental question was being used fundamentally to defend specific commercial interests on an international level rather than to achieve specific environmental goals. Unilateral actions of developed countries or of their special interest groups, who selected sectors subject to environmental measures, appeared to have, as a principal objective, the protection of a specific commercial interest. If this tendency continued, the efforts which the developing countries were undertaking to achieve economic and environmental adjustment would be frustrated and discouraged.

26. Even in cases where environmental measures were not a direct outcome of commercial interests, international trade was used to transfer environmental standards created in a specific context for the solution of specific problems in other contexts with different problems and possibly different priorities and choices. The potential threat was that when the producers of pollution and their victims in developed countries agreed on environmental measures which raised costs, the existence of a third party producer and exporter in developing countries provided a possibility for the polluters and their victims to act together. They might agree jointly to abatement measures which raised costs and, at the same time and in order to protect the producer's market, which were accompanied by protectionist measures to prevent competition from imports and which passed the environmental cost to the exporter in developing countries. Thus there was a high risk that environmental conservationism and trade protectionism would go hand in hand.

27. The enhancement of trading opportunities and market access available to developing countries was a key prerequisite for approaching today's and tomorrow's global environmental problems. The effects of environmental measures on market access and trading opportunities of developing countries should be looked at from two perspectives: the effects of environmental

measures taken by developing countries themselves on the competitiveness of their exports, one of the main determinants of their ability to reach the markets of developed countries; and the impact of environmental policies in developed countries on the trade prospects of developing countries.

28. On the first issue, the degree to which internalized environmental costs were paid by the producer in developing countries or the consumer in developed countries depended mainly on the elasticity of the supply and demand curves as well as on the ability of the two parties to shift the curves. It was well known that most exports of developing countries were relatively undifferentiated and therefore were likely to face an elastic demand curve. The supply curve on the other hand was likely to be fairly inelastic, whether because of the urgent need for foreign exchange or the conditions under which exports were produced. In short, given the shape of supply and demand curves, all measures aiming at internalizing the environmental costs of exports of developing countries were likely to impose a burden mainly on the producer and exporter in developing countries. He added that a great deal of world trade was dominated by intra-firm transactions which took place at transfer prices designed to concentrate profits in the places which suited the firm best. This was often not the exporting country if it was a developing one. It could be argued in this case that the costs internalized through environmental measures might be internalized elsewhere without adversely affecting at least the price received by the producing country. In this respect, also, one may reflect upon the effects of restrictive business practices in internalizing environmental costs.

29. With respect to the ability of the two parties, namely the developing country producer and the developed country consumer, to shift the demand and supply curves to know who actually paid for the internalized externalities depended on many factors which could not be conclusively addressed here. For example the technological factor was decisive in this respect. New technologies, including environmentally friendly technologies, were being developed by private firms in developed countries. These were normally private intellectual property, which replaced a technology that might be in the public domain, resulting in an increased flow of income to developed countries, i.e. to the firms located there which owned the patents. If the new technology imposed unilaterally agreed standards without taking other aspects into consideration, in particular a financing mechanism, the net result would be on balance unfavourable to developing countries especially to small enterprises run by the poor in these countries. This would worsen poverty conditions and work against sustainable development.

30. If the power to shift the supply curve was concentrated with firms, institutions and governments which had the means to invest in the development of new technologies, power over the demand curve would rest largely with the media and therefore with those who had access to them including well organized lobbies. All these forms of power tended to be concentrated in developed countries. In short given the ability of both developing and developed countries to affect the conditions of supply and demand whether by price or non-price factors, developing country trade stood to lose from the introduction of environmental measures.

31. On the second issue, the impact of environmental measures in developed countries on the trade prospects of developing countries, some empirical studies by international organizations proved that when developing countries had to adjust their production processes in response to changing environmental requirements in developed countries, a higher burden was placed on these countries and the impact was especially serious on the small producers in these countries. These findings were logical since small scale exporters from developing countries competed in the international market on the basis of price rather than non-price factors including environmental aspects. Thus, where environmental quality was part of the overall quality of the product, it was doubtful whether they would be able to obtain price premiums for making environmental improvements.

32. Three categories of costs were shown to be important by these country studies: transaction costs, because regulations between different markets may be substantially different; costs related to risks arising from the use of environmentally related product measures which were likely to rise and be compounded by other risks associated with export, may act as a deterrent to market access; and fixed costs related to process or design modifications which were likely to rise and may be particularly difficult for developing countries because of the high opportunity cost of capital. He concluded that to achieve global sustainable development, the difficulties and challenges must be faced in order to find the best way to address them.

33. The representative of Nigeria noted three conclusions which emerged from the statements at this meeting and studies being prepared on the subject. One was that environmental measures had not had a significant and adverse effect on trade and market access; the second was that environmental measures would have disadvantageous effects on the trading system, particularly for developing countries; and third was that the results were uncertain. He considered that it was important to be aware of the assumptions underlying such studies. He addressed the issues of the effects of environmental measures on market access, especially in developing countries, and the environmental benefits of removing trade restrictions and distortions. The interrelationships between environmental measures and market access were complex and uncertain for a number of reasons and the interlinkages were in need of further study. First, countries made different assumptions about the types of environmental measures that would or should be applicable. For example, there was uncertainty and debate as to whether harmonized standards would or should prevail or whether countries should operate on domestic standards, established according to their national objectives and priorities? Second, questions were raised as to whether the evolution of environmental measures should be product or process oriented or a mix of both. Third, there were significant and unresolved differences about the type of approaches that would govern the application of environmental measures. The debate surrounding the *ex ante* versus the *ex post* approaches underlined the differences, although his delegation held the view that they were not mutually exclusive and that there was a feasible middle ground.

34. Environmental measures varied and the list was growing, including such instruments as subsidies, tradable permits, licensing, pollution charges, voluntary industry agreements, liability arrangements, information disseminated on environmental impacts, etc. The variety of instruments created difficulty in arriving at a consensus on which types of measures to study under this item. Market access was a more operational variable; although subject to both trade and non-trade factors, it was easy to determine when market access was either restricted or enhanced. Also, market access was a cross-cutting issue which had to be integrated in the examination of other trade and environment linkages as the full mandate of the Sub-Committee was explored.

35. Studying the effects of "green" measures on trade, particularly on market access was also hampered by the absence of hard evidence of the effects of one on the other. Therefore, it would be useful to have studies from which a data base could be built, and which would show measurable results of the effects of particular environmental measures, at both product and process level, on market access for particular products. He suggested technical and empirical studies on specified product-categories agreed to by members; for instance his delegation would like studies on tropical and agricultural products. Others may desire such studies on cars, industrial plants, etc. It was understandable why data were not yet available; many MEAs had only either just come into force or had been in force for limited periods. In the absence of databases and studies which would permit a more precise, detailed discussion of the effects of environmental measures on market access, his delegation offered general, preliminary comments.

36. Environmental measures were formulated to achieve either process or product standards. They had trade effects, particularly on market access, such as compliance costs, competitiveness effects, trading opportunities, and influence on consumer preferences which tended to have implications for the demand of a product. Currently, environmental standards were neither harmonized nor uniform across countries. Consequently, higher environmental standards within a country which were enforced by ever more stringent measures would impose higher costs on foreign producers and exporters in order for them to be able to comply with the domestic regulations of the importing country. Transaction and compliance costs would obviously increase. Thus, if ever more stringent standards were adopted, and the costs were not internalized, the probable trade effects that would arise were that the differences in relative cost amongst and between nations, the basis for the gains from trade, would be nullified. Higher costs would diminish competitive advantage for the foreign producer if it were assumed that the quality of products was either equal or comparable and that the products were substitutable. Further, it was conceivable that the additional costs to be borne by the foreign producer may actually be higher if a particular export market constituted only a small portion of the foreign producer's export sales, in which case economies of scale could not be enjoyed. Thus, more stringent standards by some, under conditions where standards varied widely, could inhibit trade.

37. Increasingly, consumers were being faced with "green choices". This reorientation of choices may cause changes in demand such as an increase in favour of "environmentally friendly" products. New and expanded market opportunities could arise for countries which could seize the trading opportunities that may arise. However, it was also reasonable to suggest that the trading opportunities that may arise would depend on cost. If a significant adjustment process were needed to make the switch from environmentally unsound products to environmentally friendly ones, then the basis for trade would depend on the costs involved in making the adjustment and retaining relative cost differences between products which justified the gains from trade. Developing countries may stand to gain if consumer preferences, translated into aggregate demand, led to a replacement of chemical or synthetic products by natural products and other such products because of their environmental friendliness.

38. On the second aspect of this item, namely the environmental benefits deriving from the removal of trade restrictions and distortions, his delegation believed that cause and effect were more direct. Trade restrictions and distortions, such as subsidies in the sector of agricultural and tropical products, had had disastrous environmental consequences in many countries. African countries presented tragic examples. The removal of these distortions would make it possible for market prices to emerge, for increased incomes for producer countries, and for the deceleration of the exploitation of finite resources and hence the preservation of the environment. Declining world prices of primary products were of serious concern to the African environment. This decline in prices for primary products was largely, though not exclusively, explained by trade distortions, particularly subsidies in the consuming countries.

39. Trade figures for Africa over a ten year period showed clearly the effects of the decline in prices of primary products on Africa's share of world trade. He considered the figures shocking: in 1982, Africa's share of world trade, excluding South Africa, was 4.25 per cent; in 1992, the figure was 1.88 per cent, after an annual growth rate of -0.19 per cent. Trade distortions and restrictions did not exclusively account for this dismal trade performance but they did, in large part, explain this low export performance in light of the fact that declining export earnings from primary products stood in contrast to increasing export volume.

40. The environmental consequences had been, and continued to be, severe. Resources were being exploited at an alarming rate with the resulting effects of a too-rapid rate of resource depletion. Deforestation and desertification and a host of other serious environmental problems were magnifying. These problems would not be so severe had many of the African countries obtained fair market prices for their export products. At UNCED, a consensus was established and was being strengthened daily that trade and environmental policies should be mutually supportive in order to promote the goal of sustainable development. Trade was a means of increasing national income, wealth and prosperity. In this way, essential resources would be released for environmental protection and preservation. If the environment were preserved and its resources prudently utilized, then it would continue to make available more resources for the continuing expansion of trade. For the environment to continue to provide the basis for trade expansion, prices of goods and products must reflect the full social cost of environmental protection. If prices reflected this full social cost, then trade would contribute to sustainable growth.

41. The problem, however, was that urgent action for the implementation of this worthwhile consensus was being threatened by a wide range of multiplying concerns. For instance, there was suspicion and outrage by many regarding the utility of unilateral conduct to enforce environmental standards in an area that was primarily seen as a forum of cooperative multilateral conduct. There were concerns about the use of trade sanctions for the enforcement of MEAs. There were strong arguments that interest groups may take over and colonize the valid concerns of environmental groups for protectionist purposes. Hence, his delegation considered that there was a need for objective, scientific conclusions on the necessity and effectiveness of environmental standards with trade effects so as to exclude the possibility of protectionism by another name.

42. He concluded by offering views on how best to proceed in resolving some of the problems in the discussions. First, this was not a forum for setting rules and standards on the environment. Through discussion, study and analysis, the Sub-Committee should determine the most suitable and appropriate ways of promoting the goals of sustainable development, and should ensure that any measures taken or contemplated were GATT-consistent. The governing principles remained non-discrimination, transparency and safeguarding and strengthening the principles of the multilateral trading system by acting in concert.

43. The representative of Brazil considered that this item was mainly derived from the discussions on UNCED follow-up in the CTD last year. Those discussions should be reactivated and his delegation's intervention was largely based on its participation in that process. The parts of Agenda 21 which were allotted for discussion in that Committee, i.e. chapter 2, Introduction and Section A, contained repeated calls for an expansion of market access in favour of developing countries. Agenda 21 said that expansion of trade through liberalization increased development perspectives by augmenting exports of developing countries. Gains in allocation efficiency reduced over-exploitation or wasteful use of natural resources. A linkage therefore existed between protection of the environment and the maintenance and improvement of an open multilateral trading system. In fact, "promoting sustainable development through trade liberalization" was one of the goals established for the UNCED follow-up.

44. From this perspective, implementation without distortions of the Uruguay Round, whose conclusion was called for in Agenda 21, was a central contribution that the multilateral trading system could make to the attainment of sustainable development. But the discussion on market access derived from Agenda 21 was not restricted to this general liberalization perspective. An important component of Section A of Chapter 2 was improvement of commodity trade, both

because it was vital for so many developing countries and due to the direct relationship between commodity production and the natural environment. It was not a text directed exclusively at the GATT and many of the issues were being dealt with elsewhere. Nevertheless at least three issues were GATT-related: access, distortions, and diversification.

