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Committee on Trade and Environment
Special Session

SUMMARY REPORT ON THE ELEVENTH MEETING OF THE COMMITTEE ON TRADE AND ENVIRONMENT IN SPECIAL SESSION

24-25 FEBRUARY 2005

Note by the Secretariat

1. The Committee on Trade and Environment in Special Session (CTESS) held its eleventh meeting on 24-25 February 2005 on the basis of the agenda set out in the convening airgram, WTO/AIR/2481.

I. PARAGRAPH 31 (I) - WTO RULES AND SPECIFIC TRADE OBLIGATIONS IN MEAS[1]

2. The representative of Canada welcomed the submission of Members' national experiences on the negotiation and implementation of specific trade obligations (STOs) in Multilateral Environmental Agreements (MEAs). The submissions illustrated how national coordination could be undertaken in practice, as well as its key role in achieving mutually supportive trade and environmental outcomes. Canada described its own internal coordination mechanism, and the "principles and criteria approach" that it applied to the formulation of its national position in MEAs.

3. For Canada, coordination of trade and the environmental policies among federal governmental departments had been an established practice for a number of years. Coordination had been complemented by consultations with civil society, non-governmental organizations (NGOs), the business community and provincial and territorial governments. In preparing their position for MEA negotiations, lead departments actively engaged in discussions with all other interested departments. Interdepartmental meetings were organized in advance of each MEA negotiation, especially when trade measures were being considered. These offered the opportunity for all participants to contribute to decision-making, to identify common ground, and to eliminate, or at least reduce, their differences. External sectoral advisory groups on international trade were also consulted. The Canadian Government undertook consultations with environmental NGOs at key stages of MEA negotiations, in addition to obtaining input from the general public through its Trade Negotiations and Agreements web site.[2]

4. With regard to applying a "principles and criteria approach" to the negotiation of MEAs, Canada had advocated this approach in the CTE in 1996 (WT/CTE/M/10). It had argued that the principles could assist the WTO dispute settlement body in adjudicating cases involving MEA trade measures, and that the criteria could guide MEA negotiators when considering the use of trade measures in their MEAs.

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[1] Document TN/TE/S/5/Rev.1, entitled *Matrix on Trade Measures Pursuant to Selected MEAs*, was circulated at the meeting.

[2] *www.dfait-maeci.gc.ca/tna-nac/menu-en.asp.*

5. The *principles* included: that the MEAs be open to all countries; that they reflect broad-based support; that provisions specifically authorizing trade measures be drafted as precisely as possible; that trade with non-parties be permitted on the same basis as with Parties if the non-parties provided equivalent environmental protection; and lastly, that the MEAs have explicitly considered WTO rules for the use of trade measures in their agreements.

6. The *criteria* to be considered by MEA negotiators included: that trade measures be chosen only when effective, and when alternative measures were ineffective in achieving the environmental objective; that trade measures not be more trade-restrictive than necessary to achieve an environmental objective; and that trade measures not constitute arbitrary or unjustifiable discrimination.

7. Consideration of these "principles and criteria" in the development of Canada's national position in MEA negotiations was usually implicit rather than formally articulated. It provided a highly effective framework for achieving mutually supportive environmental and trade policies, and for coherence in the application of relevant international agreements.

8. Using three recently negotiated MEAs – the Cartagena Protocol on Biosafety, the Rotterdam and the Stockholm Conventions – Canada demonstrated how the different criteria worked. With respect to the Biosafety Protocol, the "effectiveness" criterion had been applied in its provisions on the prompt posting of information in the Biosafety Clearing House. That information pertained to the final decisions taken on the domestic use of Living Modified Organisms (LMOs) intended for food, feed and processing (FFP) that were subject to transboundary movement. Parties needed this information well in advance in order to initiate their domestic decision-making processes for LMO commodities such as canola, corn and soy beans.

9. Some countries in the negotiation had sought to have LMOs for FFP subjected to the Advance Informed Agreement (AIA) mechanism. Canada and other countries which exported agricultural commodities had found such an obligation to be excessive, and it had ultimately been set aside - in Canada's view, because it did not meet the criterion of "effectiveness." Canada had argued that LMOs for FFP were not intentionally introduced into the environment, and that they could be subjected to different obligations under the Protocol – obligations which would be equally effective in terms of meeting the Protocol's objectives.

10. One of these obligations was the above-mentioned provision on the prompt posting of information. Another was the article of the Protocol on "Handling, Transport, Packaging and Identification." It required that documentation accompanying LMOs intended for FFP clearly identify that they may contain LMOs and indicate that they were not intended for intentional introduction into the environment. In Canada's opinion, this obligation, combined with an undertaking to take a decision on detailed requirements for this purpose within two years after the entry into force of the Protocol, responded to the criterion that an obligation "not be more trade restrictive than necessary" to achieve an environmental objective. Parties were able to use the "may contain" information to ensure, via appropriate measures, that the contents of shipments would not be released into the environment.