45. In the access area, besides the problem of border measures which, in a general way, was the subject of negotiations in the Uruguay Round, his delegation had proposed examination of internal taxation on tropical commodities. Since there was no domestic production of those products in temperate zone countries, high internal taxes on them, even if in formal conformity with GATT Article III, distorted competition and were equivalent to a tariff on imports. This was a problem that had been examined in the GATT in the past without significant results and, in light of the results of the Rio Conference, should be re-examined. His delegation believed that the first step in this direction was to check the extent to which this issue had been dealt with in the past in GATT and if there were any conclusions. To this effect, he suggested that the Sub-Committee request the Secretariat to prepare a paper on the issue.

46. In the area of distortions, the UNCED message was against production and export subsidies in agriculture. Subsidies in agriculture, by depressing world prices, caused general over-exploitation of resources in developing countries in need of hard currency. The large amount of money involved in subsidization could be put to better use, for instance, by supporting sustainable development programmes in developing countries. Implementation of Uruguay Round commitments in this area had environmental and developmental dimensions and future progress of multilateral agricultural disciplines was in the interest of promoting sustainable development.

47. Third, references to the commodity problem in Agenda 21 also called for support for diversification efforts. It was easy to understand that diminishing dependence on a restricted number of commodities helped to avoid over-exploitation due to price falls. The same logic favoured vertical diversification, since more processed products were less subject to price fluctuation. Unfortunately, stepping up production faced the obstacle of tariff escalation in the main export markets which were important due to the small size of markets in many developing countries. Again, tariff escalation was an area with which GATT had dealt but not systematically, even in the Uruguay Round where it had the status of an objective in the market access area. Here again, his delegation proposed that the Secretariat prepare a paper referring to past GATT treatment of the issue and analysis of the consequences of the problem in light of the discussion in the Sub-Committee.

48. The question of market access was a horizontal issue which ran through all items of the work programme. This assessment invited a horizontal instrument to improve the knowledge of the subject and to give support to the discussions. In the CTD process, the idea of establishing a GATT database on environmental measures with an effect on trade had been discussed. The CTD had had the opportunity to hear from UNCTAD about their efforts to constitute such a database. The Chairman's invitation for voluntary submission of information on environmental measures under examination in this Sub-Committee went in the same direction. He suggested that informal consultations be conducted on this issue in order to determine what was necessary and feasible in terms of monitoring and data collection in this area under the WTO, taking due account of work done by other organizations in order to avoid duplication of efforts.

49. During the UNCED follow-up discussions in GATT, his delegation had highlighted three basic notions derived from the Rio Conference that were also valid for this debate. First, after UNCED the development dimension had to be present in any consideration of the

relationship between trade and environment. Second, international cooperation must be the basis for progress on environment and development issues. Third, the root causes of environmental problems must be addressed, which implied the necessity of dealing with development-related problems. His delegation had tried to point out some areas where WTO activity could have a positive impact on development and the environment and suggested some initial work for the Secretariat. His delegation hoped the suggestions were welcomed by others and that the Sub-Committee could proceed on this path.

50. The representative of Austria said the Sub-Committee's analysis should adequately take into consideration that possible side-effects of environmental measures on market access could be a consequence of or a necessity for the attainment of the environmental objective of an environmental measure and should neither be avoided nor desired. Furthermore, although concentrating the analysis on the side-effects of environmental measures on market access, other aspects like the environmental effectiveness of a measure, its structure, contents and the underlying environmental objective, should not be forgotten; to do so would give a partial and incomplete picture and restrict the range of analysis.

51. Principle 11 of the Rio Declaration postulated that "States shall enact effective environmental legislation". States did enact environmental legislation but, in order to be effective, it had to be adequately implemented and applied. There was reason to believe that States were becoming more competent in designing environmental legislation and in implementing it successfully. More and more companies increasingly not only abided by legal rules that were imposed on them, but themselves pushed forward the process of finding and implementing innovative solutions for environmental problems. Consumers were becoming more and more sensitive to the efforts of producers and were paying attention to the environmental impact of products. This applied to products as such, but increasingly also to processes of production. For companies, not taking into account environmental considerations could result in the loss of market shares and profit whereas taking them into account often turned out to be a competitive advantage.

52. Thus, growing public awareness for environmental concerns induced many producers to take into account these concerns and to make efforts towards internalizing environmental costs. Providing convincing evidence of their efforts to consumers enabled the latter to make environmentally sound purchasing decisions and increased the availability of information on the environmental quality of products. This was, in principle, not limited to one special national economy, but generally applicable. If consumers wanted to buy environmentally friendly products, the geographical origin of the products would not be the most important criterion for their purchasing decisions. They would look for specific quality from whatever producer from whichever country was able to provide it. Products from developing countries could be more environmentally friendly than competing goods from developed countries, because of the raw materials incorporated in these products or because they were or could be less intensive in terms of environmental resource use.

53. Turing from the macro-economic level to the micro-economic level or business administration, he added that one important sub-discipline of business administration was marketing. In order to be successful and to secure existence in the long-run, companies should make sure that there was demand for their goods. In other words they should, by means of market research, try to increase the probability that their goods would be accepted and bought by the consumers. At the macro-level there was demand for green products on the one side and supply or at least potential supply of green products on the other. So if it were possible to enable producers from developing countries to effectively communicate the environmental advantages of

their products to consumers in developed countries, producers from developing countries would equally be in position to benefit from consumers' preference for "green products" and their willingness to acknowledge environmental efforts on the producer side. Once initiated, the mechanism of mutual impact between producers and consumers would also work between producers in developing countries and consumers in developed countries. So in speaking of capacity building, the ability to communicate relevant information to specific target groups should be kept in mind as it was an essential element of this capacity. His delegation considered that the International Trade Centre should play an important role in laying the ground for disseminating the necessary skills, thereby helping to ensure not only access to the market but real market presence.

54. He turned from the process of information transmission to the information that was to be transmitted. Consumers, in order to be able to choose among products on environmental grounds, had to be given reliable information on the environmental aspects of these products. A means serving both producers' and consumers' interests could be the clear identification of product and/or process standards. A first step could be internationally agreed minimum standards which could then be further elaborated and serve as a basis for mutual recognition. Another means could be labelling schemes based on either products or processes. "Best management practices" defined with regard to local conditions could be reflected in standards of labelling schemes. The definition of "best management practices" would have to be adapted over time in order to take into account factors like new technologies, new knowledge and the quantity and quality of the resource base.

55. The representative of Chile noted that there were different ways in which market access policies could have a negative effect on the environment. His delegation considered that this Sub-Committee had not paid enough attention to the environmental effects of protectionist policies affecting the exports of many developing countries. This situation had a two-fold negative effect. On the one hand, recent evidence showed that protectionist trade policies in the agricultural sector were not environmentally sustainable and caused damage to the ecological systems of producing countries. On the other hand, the difficulties encountered by agricultural products from developing countries in obtaining access to global markets as a result of such protectionist policies made it difficult to reach the level of economic development necessary to meet the needs of their populations and of environmental protection.

56. He noted that the European Union was in the process of adopting a new agreement on the Generalized System of Preferences that included environmental and social criteria; this constituted an important precedent in the formulation of such agreements. Although the application of environmental criteria might be marginal in trade on a large scale, the principle that trade preferences should include environmental criteria was nevertheless a source of concern. As far as multilateral trade agreements were concerned, he drew attention to the fact that these agreements were increasingly being implemented through technical protocols and agreements, which may include protectionist-type criteria affecting trade and not negotiated in the framework agreement.

57. His delegation believed that the permanence of graduated tariffs, moderated by the Uruguay Round negotiations, also affected the relationship between market access and environmental protection because it mainly affected products closely related to the environment, for example, commodities, agriculture, forestry and mining. The persistence of a graduated structure with stringent environmental policies in the developed countries could be the greatest obstacle to development of these sectors and the implementation of an economic regime based on the application of comparative advantages. Finally, he drew attention to another element to be

taken into account, namely, obstacles to trade which may arise from the application of certain eco-labelling programmes. The selection of certain criteria might result in discrimination against foreign producers when local producers and consumers gave preference to certain characteristics that could more easily be provided by local producers.

58. The representative of Canada considered that the effect of environmental measures on market access was a central issue that cut across all the elements in the work programme, and could be addressed at every meeting of the Sub-Committee. His delegation welcomed the opportunity to focus discussion on the concerns of developing countries in this area. His starting point was the recognition that trade was crucial for the creation of wealth and, therefore, for environmental protection. This relationship was particularly important for developing countries. Increased national income generated from trade could be directed toward improved resource use and conservation. Trade and sustainable development were not dichotomies, and suggestions to the contrary were not helpful to an examination of the issues.

59. Another important consideration informing the debate was UNCED, the follow-up work of which was discussed in the EMIT Group. The issues debated at UNCED were of continuing relevance, and he reiterated the importance of commitments made at Rio. His delegation continued to strongly support one of the key messages to come out of the UNCED process - the importance of cooperation and partnership between the developed and developing world in dealing with environment and development issues. This meant taking the situation of developing counties into account in the formulation of national environmental measures. Of course, every country faced constraints in adjusting to new trade and environment realities, but these adjustments could be particularly onerous for developing countries. Previous speakers had referred to the discussions in the CTD, which began an examination of how to integrate trade, development and environmental issues. The work initiated in that Committee had now been brought into this Sub-Committee.

60. Market access for developing countries was a priority in that regard. There had already been some discussion of whether further work could be done to address improved market access for developing countries, building upon the advances made in the Uruguay Round. One issue that needed examination was tariff escalation and his delegation supported the proposals that had been made for a Secretariat paper on this subject. Another mechanism for providing special access for products from developing countries was the Generalized System of Preferences. This system had helped the expansion and diversification of developing country export sectors. He noted that his government was in the process of reviewing its general preferential scheme in order to improve its effectiveness in this regard. Also, many developing countries benefited from his government's other preferential tariff schemes, namely the British Preferential Tariff, preferences for Commonwealth Caribbean Developing Countries and a preferential tariff for the least developed countries.

61. The sixth item of the work programme focused on the impact of environmental measures on market access. Existing trade rules allowed countries to establish high domestic standards for environmental protection provided these were introduced in a manner consistent with GATT rules, including national and most-favoured-nation treatment. But environmental measures may affect market access and competitiveness. Much of the work in this area had concentrated on the issue of applying domestic standards or programmes to imports. A range of questions about the necessity and effectiveness of requiring imports to meet various types of environmental criteria had been identified. It seemed widely agreed that the most problematic would be those relating to the impacts of the production or processing method used to produce a good as opposed to the

impacts of the consumption or disposal of the good itself. The latter were already covered in GATT rules, but still could give rise to adverse trade impacts that would need to be addressed. These would need to be a focus of attention in future meetings.

62. Another area for on-going work would be exploring means by which countries could cooperate and coordinate in the development and application of various types of environmental standards and programmes, including measures like eco-labelling, eco-taxes, etc. This was not work for the WTO but should be pursued in the appropriate environmental fora. It was clear that in many cases differences in countries' circumstances would mean that different standards and policies were appropriate. Such differences must be respected. Furthermore, with regard to proposals for the use of trade restrictions to impose one country's standards on others, the effectiveness of this approach in promoting sustainable development had to be questioned. Policies and programmes not tailored to local circumstances had the potential to do more environmental harm than good.

63. In some instances, however, there might be a basis for the development of core international standards that could be used to establish common ground and a basis for pursuing approaches such as mutual recognition and equivalency. Efforts in this direction were already well underway in a number of fora. International standard setting authorities needed to take into account a wide range of considerations including scientific factors, countries' individual circumstances and capacities, and the environmental, social and economic implications of alternative programmes. Once again, this work did not fall within GATT/WTO competence, but was for other bodies with mandates in that area.

64. In the WTO, a number of steps would need to be developed to mitigate potential negative trade effects of environmental policies and programmes. The parameters for which types of environmental measures should be capable of application to imports would have to be established. Another step would be to pursue improvements in GATT's transparency requirements. Transparency did not offer an answer to the PPM issue but, on product standards, could be brought to bear to ensure that countries were provided with timely and accurate information and a meaningful opportunity to make concerns known. Recent UNCTAD case studies concluded that the most significant problem that exporters from developing countries had faced had been a lack of sufficient, up-to-date information. In this regard, it had been suggested that governments consider further use of enquiry points, such as those established under the TBT Agreement. These could provide information on trade-related environmental measures, including those not subject to formal notification requirements under GATT. The Sub-Committee may want to pursue this further, although it would be a partial response.

65. His delegation also considered it important to recognize that internationally agreed standards could play a positive role in promoting environmentally responsible products from developed and developing countries and that environmental standards could serve to induce technological innovation. In other words, high environmental standards could create market opportunities. One caveat was that new technology did not necessarily equate with environmental superiority. An example was coffee exporters whose natural jute packaging was less acceptable than plastic material because of a lack of recycling facilities for jute. Fortunately, this problem was resolved. He concluded by recognizing the work on the effect of environmental measures on market access that was underway in a number of organizations, including UNCTAD and UNEP. His delegation was particularly grateful for the case studies prepared by UNCTAD. Their work was creating an information base that could be used in the Sub-Committee's work.

66. The representative of the Czech Republic noted that his delegation welcomed the attention that GATT/WTO was paying to issues of environment and sustainability. His delegation was following with interest this debate which it understood to be one of the key areas, as recognized by UNCED, in approaching a model of sustainable development on a global scale. His delegation was taking the floor for only the first time now for at least two reasons: first, the background documents, invitations (airgrams) and reports were reaching his delegation sometimes very late and his delegation was hardly able to mobilize its limited capacities to obtain the necessary expertise to take active and constructive part in the deliberations; second, as a country undergoing the process of transition and probably as a number of other countries, both developed and developing, his delegation had some problems with identifying and specifying its position and interests within the context of the current trade and environment debate. Given the richness and multidimensional nature of this debate, there was much ambiguity. Not only could his delegation not be sure that by letting trade move more freely were environmental benefits automatically obtained (his delegation firmly believed in the overall positive effect of trade liberalization), it could also not be sure that by pursuing honestly stricter environmental standards to heal the devastated environment and by subscribing to relevant environmental conventions there was no violation of existing trading rules.

67. Finally, his delegation was far from sure that the pursuit of a better environment would not undermine the competitiveness of his country's revitalizing industrial and service sectors. Thus, his delegation shared most of the concerns of developed countries, but also maintained a good deal of understanding for arguments voiced by some developing countries, especially those trying to expand the market elements in their economies. So regarding market access issues, which embraced other points of the work programme and was the essence of the GATT/WTO, it was fair to say that substantial and lasting uncertainties were to be dealt with. Their elimination may perhaps start from clarifying the notion of "environmental measures" and then proceed by reviewing and classifying all kinds of environment-related export and import measures and policies. Trade had always two sides and scrutiny should not be limited to just one of them. Dealing with such difficult issues could benefit immensely from case studies and other in-depth analysis, for instant that carried out by UNEP or UNCTAD.

68. He added that beyond the environmental regulations notified under the TBT Agreement, which were exposed in document PC/SCTE/W/1, there was a wide area of existing or potential interference in trade. This area should be investigated and mapped so that, in the future, it would be possible to name other barriers to trade (if they were found) and to set some guidelines to distinguish better what was justifiable and what was not. One of the first steps may be disseminating more information about national environmental measures, policies and standards, especially those with likely trade implications. This may also become part of any mechanism of dispute avoidance. Although the concept of transparency may be too often cited, it was still a prerequisite for any further steps in the desired direction of making trade and environmental concerns mutually supportive.

69. The Czech Republic was initiating membership in the OECD with the longer-term aim of joining the EU. This implied harmonizing efforts in all areas including the environment. His government was approaching this task seriously, even if its recovering economy was still fragile and vulnerable to changes of behaviour of its trading partners. His delegation also shared the concerns of developing countries trying to expand market opportunities. Therefore his delegation remained sensitive to arguments in favour of a cautious and differentiated approach to the harmonization of environmental standards, taking into account the different circumstances and possibilities of individual countries. This process would need time, as well as international (both

bilateral and multilateral) cooperation and assistance, capacity building and fulfilment of other preconditions. His delegation was willing to increasingly work to promote cooperation this area.

70. The representative of Uruguay supported the statements by the representatives of Argentina and Australia. The subject of this item was of particular importance to her government, partially because it was seen in the context of the UNCED conclusions. As others had indicated, market access was a horizontal issue which also covered other aspects of the work programme. However, her delegation considered that the main point of this item was the review of the environmental benefits resulting from the elimination of trade restrictions and distortions, in particular, in trade in agriculture. In this respect, she supported delegations who had underlined that one of the fundamental tasks of the Sub-Committee was to examine the negative environmental effects of some practices and policies such as protectionist agricultural policies, and also to examine how such restrictions on market access hampered development efforts of some developing countries. These policies had a double negative effect on the environment: there was an over-exploitation of environmental resources used, and through international trade this distortion was transmitted to producers in other countries forcing them to overexploit their resources sometimes reaching dramatic conclusions such as desertification.

71. Regarding restrictions affecting the market for agricultural goods, she added that the results of the Uruguay Round were a step forward in the context of the sustainable development concept endorsed in UNCED. However, governments should be more ambitious because trade liberalization was an essential component for development and because restrictions affecting market access of agricultural goods in particular had negative environmental consequences. She concluded that the results attained under this item would represent an essential element in evaluating globally the conclusion of the entire process. Her delegation would evaluate the full results of the Sub-Committee and the Committee, just as the work programme had been evaluated. Her delegation hoped that progress would be achieved as quickly on this item as on other items.

72. The representative of Korea agreed that this item comprised a wide range of issues and it seemed difficult to maintain a focused discussion at this stage. He therefore made a few preliminary observations. First, much discussion had occurred on the potential impact of environmental measures on market access in various fora, such as the EMIT Group, as well as in other international organizations. He considered it desirable to have synthesized results of these discussions in order to facilitate a practical discussion here. Secondly, with respect to the beneficial effects of doing away with trade restrictions and distortions, he agreed that trade liberalization would bring environmental benefits by promoting the efficient allocation of environmental and economic resources internationally, and also by improving market access for exports from developing countries.

73. However, this assumption was based largely on *a priori*, and not *a posteriori* reasoning. In fact, there was little experience on the environmental impact of trade liberalization. Thus, empirical evidence from country specific or sector specific case studies was being accumulated by relevant bodies. Some preliminary studies by the OECD showed both positive and negative factors and indicated the need for further conceptual and analytical work, including a further elaboration of the scope of environmentally friendly products. He believed that for trade liberalization to have a positive impact on the environment, effective environmental policies, in accordance with each country's socio-economic and environmental condition, must be implemented along with trade liberalization.

74. He added that because a focused and cohesive examination of this agenda item seemed difficult at this stage, it would be necessary to revisit this topic and narrow it down once the other items of the work programme had been covered. Finally, he touched upon the institutional questions relating to this issue. Market access issues were dealt with in the CTD, and there was some overlap between the work of the CTD and this Sub-Committee. His delegation believed that proper coordination between these two Committees was desirable.

75. The representative of Hong Kong considered that the Sub-Committee should deal with this item on the premise that it was also a subject to be dealt with in the CTD. Nevertheless, it was up to the Sub-Committee to determine whether the work already done could be advanced and operationalized. He supported the notion that market access was a cross-cutting issue and was an integral part of many of the items of the work programme, although it would be dealt with specifically under this item. He agreed with those delegations that stressed that trade liberalization and trade itself was the prerequisite for environmental protection, the creation of wealth, and effective and efficient allocation of resources, and that this was the background for further work in this area. The intervention by the representative of the United States appeared to cast doubt on this premise. If so, this could apply to certain isolated cases which could be specifically examined.

76. He considered that the representative of Argentina had given a useful exposition of the issues behind this item, based on analytical work done by the OECD. However, the issues must be seen in perspective to come to the right conclusions as stressed by the statement by the representative of Nigeria. Under this item, he believed that the only right conclusion was that subsidies, like any other trade distortion, were bad for the environment and, as such, should be removed at source. This was not to say that they were countervailable in the GATT sense because in the remit of GATT, countervailing duties were based on "injury" established in the importing country, not in the exporting country which would be extraterritorial and extrajurisdictional.

77. He noted that a number of delegations had spoken of the need to emphasize the second part of the sixth item in future work and his delegation supported this. It would be necessary to understand how trade barriers, tariff escalation, internal taxes, etc. inhibited individual countries to get at the right policy that struck the correct balance between developmental needs and the right to preserve the environment. In many cases, he believed that efforts to establish the right mix was inhibited by what actually constituted the export market. Further study would be necessary to understand how this aspect could be tackled. The representative of the United States noted studies that indicated that trade measures taken for environmental purposes had minimal effects on trade. He wondered whether this was quoted out of context. It would be necessary to compare these findings with tariff escalations, trade barriers, and quantitative restrictions which probably had more significant effects. This was evidenced in the number of panel cases in GATT which dealt with trade measures taken for environmental purposes.

78. Another point with which he agreed was that in order to reduce the actual or potential adverse trade impact, there should be effective transparency in a way that there would not be local bias and that all players would have a say. This did not mean that he subscribed to the idea that transparency equalled participation by all interested parties. Overall a balance had to be maintained. The more imminent problems would have to be identified. The representatives of Egypt and Nigeria had given interesting perspectives and further work would have to balance the various perspectives on this issue.

79. The representative of Switzerland considered that this item contained two aspects which were of a different dimension and had to be treated separately: first, the aspect of the effect of environmental measures on market access and second the environmental benefits of removing trade restrictions and distortions. Therefore, she divided her intervention into two parts. Under the first part, she considered that the question of market access in trade terms dealt with the reduction or elimination of trade barriers with the goal of increasing market access. This objective was met in the Uruguay Round especially by reductions in tariffs, reductions in non-tariff support in agriculture and reductions in non-tariff barriers to trade. The strengthened and expanded rules, procedures and institutions would increase the legal security for market access. However, market access was not just defined by trade policies but also by domestic policies such as environmental policies which may impact on international trade. If environmental policies were becoming more stringent and more comprehensive, their potential effects on market access and on competitiveness would be more important. Environmental endowments, assimilative capacities, social and intertemporal preferences had important influences on the environmental priorities of a country. The stage of the economic development of a country but also institutional structures which expressed or enforced environmental concerns in legislation may affect the choice of present and future environmental policies and goals. Many developing nations, however, lacked the institutional frameworks needed to convert public opinion with regard to environmental concerns into government action.

80. The impact of domestic environmental measures especially by developed countries on market access in relation to developing countries was complex and depended on different aspects. In her delegation's view, market access could by analyzed along five lines: first, the type of instrument such as technical specifications of a product, packaging requirements, and voluntary measures such eco-labelling; second, the countries' export structure; third, the structure of the firm, which was specifically concerned with such an environmental measure applied by a developed country; fourth, the aspect of unilateral environmental measures versus measures taken pursuant to an MEA; and, fifth the type of environmental problem on which the environmental measure was based.

81. Without going into details, she explained briefly these aspects, starting with the first aspect, the type of instrument, and its effects on developing countries. All measures had to be applied on a non-discriminatory basis, in a transparent manner, and they should be proportional. However, developing countries may face specific problems. For example, compliance with specific technical specifications in overseas markets may be linked to difficulties concerning adaptation to new regulations, particularly regarding accession to environmentally sound technologies. Another problem may be costs of access to conformity assessment systems. Also packing requirements could present problems for developing countries such as increased costs for producers for procedures such as take-back obligations, deposit refund systems, compliance costs of changing the design of packaging and or the material used in order to comply with the environmental regulations of importing countries, and compliance with recycled content requirements. Similar problems could be identified also for eco-labelling schemes in developed countries. Specific exporting firms from developing countries may try to compete with unlabelled products or they may be compelled to obtain a label by adjusting the product to specific requirements in order not to lose market share. Criteria of eco-labels based on process requirements may pose problems for developing countries' export firms because of a lack of access to the corresponding technologies, raw materials and information.

82. Regarding the second aspect of the market access problems - developing countries' export structure - market access problems for a country may exist when the developing country was

export-orientated. If developing countries' firms were mainly export-oriented, environmental measures in overseas markets may affect export opportunities of a developing country due to costs of compliance. Particularly in the textiles, footwear, and timber sectors, compliance with environmental measures in the importing overseas countries may affect the trade of these products and thus the trade balance. Moreover, opportunities for mainly inward-oriented firms in developing countries to raise their exports may be limited as they may face different compliance problems for specific product and process requirements in overseas markets.

83. A third important aspect was the structure of a firm. Larger firms and particularly those which dealt with foreign buyers, may be better prepared to meet environmental requirements in overseas markets. They also may have better access to information. Larger firms may have a better financial basis to innovate and to adjust their technologies. Given that in developing countries the size of the firms may traditionally be smaller than firms from the developed countries, these aspects were of significance. That was why special structures may be needed to help small enterprises have better access to foreign markets.

84. Regarding the fourth aspect of unilateralism and multilateralism, trade effects of environmental measures taken pursuant to an MEA may be different for countries, particularly for developing countries, than the effects of unilaterally applied environmental measures. Environmental measures applied pursuant to an MEA and applied by many countries created higher pressure to produce alternative products. Depending on the developing countries firms, such multilateral pressure may lead to the development or the increase of trade of such alternative products. It was difficult to assess the overall impact of these measures on the competitivity of firms in developing countries. However, the multilateral environmental measures offered the possibility to develop these measures in a concerted manner.

85. Regarding the last aspect, the type of the environmental problem, the question was whether the effects on market access due to domestic environmental measures addressing local or regional environmental problems were of the same dimension as measures applied pursuant to an MEA. The effect on market access *per se* may be the same, but the consequences concerning a developing country's resource management may be different. It was in each country's sovereignty to apply high environmental standards. However, the application of trade-related measures applied by developed countries for tackling strictly local environmental problems or even regional problems may cause difficulties for developing countries. In order to maintain a certain level of market access, developing countries would be forced to devote more resources to certain environmental improvements rather than choosing on the basis of their own environmental and developmental conditions and priorities. Concerning MEA-based measures addressing global environmental problems, which contained transitional periods and specific financing mechanisms, devoting resources to achieve a global environmental improvement may correspond more with environmental and developmental conditions and priorities in developing countries as the urgency of tackling global environmental problems was widely recognized.

86. She considered that this brief illustration listed some aspects which may play a role in analysing market access problems for developing countries. To conclude, the analysis of the effect of environmental measures on market access, especially in relation to developing countries was extremely complex and would require further analysis. In the long term, the only way to protect the global environment was through international cooperation, not only regarding the environmental measures themselves but also regarding their trade effects. To get a better overview of these effects, case studies on trade effects of specific environmental measures for specific developing countries would be useful. Such studies had already been made especially by

UNCTAD and it would be helpful for the Sub-Committee's work if the Secretariat could prepare a document on existing analytical results.

87. The second aspect of this item related to the environmental benefits of removing trade restrictions and distortions. Removing trade restrictions meant especially reducing tariffs, reducing non-tariff support especially in agriculture and reducing non-tariff barriers to trade. All these elements would contribute to a steady elimination of trade distortions. Furthermore, the elimination and reduction of trade barriers may have a positive side effect: the environment may profit from liberalizing trade. She mentioned some aspects of environmental benefits. First was the macro-economic aspect of liberalizing trade. It could be argued that economic growth may have a negative impact on the environment. The prediction of what growth would do to the environment depended also on how growth would affect the production of pollution. Studies had not shown an absolute correlation between these two factors. However, it might be a rather narrow approach to look just at these two factors without taking into account the effect of other existing (flanking) policies. Moreover, economic growth may enable governments to tax and raise resources for a variety of objectives, including the abatement of pollution and the general protection of the environment. Economic growth may also increase awareness for a good environment.

88. A second aspect was the reduction of tariffs and non-tariff barriers. In developed and developing countries a growing market existed for environmental goods and services, largely because of more stringent environmental standards. A shift in the composition of production had developed major sectors, such as the environmental equipment sector. Trade in these sectors depended on existing trading conditions, and would also benefit from the reduction of tariffs and non-tariff barriers.

89. A third aspect was the reduction of subsidies especially in the agricultural sector. Government protection still existed for particular industry sectors. Subsidies were particularly prevalent in the agricultural sectors, especially in developed countries. In the context of international trade and the environment, agricultural subsidies presented several major problems. Misallocation of resources may increase environmentally damaging farming practices, such as soil salinisation brought on by over-irrigation with subsidized water, and damage to aquatic ecosystems through run-off of subsidized pesticides. Reduction in subsidies for the agricultural sector may lead to a reallocation of resources and promote agriculture in other countries, which benefited from a more appropriate production context. This may lead in the middle and long terms to more environmental friendly agricultural production. Without presenting a complete picture of environmental benefits due to liberalizing trade, it could be concluded that removing trade restrictions could foster the production of more environmentally friendly products, but it was not sufficient if not accompanied by environmental measures. In that sense, the real effect of the reduction and elimination of trade barriers depended largely on the entire policy framework and priorities of a country.

90. The representative of Malaysia, speaking on behalf of the ASEAN countries, noted that the Uruguay Round had resulted in an impressive market access package. The recent analysis undertaken by the GATT Secretariat highlighted the benefits that could be gained by both developed and developing countries. According to the study, global income was envisaged to be boosted by US$510 billion per year by the time market access commitments were fully implemented in the year 2005 because of the resulting market opening. The report also provided the following impressive estimates of annual income gains: US$122 billion for the United States; US$164 billion for the European Union; US$27 billion for Japan; and US$116 billion for

developing and transition economies as a group. This analysis also pointed out that developing countries were expected to secure an even greater expansion in trade: a 14 percent increase. The report also highlighted the fact that the Uruguay Round had brought about the elimination of "grey area measures" and the restoration of some discipline on the use of anti-dumping measures. His delegation considered that the Secretariat could not have factored in the environment in the analysis. The prospects of market access were largely based on liberalization measures to be implemented over those years.

91. After having attained the above market access package, he believed all governments would be keen to see the fruit of their efforts translated into tangible results. That of course would only be possible if the WTO would come into effect. Further, his delegation noticed disturbing trends emerging including the introduction of environmental conditionalities which threatened to negate the impressive results pointed out by the Secretariat report. He added that new challenges were arising from "grey area measures " turning into "green area measures" which in effect had the potential impact of stifling trade. Specifically, there was already legislation being introduced which prohibited the building of official buildings with tropical timber. What this effectively meant was that the trade potential that was envisaged from market access concessions could not be realized because of this kind of measure being introduced without regard to scientific evaluation but rather motivated more by political expediency. The market access package was in real danger of being a "white elephant". In the long run the emergence of conditionalities associated with the environment would only make contracting parties feel short changed. It was pertinent that this be avoided in the long-term interest of the international trading system.

92. The representative of the European Communities gave some preliminary views on some of the points covered by this item. UNCED concluded that trade, environment and sustainable development should be approached in a integrated manner, and that policies in those fields should be made to work in a mutually supportive way. A number of principles and concepts agreed at Rio should be noted, as they may be relevant to this item. Principle 2 was of importance, in that it acknowledged the sovereign right of states to exploit their own resources pursuant to their own environmental and developmental policies, but also imposed on them the responsibility to ensure that activities within their jurisdiction or control did not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

93. Principle 4 of the Rio Declaration stated that "in order to achieve sustainable development, environmental protection should constitute an integral part of the development process and could not be considered in isolation from it". On the other hand, Principle 6 affirmed that "the special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, should be given special attention. International action in the field of the environment and development should also address the interest and needs of all countries". Also Principle 11 of the Rio Declaration was relevant in this discussion, in that it specified that while "states should enact effective environmental legislation, standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries". Finally, Principle 12, in particular its first sentence, provided that "States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation".

94. As was acknowledged by UNCED, the conclusion of the Uruguay Round had been a major step forward. Free trade facilitated the efficient allocation of resources. The main result of this was that, through the principle of comparative advantage, each country specialised in the

production of goods in which it was more efficient. This resulted in higher world welfare. In all these ways, removing tariff and non-tariff barriers not only had a positive impact in terms of wealth and standards of living measured in monetary terms, but may also have a positive impact on the environment provided that the appropriate environmental policies were adopted. Consequently, also for environmental reasons, the benefits of the Uruguay Round should now be finalized through ratification and implementation and the work of this Sub-Committee should continue to proceed constructively.

95. As far as environment and development were concerned, the major task was to render compatible and supportive the right to environmental protection at a high level, with the right of all countries, but particularly less and least developed countries, to benefit from trade, through agreed market access. The first part of this equation, namely the right of WTO members to adopt a high level of domestic environmental protection, was clarified in the Uruguay Round texts, in particular in the Preamble of the WTO Agreement which acknowledged the importance of "seeking to both protect and preserve the environment". Furthermore, the Preambles of the TBT and SPS Agreements clarified that no WTO member should be prevented from adopting and enforcing measures necessary to protect human, animal, or plant life or health, and the environment, subject, of course, to the conditions contained in those Agreements.

96. At the same time, his delegation believed that the Uruguay Round Agreements substantially further developed the approach, already presented for example in Part IV of the General Agreement, to allow in the framework of the non-discriminatory trading system more favourable treatment to LDCs, especially LLDCs, taking account of their special needs and specific problems. The 1979 Tokyo Round Decision of Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries was underpinned by the same spirit. More specifically, the SPS and the TBT Agreements provided for the possibility of a consensual decision to grant special and differential treatment to LDCs. For example, Article 10, paragraph 3 of the SPS Agreement provided for the possibility that the SPS Committee grant LDCs specific time-limited exceptions from obligations under the SPS Agreement. His delegation found particularly interesting for purposes of this discussion Article 10, paragraph 2 of the SPS Agreement, which provided that, "where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country members so as to maintain opportunities for their exports".

97. The TBT Agreement, while envisaging, in Article 12.8, a similar possibility for the TBT Committee as for the SPS Committee, i.e. to grant time-limited exceptions in favour of LDCs, also put emphasis on the aspect of providing (Article 12.7), on consensual terms, technical assistance to developing countries "to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the diversification and expansion of exports from developing countries". There were many similar provisions in the Uruguay Round Agreements which were not necessarily exclusively related to environmental protection but which urged developed countries to have special regard to the special situation of developing country members when using measures which could have a negative effect on their access to markets. For instance, Article 15 of the Antidumping Agreement recommended that "special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures..." A final example was the Decision on Measures in Favour of Least Developed Countries, which was adopted in Marrakesh and which recognized "the specific needs of least

developed countries in the area of market access where continued preferential access remains an essential means of improving their trading opportunities".

98. These provisions showed that the GATT/WTO system was prepared to allow a certain degree of flexibility to developing countries regarding their compliance with rules, if that would be inappropriate given their specific problems. It might be considered that, when dealing with the inter-relationships between environmental protection, market access and development, a similar approach could be pursued. For instance the possibility could be considered that developed countries, when introducing environmental measures affecting in particular market access for developing countries, should consider whether it could be possible to use a differentiated schedule for compliance, such as a time-limited exception from complying with the relevant obligations, or other forms of phase-in or phase-out periods. Another option was, as indicated in the TBT Agreement, to ensure that developed countries positively consider granting technical and/or financial assistance, on consensual terms, to developing countries in order to help them comply with new environmental regulations.

99. A note of caution was necessary though. Especially with regard to phase-in periods, it was essential that they be compatible with achieving the environmental aim. In other words, such time-limited exceptions should not create the risk of undermining the environmental objective of a measure. Article 10, paragraph 2 of the SPS Agreement provided a good model in the sense that longer time frames for compliance could be granted on products which were of interest to developing country members, but only where the appropriate level of sanitary or phytosanitary protection allowed scope for doing so. A similar approach could also be imagined for environmental measures, where that was appropriate. Such an approach could be considered by negotiators of MEAs when measures which either directly or indirectly affected trade were considered. However, it was up to those negotiators of MEAs to decide whether the granting of phase-in periods to less and least developed countries would be environmentally sustainable.

100. Finally, with regard to special treatment for developing countries, an approach which would be the other side of granting phase-in periods while they improve their capacity to move to higher environmental standards could be considered. This would grant special treatment in terms of market access for products whose characteristics or whose method of production had been internationally recognized as environmentally friendly. His delegation would be interested to hear the views of other delegates, especially of developing countries, on such an approach.

101. He added that an important instrument to avoid unnecessary effects of environmental measures on market access was effective transparency and information dissemination. Especially *ex ante* transparency could help avoid clashes between environmental protection and market access. This issue could be further discussed in the future under the fourth item of the work programme. For the moment, he simply noted that the models of Article 2 of the Uruguay Round TBT Agreement, as well as of Annex B of the SPS Agreement could be useful, i.e. to publish *ex ante* notices of measures which did not conform to international standards or where there were none, to receive comments and discuss those upon request. Of course, as was generally agreed in the EMIT Group, transparency obligations should not become so administratively burdensome that they would be unworkable.

102. He added that a number of delegations had mentioned the possible negative environmental effects due to trade distortions and the environmental benefits of removing those distortions, in particular the delegation of Argentina with respect to agriculture. His delegation considered that as far as these negative environmental effects would indeed occur, it could not be underlined

enough that a great step forward was already being made by the Uruguay Round since the market access improvements stemming from the Round provided enhanced possibilities for production to take place in countries which had the environmental capacity to carry it out in an environmentally efficient manner. Also the Uruguay Round Agreement on Agriculture could be considered to increasingly allow production to take place in such countries and at the same time allow increased market access for developing countries. It should be underlined that trade liberalization may very well bring environmental benefits provided that the countries benefitting from that liberalization applied appropriate environmental policies. If incentives from the Round would therefore lead some countries to change agricultural production strategies or methods, this should be accompanied by the correct policy instruments which should also take into account the environmental impact of agriculture.

103. Finally, he added that several countries, including developing countries, adopted non-tariff measures on a number of products in the natural resource and raw materials sectors. These measures provided an artificial competitive advantage to domestic producers in comparison to foreign competitors. These measures could be grouped into three categories: the supply of raw materials to local producers at lower prices than world market prices, export restrictions on raw materials, and differential export taxes applied to raw materials and to processed products. His delegation considered that it was possible that in certain cases these policies could impact negatively on the environment through inefficient allocation of resources and over-exploitation by local producers using those natural resources. Therefore, in any discussion on the environmental benefits of removing market restrictions and distortions, this issue should also be taken into account and further analyzed.

104. The representative of India agreed with the fundamental hypothesis that trade liberalization was crucial and that it released resources for developing countries to afford better environmental protection. He realized that for some developed countries there were excessive levels of consumption and other factors which might lead them to question that hypothesis. His delegation believed that if market access was not available and if trade liberalization was not possible through an open, non-discriminatory and equitable multilateral trading system, it would have disastrous consequences for environmental protection in developing countries. This would have to be accepted unconditionally if the Sub-Committee was to proceed further on this item.

105. When speaking of the effect of environmental measures on market access, the measures being discussed, according to the Sub-Committee's mandate, were charges and taxes, requirements for environmental purposes relating to products including standards, packaging, labelling, and recycling. Also, the issue of transparency was relevant for market access. As far as the effect of these measures on market access was concerned, his delegation envisaged three possible effects: obstacles to trade for developing countries which would affect market access; competitiveness concerns could arise, although the evidence was not conclusive in this regard, and lead to effects on market access; and goods and services not being allowed market entry on these grounds. His delegation considered that the Secretariat paper could look at these three possible effects. Only by looking at the degree to which market access was affected in developing countries and at the product range which was of importance to developing countries could a dispassionate analysis of the effect of environmental measures on market access of interest to developing countries be done.

106. He considered that ultimately the Sub-Committee's analysis based on the above criteria should lead to some prescriptions. He asked how market access, which was so critical to the environmental protection of developing countries, could be achieved while at the same time enabling achievement of sustainable development. His delegation believed that tighter disciplines

and clearer rules were necessary for these environmental measures. If not, there would be a tendency towards protectionism and abuse and this would have a negative impact on market access for developing countries. His delegation also believed that it was necessary to follow the route of MEAs based on international consensus. It was possible that this would create an unavoidable negative impact on market access, in which case his delegation would propose that there would have to be some mechanism for financial assistance and technology transfer within the context of that MEA.

107. His last point was that unilateral trade measures for environmental purposes almost always affected market access for developing countries because the notion of unilateral trade measures was that stronger countries could impose measures on weaker ones. Apart from the fact that such measures were based on unacceptable principles, his delegation believed that they would affect market access, would lead to depletion of valuable resources and in the ultimate analysis would be counter-productive to the achievement of sustainable development. He suggested that the Sub-Committee be in close contact with UNCTAD which had done significant work in this area which could be of use. It would also be useful to watch what the CTD was doing in this area. In the final analysis, the safeguarding of an open, non-discriminatory, and equitable multilateral trading system would guarantee market access for developing countries.

108. He added that there were specific areas where removal of trade restrictions and distortions could be foreseen, such as the areas of textiles and agriculture. He agreed with the representative of Hong Kong in terms of what subsidies did in the area of agriculture. He considered that the biggest threat to market access was green protectionism. In the area of textiles, for the past thirty years there was an arbitrary quota regime in which trade restrictions were imposed on products exclusively from developing countries. Now, as a result of the Uruguay Round, there was a definitive commitment to eliminate the MultiFibre Arrangement in ten years time. At the same time there was a sudden interest in process and production methods in the area of textiles. The natural inclination was to believe that there was a link between these two trends which indicated protectionism. This was the type of analysis that his delegation expected. The history of international trade had indicated that where there was the possibility of competitive advantage for developing countries, there had been an attempt to impose restrictions one way or another. Developed countries had a duty to show that this was not the case. For those who genuinely believed in sustainable development, this would not be the case but the onus was on them to prove this.

109. The representative of Sweden, speaking on behalf of the Nordic countries, considered that in discussing the effect of environmental policies on market access it was important to establish that this concerned environmental problems which all countries had a common responsibility to solve. The concern for environmental protection was widespread and could not be ignored. In many countries there was an increasing consumer demand that would affect the pattern of international trade. Her delegation's view was shaped by the fact that it was comprised of small and open economies, heavily dependent on exports. Therefore they shared the concern of many developing countries that environmental protection could be misused as a means for hidden protectionism. However, the role of environmental protection as a barrier to trade must not be overemphasized in comparison to a number of other factors which made trade far from free.

110. The North-South dimension could be misused as a pretext for delaying the introduction of more ambitious environmental standards at a time when these were needed. This should not be allowed to happen. The challenge was to find ways to implement sound environmental policies while at the same time taking care of the vital economic and development interests of the least

developed countries, for instance by use of grace periods and the provision of technical and financial assistance when formulating environmental policies. It was too easy to focus on "green protectionism" while forgetting other forms of protectionism towards the least developed countries. Environmental measures and requirements had a positive impact on the environment as well as on development in the developing countries. Some measures had been established upon the request and under pressure from developing countries. For instance under the Basel Convention it was agreed to prohibit exports of hazardous wastes from OECD to non-OECD countries. This was originally a proposal from the G77 countries. In the FAO the Nordic countries had recently given their support to a process for stringent restrictions on trade with dangerous chemicals based on Prior Informed Consent. Also in this case the interest from developing countries had been strong. Also in a protocol on bio-safety under the Biodiversity Convention, Prior Informed Consent would be a central element. The developing countries had been and were still frontrunners of this proposal.

111. Her delegation believed that there were environmental benefits to be gained from removing trade restrictions and improved market access on a world-wide level. The Uruguay Round had resulted in a number of improvements for developing countries' opportunities for market access. However, it could go further. The goal was clear - to make room for trade and environment to be mutually supportive. Freer trade would enhance economic growth overall and improve the effective allocation of resources if environmental concerns were also taken into account. Her delegation had four points to make on the ways in which increased market opportunities could be achieved.

112. First, transparency and access to information was of vital importance in ensuring that environmental measures would not become an unnecessary obstacle to trade. Here, the TBT and SPS Agreements of the Uruguay Round were useful examples. These Agreements included provisions on transparency as well as on the establishment of national enquiry points and efficient notification procedures. One opportunity to enhance market access for developing countries was eco-labelling systems which could promote environmentally friendly products. To ensure this it was, however, important that producers also in developing countries were able to contribute in setting the relevant criteria. Apart from scientific criteria, she also considered that the Precautionary Principle was relevant. Eco-labelling systems were a useful tool in striving for a sustainable society. They had aspects relating to trade which may be technical and complicated and needed to be discussed further. For instance, whether mutual recognition could be a way to improve market access was one issue which could be explored further, possibly in expert groups. In this respect, the UNCTAD *Ad Hoc* Working Group might supply useful input.

113. Second, in order to improve export possibilities it was important that environmentally sound technologies were made available to as many countries as possible. The Uruguay Round, once implemented, would facilitate technology transfer. The intention of the TRIPs Agreement, for example, was to enhance opportunities for companies to invest in foreign countries, as it ensured that the value of technology was not lost. This way technological know-how would spread more evenly across the world. Studies, such as those of the OECD, had shown that an important prerequisite for technology transfer was appropriate national environmental legislation. This would force companies to invest in environmentally sound technology which was not necessarily much more expensive. Here the role of technical assistance for the least developed countries was crucial. Legislation and its implementation would have a larger impact than additional financing. But there was a need to go further. Therefore, her delegation supported international work on trade and investment and its impact on market access, technology transfer

and the environment. An important way to ensure the diffusion of technological know-how was through greater predictability and stability in national rules and practices.

114. Third, the reform and liberalization of trade in agricultural goods included in the Uruguay Round and the integration of the textiles and clothing sector into the WTO system would bring sizable benefits to the developing countries. An interesting topic for further analysis would also be the impact of subsidies in general. This analysis should aim at assessing both the impact on market access of developing countries as well as the impact on the environment in exporting and importing countries. Fourth, another feature in the context of market access was tariffication and its impact on the environment which would merit further analysis. To conclude, she had presented ideas which would increase opportunities for market access without compromising appropriate environmental policies thereby promoting the common goal of sustainable development, increasing the stability and predictability of the multilateral trading system and making the trading system mutually supportive with environmental protection. She considered that next year the Committee should focus its discussion further on some of the items of the work programme, in order to fulfil its terms of reference. At the same time, she stressed the need to ensure full transparency for all delegations when working with technical questions. Only by deepening the work could it be ensured that the Committee could present results and appropriate recommendations to the first Ministerial meeting of the WTO.

115. The representative of Mexico considered that the sixth item had two distinct facets which, although related, should be dealt with separately: (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed; and (ii) consideration of the possible benefits to the environment of removing trade restrictions and distortions. Regarding the first aspect, her delegation shared the view expressed by others that it should be considered as a "cross cutting issue" present in discussions on all other subjects of the work programme. This was in line with Chapter 2 of Agenda 21 which concerned aspects that were fundamental for the international trading system such as the promotion of market access as a catalyst for economic development and consequently for sustainable development, especially that of developing countries.

116. It should be pointed out that the trade impact of environmental measures on market access could affect not only developing but also developed countries. Nevertheless, it must be borne in mind that the global impact and the secondary effects of such measures may be more important and harmful for developing countries in view of their situation and their special needs in the area of finance and technology. In addition, trade was a vital prerequisite for the sustainable development of developing countries. This was fully recognized in the basic principles and recommendations arising out of Rio and her delegation did not believe that it should be questioned. Trade was the most important channel through which these countries could have access to monetary resources that would allow them to take action aimed at ensuring environmental protection and the conservation of natural resources. Regarding this item, the imperative need was to ensure the effective and growing integration of developing countries in the international trading system through greater and more predictable access to markets that was equitable, non-discriminatory and non-conditional.

117. In her delegation's view, the question of market access should be considered from two perspectives. On the one hand, an effort should be made to seek forms and mechanisms to increase market access for exports from developing countries so that the latter could obtain the resources necessary to improve standards of living and invest in environmental protection. The rapid implementation of the results of the Uruguay Round would constitute an important

contribution in this regard, even though there were other unexplored channels which might be discussed, for example, those mentioned by Canada, Brazil and others, such as graduated tariffs. Another interesting channel to consider was the export potential of developing countries in environmental services and "environmentally friendly" products, for example, natural materials for packaging whose utilization had proved to be more efficient from the environmental point of view than the materials currently utilized in various packaging and recycling programmes in developing countries.

118. On the other hand, it was vital to create the necessary means to guarantee the preservation of market access that developing countries already had and for which they had paid, in view of the possible effects of trade distortions arising out of the implementation of environmental measures. This meant that consideration of the issue of market access should cover both the "positive" aspect, consisting of exploring new opportunities and non-conditional preferences for exports from developing countries (on which this Sub-Committee could initially base itself on studies already carried out by other bodies such as UNCTAD and the ITC), as well as on the "negative" aspect, consisting of identifying, monitoring and dealing with environmental regulations whose effects may cause possible losses or nullification of existing access. This latter element was of crucial importance because one of the major concerns of developing countries today was not only greater market access but also how to conserve the market access they already had. The trade restricting or distorting effects of environmental measures may be a response to legitimate measures and criteria, although they must not have any significant negative impact on market access and the competitiveness of exports from developing countries, but they could also be a result of protectionist aims.

119. It had been noted that certain measures which may be legitimate such as those concerning the requirements of environmental packaging and labelling programmes had effects which could practically nullify market access because it was difficult for foreign suppliers to meet the criteria on which they were based. Suppliers could suffer a negative impact on the competitiveness of their products, even when these were found on the market, because of the strong influence such programmes had on consumer preferences. The imposition of such criteria in programmes and standards (especially those related to PPMs) for imports from developing countries raised serious problems of market adaptation and in many cases could result in counterproductive effects, even on the environment, both in the country enforcing the measure and in the country obliged to adapt to it.

120. In view of the possibility that such situations would become more commonplace as the use of measures and requirements for environmental purposes increased, it was vital to identify and monitor measures that might have this kind of impact on market access, particularly for developing countries. This could be done with the help of a database, as discussed in the CTD and proposed by Brazil, which could benefit from the work already undertaken by other bodies such as UNCTAD as well as the contributions made by countries participating in this Sub-Committee. Once these measures had been identified, their effectiveness and the need for their application to imports from developing countries (including possible secondary effects) should be studied together with possible mechanisms to be recommended by this Sub-Committee in order to overcome such effects, for example, greater transparency, mutual recognition and equivalency of standards and rules, as well as from the creation of stricter regimes for certain requirements and measures.

121. With regard to measures laid down in MEAs, generally acknowledged to be legitimate because they were supported by a broad international consensus, she awaited with interest the

study by the Secretariat on their effectiveness, especially concerning countries which were not parties to such agreements. This study could highlight, in particular, aspects which concerned developing countries and the direct or indirect effect of applying these measures to market access for their exports in particular, and to the development process as a whole. It was also probable that distortional effects on market access were the result of measures which may respond to criteria with protectionist objectives. The best way to act in order to avoid and/or rectify this trend would be for the Sub-Committee's work to adhere strictly to the basic principles and recommendations of UNCED, in particular those which stated, firstly, that environmental problems must be attacked at the root and not necessarily through trade restrictions; secondly, that environmental problems within a country which did not affect other countries should be resolved by the national authorities, through appropriate policies that were consistent with its objectives and priorities and with its own environmental and developmental situation; thirdly, that environmental problems which went beyond national frontiers and had transboundary or global effects should be resolved through international cooperation and consensus.

122. Another principle which her delegation believed was essential to bear in mind and which should be taken into account horizontally throughout the discussions in this Sub-Committee concerned the differing responsibilities among States in the pursuit of sustainable development in light of their different contributions to global environmental degradation and in view of the differences in their ability to obtain technologies and financial resources. Lastly, she referred briefly to the second aspect of the subject under consideration, namely, the environmental benefits of removing trade restrictions and distortions. This aspect was also of vital importance. Argentina, Australia and Brazil, among others, had highlighted the urgent need to deal with trade restrictions and distortions which had a negative effect on the environment, especially those which ran counter to the efficient allocation of environmental resources such as agricultural subsidies, causing among other problems over-exploitation of natural resources, in particular of commodities. Although she was interested in seeing the trading system contribute to better environmental protection and the achievement of sustainable development, this aspect could not be left aside and should be discussed in detail within the framework of the WTO.

123. The representative of Japan agreed that this item had wide-ranging scope and was a cross-cutting issue in the entire work programme. It could be said that the effect of environmental measures on market access and environmental benefits of removing trade restrictions and distortions were central themes of the Sub-Committee's deliberations. As the scope of the term "environment" was broad and not easy to define, the scope of "measures for environmental purposes" was also very wide-ranging. The effect of environmental measures on market access would vary, depending on many elements such as the scope and nature of the measure, who should take the measure, for what purposes, to whom it should be applied, at which stage (production, exportation, distribution, importation, consumption, etc.), etc.

124. Market access issues, therefore, could arise not only between developing and developed countries, but also within developed countries. Furthermore, such issues could arise within developing countries and even between companies located in a country. Many delegations, including Argentina, the United States, Egypt and Nigeria had illustrated well how complex, far-reaching and even uncertain these issues and their implications may be. These considerations, his delegation believed, underlined the need for a case-study approach. Generalized arguments could run the risk of missing many important aspects. To try to write a legal prescription at this stage could lead to hasty conclusions, which would be counter-productive. In this regard, his delegation appreciated the analysis by the Swiss representative.

125. Several guiding concepts had been suggested in the discussions, such as national treatment, the most favoured nation principle, transparency, necessity, least trade restrictiveness, unnecessary obstacle to international trade, arbitrary or unjustifiable discrimination between countries where the same conditions prevailed, disguised restriction on trade, and avoidance of unilateral application of domestic standards and regulations to objectives outside the jurisdiction of the country taking the measure. These concepts should be taken into account as the case study approach was pursued. It had been widely recognized that the increase in income generated by trade expansion was a major source of further efforts for better environmental protection, and that successful conclusion of the Uruguay Round was an important contribution to sustainable development. The most urgent task to tackle was to ratify the Uruguay Round Agreements as scheduled and to implement the results quickly and in good faith. The Committee should continue to discuss a variety of issues positively and constructively, with a view to ensuring that both trade measures for environmental purposes and non-trade measures which could have trade impacts would be another step forward in the direction of maintaining and of further strengthening the rules and disciplines of the multilateral trading system.

126. The representative of New Zealand agreed that this item was a cross-cutting issue and with a number of comments made by delegations regarding the inverse relationship between trade protectionism and environmental protection and sustainable development, especially in the agricultural sector. The general starting hypothesis for all countries that trade underpinned sustainable development was uncontrovertible, as a number of studies had shown, although in some cases there was the consequent need for complementary environmental mechanisms, particularly in the domestic context. Regarding comments by the United States, he presumed that the studies referred to had concentrated on major industrial economies and pointed to the lack of an impact of environmental measures on competitiveness particularly because of the positive effects of standards in promoting efficiency and also of their effect in the development of associated environmental industries and services.

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127. The representative of Colombia considered that study of this item showed that the problem was to determine whether a procedure to make MEAs consistent with GATT provisions should be established. His delegation believed this to be the case and that this exercise should commence by recognizing the fact that a number of MEAs contained trade clauses. His delegation considered it would be preferable to avoid the inclusion of such clauses in agreements which, by their very nature, had objectives that were not in accord with trade regulations, but recognized that in practice it was not easy to make such a clear delimitation. Bearing in mind the indisputable premise that GATT, and the future WTO, was the forum from which the rules of trade emanated and in which trade disputes were settled, it was necessary to formulate some principles to ensure that present and future commitments in the multilateral trading system which regulated trade relations among its members were not nullified or jeopardized on the pretext of postulates regarding protection of the environment. In other words, GATT could not allow the opening of an ecological window through which short-term protectionist measures may enter.

128. In order to have consistency between MEAs and GATT regulations and to avoid undue interference, it was necessary to define some specific criteria within GATT/WTO regarding the appropriateness and effects of including trade measures in MEAs. In this connection, his delegation shared the views expressed by a number of delegations that such criteria should include aspects such as non-discrimination, national treatment, the need for the measure and its scientific basis, transparency, proportionality, effectiveness, and that the criteria should be the least

restrictive possible. His delegation found interesting and well-meaning the idea that there should be ex-post monitoring of trade measures in MEAs, although this might give rise to long and complex procedures which would undoubtedly include disagreements regarding the competence and legitimacy of the WTO to carry out such a qualification procedure. The most appropriate way of ensuring that these measures were consistent with the criteria adopted within GATT/WTO would be to decide that, in the event of any trade dispute arising out of the provisions of the MEA, the parties to the MEA should have the right to resort to the WTO dispute settlement mechanism and that this forum should decide in light of its provisions. Such an option would provide an appropriate procedure that would avoid obstructions and delays in the liberalization of trade.

129. The representative of India referred to the intervention of the delegation of the United States at the last meeting under this item of the work programme and said the United States had implied that the use of trade sanctions could be justified in the context of an MEA because MEAs were vague, broad, difficult to achieve, may not take into account all relevant factors, and many might not have worked. His delegation would not accept the notion of trade sanctions merely because there were some issues and problems that were encountered in MEAs. Trade sanctions created many problems for the multilateral trading system which were a lot more difficult to resolve than the issues related to working out a possible MEA. There was also a presumption by the United States that an *ex ante* solution was absolutely necessary. He did not consider that the Sub-Committee had reached the prescriptive stage yet and his delegation, as many others, was considering all options. In addition, the US intervention had referred to several MEAs in which the idea of trade sanctions was entertained for enforcement or implementation of a prevailing scientifically-based environmental norm. Again, his delegation had concerns and would have to examine this carefully.

130. The representative of New Zealand noted that the United States intervention had made the point that both the US environmental and business communities were less than happy with the current situation. But negative perceptions, *per se*, should not be the basis for changing the rules. The perceptual problem highlighted the fact that this process would help to improve understanding of the issues, as the EMIT Group had done, so that the substantive work could be based on a thorough analytical approach. While his delegation agreed that there was a place for trade measures under MEAs, subject to appropriate disciplines, the US statement that trade measures could be appropriate to "enforce or implement a prevailing scientifically-based international environmental or conservation norm" raised a number of questions. His delegation would question whether in these circumstances trade measures were necessary. Alternatively, would an MEA not be possible in such cases and could not a more appropriate vehicle for any trade action be envisaged? His delegation would be interested in an elaboration of this point.

131. He noted that the United States recalled the limitations of MEAs. However, did these in themselves detract from the desirability of reaching multilateral consensus on the use of trade measures? For example, how did these supposed limitations compare with the limitations of unilateral action, e.g. effectiveness? These were a few of the questions which occurred to him, and he would find it useful if the United States could provide further elucidation of these points when the Committee returned to this item next year.

132. The representative of Canada considered the basis of the discussion on MEAs to be a recognition that the only appropriate and effective way to address environmental issues at the international level was through multilateral cooperation. His delegation would not expect trade measures to necessarily be a regular feature of MEAs. This had not been the case so far and

trade measures were in fact not a first best solution. Nevertheless, there might be instances in the future where trade measures were proposed. In such cases, his delegation could see merit in the basic principle that if the international community decided to adopt an MEA that enjoyed broadly-based support and participation, then the GATT rules should not be an arbitrary impediment to provisions for the use of trade measures that might be included. His delegation agreed that it was necessary to consider how best to prevent possible conflicts between such provisions in an MEA and its parties' obligations under the WTO.

133. In supporting multilateral approaches, his delegation also strongly rejected unilateral actions. It did not believe that there was any basis for providing authority in the WTO for the use of unilateral trade penalties to apply environmental programmes or standards extra-territorially. It was not for one country or a minority of countries to decide for others what action should be taken domestically or in the global commons. There must be agreement on what needed to be done. Multilateral agreement may not mean 100 per cent participation. The threshold of support that could constitute international consensus might vary from case-to-case depending on the nature of the problem and the programme to be used. Having a means to recognize agreements that reflected actual international consensus, and not just the nature of the negotiation process, would be critical to any approach for accommodating potentially GATT-inconsistent trade measures in MEA's.

134. His delegation was troubled by the United States' suggestion that accommodation should be found in the GATT/WTO rules for trade restrictions used by an individual country to apply or to enforce what was referred to as "a prevailing scientifically-based international environmental or conservation norm". What would be the nature of such "norms"? How would this concept be defined? In the absence of an MEA that enjoyed broadly-based support and participation, on what basis could it be said that something did in fact represent a norm? In the absence of agreement under such an MEA on specific trade measures to implement or enforce it, on what basis would the use of such measures be authorized in the WTO? It seemed to his delegation that the place for decision-making about enforcement measures for internationally agreed environmental programmes was in the relevant environmental forum during the development and negotiation of an MEA itself. The WTO was not the right place for making these judgements. Indeed, to look to the WTO for authority to use trade penalties in situations where there was not agreement on the environmental issue or programme would be to cast the WTO in the role of deciding environmental policy and acting as an arbitrator between WTO Members on matters relating to environmental policy. This was not the business of the WTO.

135. It was the rejection of any role for the WTO in second guessing MEA's that had led to the discussion of *ex ante* as opposed to *ex post* approaches, with some delegations insisting on the former. The problem here was that to provide a general, *ex ante* exception for any GATT-inconsistent measures that might be taken in connection with an MEA, before even knowing what that MEA and its trade restrictions consisted of, would amount to a blank check. Delegations had generally agreed that this was not desirable. There must be some reasonable checks and balances, whether through the establishment of clear criteria setting out what types of measures might be acceptable or through an exceptions procedure with some control mechanisms.

136. At an appropriate stage in the work it would be necessary to look more closely at possible approaches. With respect to the exceptions procedure issue, the purpose as far as his delegation was concerned would not be to subject the MEA itself or its environmental objectives to provisions of scrutiny in the WTO. Rather, the focus would be on addressing specific trade measures under an MEA in the context of the rights and obligations governments had assumed in

the GATT. Those rights and obligations should not be taken lightly or set aside without due process. It was for this reason that it would be necessary to know what was to be exempted from the rules and on what basis that should be done. This would call for a case-by-case consideration of exceptions requests relating to trade measures specifically and formally called for in an MEA that reflected broad international consensus on the environmental programme and its enforcement. When the time would come, there might be a number of options that could be discussed. However, more analytical work would have to be done on MEAs, as well as on the other items on the work programme, before the Sub-Committee was in a position to agree on the nature and extent of the problems that might need to be addressed and how best to proceed.

137. The representative of Brazil said the issue of the relationship between MEAs and the multilateral trading system was an important one. Given that environmental policy makers had felt it necessary, in some cases, to adopt at the international level trade measures with environmental purposes, potential problems of compatibility may indeed occur. Although no concrete problem had emerged, it would be useful to work towards greater certainty and orientation both for environment and trade policy makers. From the previous analysis in the EMIT Group, it was possible to understand that a number of possible GATT-illegal trade measures adopted in the context of MEAs could find justification under Article XX, like, for instance, quantitative restrictions applied on an MFN basis that could satisfy the requirements of the exceptions of Articles XX(b) or XX(g). But it was also possible to identify at least two basic situations in which the direct application of Article XX would pose problems, namely the use of trade measures to impose PPMs extrajurisdictionnally and the use of discriminatory trade measures against non-parties.

138. In the case of situations which were possibly compatible with Article XX, it would be useful to reassure those that feared that the Article was not explicit about environmental measures, while reasserting the basic principles under which those exceptions to the general GATT rules operated. In cases where Article XX might not be directly applied, a solution should be found to avoid problems in the operation of truly multilateral environmental agreements. Before examining possible solutions, some basic assumptions would have to be recognized by all; his delegation believed that past discussions pointed to wide convergence on the following three points.

(i) GATT/WTO was not an environmental policy making institution and should therefore avoid discussing environmental policy options and relative efficiency of measures enshrined on MEAs. Although trade was a component of sustainable development, only to the extent that trade measures were used for environmental purposes at the international level in MEAs would environmental measures become an issue in the multilateral trading system.

(ii) In order to allow for proper absorption of the consequences of MEAs in the multilateral trading system, it was essential that they reflect a true international consensus, achieved in the appropriate environmental negotiating fora. It would be prejudicial to the WTO to be faced with an attempt to legitimize otherwise inconsistent trade measures adopted in an MEA that would not be backed by international consensus, since it was not expected that such a consensus could be reached within GATT. At the same time, it would be unacceptable that MEAs be used as an instrument to force on other countries, through trade, behaviour desired by one or a few other countries. Multilateralism could not be used to legitimize unilateralism.

(iii) In order to reduce potential problems, the principle that environmental problems should be tackled at their root should be emphasized in environmental fora, reducing the use of trade restrictions to what was really necessary.

139. In past GATT discussions on this issue, his delegation had supported the idea of exploring a solution on the lines of an interpretation of Article XX, eventually involving presumption of conformity for qualified MEAs, and had supported the general thrust of the proposal by the European Communities in the EMIT Group. His delegation remained open to other proposals, and noted that suggestions had been made that other approaches, like the Article XXV:5 or the Article XX(h) approaches could be explored. His delegation's support of the Article XX interpretation was based on two main aspects that should be present in any proposed solution. First, the solution should provide a clear incentive for the multilateral course of action in dealing with environmental problems of a transboundary nature through the provision of a clear orientation on the relationship between MEAs and the multilateral trading system. In this way it could be considered that a true MEA, although time consuming, would provide for an undisputed solution with a better chance of success. This orientation would not impinge on the environmental options made by the MEA drafters, but rather on conditions on the use of trade restrictions. To achieve those objectives, the second aspect was that the solution should be an *ex ante* one.

140. In this direction, at least four areas would require discussion:

(i) Criteria would be needed to define the multilateral character of an agreement which would require discussion of the following aspects: openness of the negotiating process and role of UN sponsorship, producer and consumer participation, where relevant, the range of the levels of development and geographical distribution of participants, and the issue of regional agreements to examine how to deal with potential trade effects on non-regional countries;

(ii) Criteria would need to be developed on what had been termed the "specificity" issue to avoid the use of MEAs as justification for unilateral actions; an MEA should be clear on which trade measures should be adopted under its provisions, as well as the circumstances for their adoption;

(iii) Some form of assurance of enforceability of MEA trade restrictions on trade among parties, according to the MEAs' rules, to justify their application to non-parties, and if such provisions would presuppose dispute settlement procedures in the MEA; and

(iv) Whether it was feasible to distinguish, as suggested in the European Communities proposal, between discriminatory trade measures necessary to achieve the objectives of the MEA and punitive sanctions to force a country to join an MEA, without entering into the environmental discussion of the objectives and methods chosen by the MEA.

141. His delegation's statement did not try to bring new proposals or aspects into the discussion, nor answer comments made in the previous meeting, but, rather, showed where it stood in relation to the main aspects of the discussion. His delegation hoped that these propositions could coincide with the basic views of many delegations.

142. The representative of Australia noted that the purpose of his statement was to offer some reflections on the discussion at the previous meeting on this issue. In particular, he pointed to five important themes that seemed to emerge from the discussion: only a small number of MEA's

contained trade provisions; many trade provisions in this small number of MEA's may be fully consistent with the multilateral trade rules; the GATT had always recognized the existence of certain overriding public policy objectives, and had accommodated these objectives through the general exceptions of Article XX. Consequently, accommodation in the multilateral trading rules for trade measures taken pursuant to MEA's in order to achieve overriding public objectives would not appear to create any problems in principle for the multilateral trading system. However, it also needed to be emphasized that Article XX imposed a number of carefully defined disciplines on the application of trade measures taken to achieve the overriding public policy objectives covered by Article XX.

143. Unilateral resort to trade restrictive measures posed fundamental challenges to the multilateral trading system and its basic principles of encouraging mutually advantageous cooperation between countries on trade issues. By contrast, there should be no inherent conflict between international cooperation on trade and international cooperation in another areas such as the environment, as both the multilateral trading system and MEA's were based on the same search for equitable and cooperative solutions to issues of global concern. The challenge was to ensure that international cooperation in each area was compatible with and supportive of international cooperation in other fields.

144. The discussion highlighted and contrasted the *ex ante* and *ex post* approaches to accommodating trade measures taken pursuant to MEA's in the multilateral trading rules. However, the delegations of Argentina and Korea had pointed to the possibility of a combined approach which drew on the attractive features of both approaches. In this context, it was perhaps useful to draw attention to the Article XX(h) approach and its interpretative note in regard to measures taken pursuant to obligations under intergovernmental commodity agreements. Interestingly, this approach combined three alternative means of accommodating such measures: if the measures were under agreements which conformed to a set of principles approved by the Economic and Social Council in 1947; if the measures were under agreements which conformed to criteria submitted to the CONTRACTING PARTIES and not disapproved by them; and if the measures were contained in individual agreements that were submitted to the CONTRACTING PARTIES and not disapproved by them. Some of the discussion at the previous meeting seemed to suggest the need to choose between the *ex ante* and *ex post* approaches which involved a menu of options as in the case of Article XX(h) or which, at least, combined the use of generic criteria to cover some situations with provision for a case-by-case examination for others.

Reflecting on these themes may help gain a better sense of the proper dimensions of the issue. His delegation suggested the following observations might be worth further consideration:

(i) It may be the case that the situations where trade measures were necessary for the achievement of the environmental objectives of an MEA were relatively small in number;

(ii) Even when trade measures were included in an MEA, there may be significant scope for achieving the environmental objective concerned through measures which were fully consistent with the multilateral trade rules;

(iii) There may be only a limited number of MEA's, and a limited range of trade measures, that required accommodation in the multilateral trade rules as exceptional measures that served certain overriding public policy objectives, so it may be possible to develop a fairly specific set of guidelines or criteria to deal with these situations while, at

the same time, taking a forward-looking approach and ensuring that any guidelines or criteria were flexible enough to cater to a range of different situations.

145. The representative of Hong Kong considered it useful to maintain a regular dialogue on this item because his delegation believed that this was the area where the Sub-Committee might be able to achieve some early results and send a positive signal to the environment world. Regarding a point made by the representative of India and earlier by the representative of Canada on the use of trade sanctions to support an MEA, it was a basic fact that, under GATT, governments signed away this right vis-à-vis other contracting parties. Given that there was no right to use trade sanctions, it followed that resort to trade sanctions would have to find coverage under the exception rules of the GATT. With respect to the rules on burden of proof, whenever the exception rules were resorted to GATT jurisprudence said that they would have to be interpreted most narrowly and that the burden or proof would always be on the party seeking coverage. Resort to the *ex-ante* approach versus the *ex-post* approach would change this. Regarding the comment made by the representative of Colombia on the right to dispute settlement, he noted that this was a right under GATT and would assure governments of stability and predictability in the multilateral trading system. This right could not be given up easily which was why an *ex-ante* approach was a very drastic one if it meant giving a blank check of any kind.

146. Furthermore, regarding Sweden's reference to the precautionary principle, which was well recognized in the environmental field, he pointed out that it inherently conflicted with what had become knows as the principle of necessity. The Sub-Committee would have to return to this issue to see where a balance could be found. He subscribed to the points by New Zealand and Canada that, in whatever exercise undertaken, the Sub-Committee must not attempt to accommodate unilateral action or extraterritorial action in the GATT. This would have to be handled with care and on a case-by-case basis. The objective should be two fold: to offer some incentive for multilateral solutions to transboundary or global problems, and not to offer an encouragement to use trade measures in MEAs, especially trade measures that would be inconsistent with the GATT. He noted his interest in the interventions made by the representatives of Australia of Brazil. His delegation was not insisting that there be one particular approach; there could be a hybrid of the various alternatives, but the Committee must proceed with caution and must not enter the prescriptive stage prematurely.

147. The representative of the United States said his delegation would undoubtedly return to a number of the points that had been made and the questions that had been raised not only early next year, but probably on an ongoing basis. Serious discussion of MEAs and the various options that had been laid out would require more detailed analysis and commentary. It would also require a better recognition and understanding of the background to MEAs, in particular the process of decision making that went into them, recognizing that the negotiators of those MEAs considered the use of trade measures not a preferred option the record would show, but gave due consideration and reflection to the issue. To the extent that these negotiations took a decision on the necessity and the expected effectiveness of those trade measures (a decision taken in the context of a broader agreement involving environmental objectives) there had to be certain respect for that decision and the package. This was one of the underlying reasons for his delegation's preference for an *ex-ante* approach. Nevertheless, it was important to examine all of the ideas and their implications that had been put forward and would be put forward later. It was also important to recognize that there were differences in MEAs. Trade measures in them did not always play the same role and this might be relevant as possible solutions were considered.

148. His delegation's intervention at the previous meeting spoke of trade measures, not of sanctions. A lot of mention had been made of sanctions and of unilateralism, and he considered that some countries practised the very concepts which they seemed to be rejecting in this Sub-Committee. It was important to understand that unilateralism had many forms and shapes. Unilateralism could mean a country on its own deciding the conditions for market access for certain products in a way that disadvantaged foreigners because of the container in which their imports presented themselves at the border. It could take the form of countries choosing on their own to administer conservation concepts beyond their territorial borders through measures other than trade measures but which were, nevertheless, unilateral. There were all sorts of ways in which countries acted in a formal sense unilaterally, if the only alternative was action under an MEA. In fact in implementing MEAs, national action was necessary to give effect to them. Thus, in thinking about these issues, care would be needed. He understood the sensitivities on unilateralism and he emphasized that his delegation was not talking and did not talk about sanctions in its previous intervention. But it did believe that examination was needed of the variety of situations which would give rise to the use of trade measures sometimes pursuant to recognized MEAs, sometimes pursuant to norms which may not necessarily in the minds of all be MEAs but which had a degree of international legitimacy.

149. The representative of Japan stated that his delegation could not share the US approach on this issue. The use of trade measures in MEAs, as well as unilateral measures, had a range of problems which deserved serious and careful analysis in the Sub-Committee. He shared the concerns expressed by the representatives of New Zealand, Canada, and Australia and supported the Brazilian intervention. MEAs should not be used as a pretext for unilateral measures or for protectionist purposes. His delegation would like to pursue this issue more carefully and not in a hasty manner to reach a satisfactory conclusion.

150. The representative of the European Communities was interested in the suggestions by several delegations on a wide range of approaches ranging from full *ex- ante* to full *ex-post*. His delegation had made its preference for an *ex ante* approach clear. This did not mean that it would not consider the interesting ideas put forward carefully. He noted that his delegation had never considered the *ex ante* approach as a full blank check. MEAs should fulfil certain conditions as to their openness during negotiation and their level of participation specifically of producer countries. Also, where MEAs provided for certain measures but did not specify exactly which, if they left a large margin of discretion in their application of measures, including trade measures, it should be possible to examine how the specific trade measures used to implement an MEA related to GATT tests like not affording protection to domestic production and those in the headnote of Article XX.

151. With respect to the point made by the Hong Kong representative that the burden of proof should be on the parties to the MEA, he noted the representative of Australia's intervention referring to Article XX(h). Article XX(h) spoke about submitting agreements which could either fulfil pre-agreed conditions or other constructions such as that the agreements would have to be explicitly disproved of by the contacting parties and future WTO members or that the burden of proof would be not necessarily on the parties to the specific commodity agreement. His delegation welcomed the intervention by the representative of Brazil and was interested in his third point on the assurance of enforceability of MEA trade restrictions on trade among parties. This would deserve further consideration as it had not been raised before.

152. The representative of Sweden, speaking on behalf of the Nordic countries, underlined that she had not heard any delegation advocating giving a blank check to negotiators of MEAs. If the existing alternatives were to be examined, then it was important to have a clear perception of what

they were. Her delegation considered that the *ex ante* approach would contain criteria that should determine what would be counted as an MEA eligible for exception under GATT. Relevant parameters could be the level of global representation, extent of participation of countries concerned with the issue at hand, if the MEA was open for accession by all governments, etc. Another important issue was to what extent the trade measures would have to be specified in the MEA. A minimum, important requirement was that the MEA could establish that trade measures were necessary and that they had a link to the environmental problem. Criteria would also have to be established that would provide the basis for the demand that GATT/WTO would place on the trade measures taken. The criteria should include concepts such as least-trade restrictiveness, effectiveness and other such criteria. This would provide guidance for the negotiators of MEAs and national governments when implementing them.

153. The representative of Argentina noted that at the previous meeting, his delegation had made a proposal which attempted to reconcile two different approaches. He considered that the Australian proposal at this meeting was extremely interesting and wanted to work further on looking into the possibility of applying Article XX(h). His delegation was concerned that after so much effort to see how to deal with trade provisions or clauses which might be included in MEAs, it was important to ensure that when a certain window was opened, protectionist measures would not slip in. Many ideas had been put forward, including that unilateral measures may be taken. The latter did not help progress in the discussions. Unilateralism did exist and was always a possibility, but in fact it had to be determined where the environmental externality was. Was it in one market, one jurisdiction, or where was it located? If it was in one jurisdiction, then obviously unilateral measures may be taken within certain limitations. Externalities outside one jurisdiction and in several jurisdictions or markets and those affecting the global commons were the ones referred to when MEAs were discussed. For those externalities a cooperative attitude had to be adopted. It was on this particular criteria that his delegation proposed a flexible approach which would reconcile the predictability of the *ex ante* approach, would respect the decisions taken by environmental negotiators, and at the same time would avoid any blank check and would give the flexibility of a case-by-case analysis in light of the specific measure taken.

154. His delegation frankly did not want to give flexibility and allow unilateralism at the same time; it was either flexibility or unilateralism. His delegation would like to set unilateralism aside. In order to make progress and to reach some sort of phase where the Sub-Committee could begin to evolve rules, the Sub-Committee must reach an agreement and an understanding on a clear renunciation of unilateral measures if there were externalities which affected more than market or one jurisdiction. These must be approached with a cooperative attitude. Thus, cooperation and flexibility should be the alternatives to unilateralism.

Item three of the work programme

155. The Chairman introduced a publication submitted by the delegation of the United Kingdom, entitled "Making Markets Work for the Environment". It was published in 1993 by the UK Department of the Environment and examined in detail six types of economic instruments: emission charges, tradeable permits, product charges, deposit and refund schemes, legal liability and subsidy. It looked at how they worked, how they could be implemented, and how they could be monitored.

156. The representative of Argentina drew attention to the meeting of the UNCTAD Adhoc Working Group on Trade, Environment, and Sustainable Development, the focus of which would be eco-labelling and environmentally friendly products. It would be useful if the Sub-Committee

could give some guidance on what it expected from that work. This would be one way to initiate coordination between inter-governmental organizations. He noted that the United States' submission on eco-labelling (PC/SCTE/W/5) set out many points and concerns which should be discussed under eco-labelling. It flagged a series of questions on which it would be useful to have input from other organizations which could deal with the more technical details. For example, he highlighted the points in section IV:B of the submission which would benefit from other organizations' input, specifically with regard to the environmental justification of measures. The Sub-Committee should have full input in the trade and environment discussions going on elsewhere.

157. The representative of Brazil noted that during the September meeting of the Sub-Committee, some delegations had manifested doubts about the relationship between eco-labelling schemes and the Agreement on Technical Barriers to Trade. In order to contribute to that debate, his delegation presented a preliminary analysis of the problem mainly in the light of the new Agreement on Technical Barriers to Trade that resulted from the Uruguay Round. The issue involved two main questions: first, to analyze how complex eco-labelling schemes fit into the coverage of the Agreement and second, to determine the level of obligations involved according to the nature of the scheme (mandatory versus voluntary, governmental versus non-governmental).

158. The establishment of an eco-labelling scheme in most cases would involve three activities: setting of process and product standards or technical regulations, setting of a labelling standard or technical regulation and setting of a conformity assessment procedure. Eco-labelling, therefore, was at the same time a label, a set of standards and a conformity assessment procedure. The fact that eco-labelling schemes involved stipulations both about product characteristics and about PPMs was at the origin of most of the discussion of the relationship between eco-labels and the TBT Agreement disciplines. The trade and environment debate brought to the forefront the discussion on the validity of applying to imports (therefore affecting international trade) regulations that distinguished among products on the basis of their PPMs, even if those were not reflected in the characteristics of the final product. While not entering into this debate, he recalled that the adequacy in environmental and trade terms of asking foreign producers to adopt environmental behaviour which took into consideration domestic conditions had been strongly challenged.

159. In consequence, some seemed to question the applicability of the TBT Agreement to eco-labelling in order to avoid legitimizing trade distinctions among products based on PPMs not reflected in the characteristics of the final product (PPMs unrelated to the product). According to this view, if those PPMs were considered to be covered by the TBT Agreement, there was a risk that this would be interpreted as meaning that GATT "recognized", therefore "allowed", the use of restrictions on imports based on PPMs unrelated to products. More specifically, if their use were to be considered to be subject to the national treatment discipline, this might be unduly construed so as to mean that their application to imports would be allowed (border adjustment), as long as domestic production was also subject to the same PPM requirements. There was, nevertheless, a general recognition that GATT rules applied to products and guaranteed market access to products, independent of their production conditions, and his delegation remained of the view that this was an essential characteristic of the multilateral trading system.

160. More worrying was the fact that there were those who seemed to question the applicability of the TBT Agreement to eco-labels simply to avoid any discipline on its use. The Tokyo Round TBT Agreement clearly excluded PPMs from its scope, independent of their relation to the

product. Although excluded from the definitions of standard and technical regulation, the issue was at the centre of one of the few disputes that had arisen: the dispute over the EC directive that prohibited imports of meat from hormone treated animals. It was this case that was on the minds of the negotiators of the new TBT Agreement when the first proposals to include PPMs in the agreement were made. The inclusion of certain PPMs in the coverage of the new TBT Agreement, therefore, responded to a preoccupation with PPMs that affected the final characteristics of a product. Accordingly, the concept of relatedness to the product was present in the definitions of standards and technical regulations found in Annex 1 of the new Agreement.

161. His first conclusion then, was that, to the extent that eco-label schemes created standards (if they were voluntary) or technical regulations (if they were mandatory) stipulating product characteristics or PPMs related to those product characteristics, they were subject to the disciplines of the TBT Agreement and the bodies that produced those standards or technical regulations should be considered standardizing bodies. This was the case, for instance, if they created their own standards on the definition of the degradability of a product instead of using existing ones. This was not the case if the scheme created a standard of sulphur emissions which was not related to the product. It was interesting to note that the fact that the Agreement did not try to regulate what went beyond the product reflected a preoccupation of not interfering with each countries' prerogative of establishing the process standards it considered more appropriate for its domestic conditions, including the level of risk socially acceptable. The unacceptability of differentiating products on the basis of PPMs was simply a counterpart to this prerogative.

162. In the second place, an eco-labelling scheme always created a particular standard or technical regulation on the label which was to be imposed on products that satisfied the requirements (the definition of its format, colours etc.). Although this was expected to be the more visible part of the scheme, this should not cause great doubt to the extent that labelling was explicitly mentioned in the definitions of standards and technical regulations under the Agreement. The second conclusion was, therefore, that the statement of the label characteristics was subject to the disciplines of the TBT Agreement. Third, eco-labels were a conformity assessment procedure. Rules, methods and procedures were established to ensure that a product complied with the requirements and had the right to use the label defined by the scheme. Conformity assessment procedures, which were covered by specific disciplines in the new TBT Agreement, were defined in a broad way in its Annex 1.

163. Having expressed his opinion on the issue of coverage, he turned to the question of the level of disciplines. The TBT Agreement had tried to reach an equilibrium between addressing comprehensively the problems in the standards area and building feasible ways of implementation, both from the point of view of the practical operation, for instance, of the notification mechanisms, and from the point of view of legal or political limitations, for instance, of federal states. The result was the existence of different levels of obligations for central governmental bodies, local governmental bodies and non-governmental bodies, as well as different obligations, especially in the notifications area, according to the mandatory or voluntary nature of the document. The new TBT Agreement had tried to reduce the distance between those different levels or to reinforce the ultimate responsibility of signatories for the implementation of the disciplines at all levels. The creation of a code of conduct for standardization bodies went in this direction, as well as, for instance, the obligation of members to "take such reasonable measures as may be available to them" to ensure that both local government bodies and non-governmental bodies complied with the basic disciplines on conformity assessment procedures, except notifications.

164. Eco-labelling schemes were normally voluntary and in most cases non-governmental. But even in non-governmental schemes, governments had an important participatory role in their implementation and promotion. Therefore, there was an obligation to take reasonable measures to ensure their compliance with basic disciplines like non-discrimination and national treatment, as well as the obligation to use international standards as the first option or the procedural disciplines on the access to and functioning of conformity assessment procedures that were established in Article 5. Also, although not subject to the same transparency requirements as technical regulations, in particular in the case of notifications, standards were subject to transparency requirements, including availability of information through enquiry points. Some doubts may arise in relation to voluntary conformity assessment procedures: the text of the new TBT Agreement referred to "cases where a positive assurance of conformity is required", which seemed to be quite general and all encompassing, while Article 5.6, relating to notifications, contained no such qualifications and referred simply to a "proposed conformity assessment procedure". That implied that a voluntary eco-labelling scheme implemented by a central governmental body, was subject, for instance, to all transparency obligations established by the Agreement, including the obligation to notify.

165. It could not be denied that the TBT Agreement was not tailored with eco-labelling schemes in mind. In particular, the new TBT Agreement was practically completed by 1990, before the start of formal discussions on trade and environment within GATT. The discussion was therefore, far from closed, especially in relation to the consequences of life cycle analysis which used process standards. The Sub-Committee should continue to discuss the issue, including, as suggested by some delegations in the September meeting, by exploring the possibility of complementing the TBT Agreement in the eco-labelling area. Meanwhile, governments should ensure that the present disciplines, although not very demanding, were strictly observed. His delegation had recently been informed that the Commission of the European Communities approved the criteria for eco-labelling of certain paper products that his delegation had criticized in the past. It noted with regret that, although the present TBT Agreement already had notification requirements on certification schemes, the EC eco-labelling scheme had not been notified. It also regretted that although the elaboration of the criteria in question did not follow the transparency requirements that the Commission itself had established recently, they would guide the concession of the EC eco-label for the products concerned. He added that this certainly would not favour the credibility of the scheme.

166. The representative of New Zealand said that his delegation would study the Brazilian statement. He considered, however, that the interpretation of both the coverage and obligations of the TBT Agreement and the implications of that coverage and obligations would be a matter for the members of that Agreement.

167. The representative of the European Communities said that it would study the statements made at this meeting on this item. He agreed with the representative of New Zealand that this was probably not the right forum for final decisions on the coverage of the TBT Agreement. He stressed that the EC eco-labelling scheme was a voluntary scheme which could award labels; it was not a formal restriction on imports. The scheme was applied on a most-favoured-nation and national treatment basis. Furthermore, as his delegation had said before, UNCED specifically recognized the importance of giving appropriate information to consumers on environmental issues. Finally, his delegation was open, without any prejudice to the question of coverage of the TBT Agreement, to explore in this Sub-Committee the issue of the relationship between appropriate transparency and the setting of eco-labelling criteria.

168. The representative of the United States also noted that his delegation would reflect on the Brazilian statement; he shared some of the concerns Brazil had expressed about the evolution of the eco-labelling scheme in the EC. It may well be that this Sub-Committee was not the proper place for providing definitive interpretations of the TBT Agreement. There were nonetheless environment-related issues that arose from initiatives related to eco-labelling and that related to the TBT Agreement. The Sub-Committee had a mandate to look at the adequacy of the existing disciplines of the multilateral trading system in dealing with various sorts of issues. He therefore considered it appropriate for this Sub-Committee to examine the sorts of issues that arose in the context of developing eco-labelling schemes, many of which his delegation had alluded to in its paper, some of which were specifically mentioned by Argentina.

169. The Chairman took note of the comments made. He reiterated his invitation to delegations to submit individually and on a voluntary basis, to the Secretariat for compilation information that reflected their own national experiences with measures that were covered under the third item of the work programme. He noted that the Secretariat had received, to date, only two replies to this invitation.

170. He further reported that he was continuing consultations on the question of appropriate arrangements with non-governmental organizations. Those consultations had not yet come to a conclusive stage. He understood that delegations were consulting among themselves. He hoped that this would soon lead to a meeting of minds so that the Sub-Committee could conclude this issue and transmit conclusions to the Preparatory Committee before it finalized its work.

171. With regard to the future work, presuming that next year the WTO Committee on Trade and Environment would come into force, he envisaged that the first meeting of the Committee could be held in early February. This would allow the Secretariat time to prepare the requested documentation. He would consult with delegations and the Secretariat to determine an appropriate date around this time. At the next meeting, as was agreed at the previous meeting, the Committee would take up the seventh item of the work programme, exports of domestically prohibited goods, for a first substantive exchange of views. He also considered it important that the Committee continue to progress in examining the other items of the work programme that had been identified as areas of focus, items one, three and six. He proposed doing this by again allowing for discussion on all three of these items at the next meeting. Based on this discussion and perhaps further discussion in the subsequent meetings, the Committee may want to consider the possibility of breaking these items down into specific sub-issues around which the Committee could organize its work. He did not wish to propose any such sub-issues but suggested that delegations consider moving forward in this way and that they reflect on possible sub-issues under the three items the Sub-Committee had been addressing on which they may wish to focus work. This was all without prejudice to any other items or issues that delegations may wish to raise or papers they may wish to present for consideration by the Committee at any time.