11. The second example that Canada cited was that of the Stockholm Convention, which was an example of how the criterion "that trade measures not constitute arbitrary or unjustifiable discrimination" could be applied. The primary objective of the Convention was to protect human health and the environment from persistent organic pollutants (POPs) which were defined under Article 8 of the Convention. The Convention included provisions on the elimination or restriction of production and use of certain POPs employed for specific purposes, for example, of DDT in the campaign against malaria.

12. The initial agreed list of chemicals and pesticides that constituted POPs had reflected a consensus on the threat to human health and the environment that certain substances posed. It had

facilitated Parties' agreement on the chemicals and products that needed to be eliminated and, therefore, subjected to trade restrictions. Arbitrary or discriminatory decision-making was avoided through an agreement to first implement measures to reduce or eliminate releases from intentional production and use of POPs; and second, measures to reduce or eliminate releases from unintentional production of POPs; and third, measures to reduce or eliminate releases from stockpiles and wastes.

13. The third example given by Canada was that of the Rotterdam Convention. It ensured that importing Parties could take decisions that were "least trade restrictive". The primary objective of the Convention was to promote shared responsibility and cooperative efforts in the international trade of certain hazardous chemicals, in order to protect human health and the environment from potential harm. The Convention was also intended to contribute to their environmentally sound use, by facilitating information exchange on their characteristics; providing for a national decision-making process on their import and export; and disseminating these decisions to the Parties. Based on the information provided to importers, decisions could then be made on whether or not to consent to import, or to provide consent subject to certain conditions. Within this range, less trade restrictive options would always be available to Parties.

14. The criterion that "trade measures not constitute arbitrary or unjustifiable discrimination" was also ensured by the prior informed consent (PIC) procedure. The export of chemicals and pesticides that were subject to the PIC procedure would not be allowed unless the country of import had provided its "prior informed consent" regarding the receipt of the shipment of chemicals. Importing countries would be notified when potential candidates for the PIC procedure (products subject to regulatory action in the exporting country) were exported. Import restrictions taken pursuant to the Convention needed to be trade neutral and, thus, to prevent the use of the PIC regime to protect domestic products.

15. Under the Convention, it was also necessary for bans or restrictions on imports of PIC chemicals to be accompanied by parallel bans or restrictions on production for domestic use, either through final decisions pursuant to legislative or administrative measures, or through the issuance of interim responses on the import of the chemical or pesticide. Once consent had been granted, it was necessary for adequate safety information to accompany shipments of the products.

16. In conclusion, Canada believed that using basic agreed criteria could assist in ensuring that mutually supportive trade and environmental outcomes were reached in MEA negotiations, and provided a useful framework for any dispute settlement deliberation related to an MEA trade measure. However, this approach was limited in how far it could assist in clarifying the relationship between STOs and existing WTO rules, in that issues of WTO consistency were more likely to arise at the level of the domestic implementation and interpretation of STOs, even when MEA provisions and WTO rules were, apparently, mutually supportive.

17. The representative of Australia welcomed the intervention from Canada and the national experience-sharing exercise. In Australia's submission to the CTESS' previous meeting (TN/TE/W/45), Australia had concluded that the relationship between trade and environmental obligations was working well. No evidence to the contrary had been tabled to the Committee. Instead, the demandeurs in this area referred to "problems that could arise in future" without any elaboration, in specific terms within the mandate, of what these problems might be.

18. Specific messages on how to ensure the mutual supportiveness of trade and the environment could be drawn from the material that Australia and other Members had offered on their national experiences through submissions and in oral interventions to the Committee. A number of key points had emerged from these contributions, such as the importance of national-level coordination, communication, transparency and accountability, and of international-level, science-based, participatory approaches to decision-making. Australia believed that more could be achieved in future CTESS meetings, particularly if the Committee managed to hear a representative spread of

Members willing to come forward with their own experiences, especially from developing countries. In addition, Australia hoped that the demandeurs would share their own national experiences.

19. The representative of Venezuela indicated that his country had recently adopted a new national constitution which, for the first time in the country's history, contained environmental provisions. All legislation was now being reviewed in the light of this new constitution, and Venezuela was holding domestic consultations with various institutions, such as universities and NGOs, in order to ensure that all legislation complied with it.

20. The representative of Djibouti stressed the importance of technical assistance in the negotiations, and the need for assistance that went beyond seminars. Furthermore, he called for greater coordination between the different institutions that dealt with trade and environment.

21. The representative of Korea welcomed the national experience-sharing exercise, stressing that Members needed to have a more comprehensive body of evidence before them prior to drawing conclusions.

22. The representative of the European Communities (EC) thanked Canada for its intervention, which showed how certain principles and criteria could be distilled from the discussion, and could contribute to conflict prevention. Canada had also demonstrated how the gap between the national experience-sharing exercise and the more ambitious approach of governance principles, could be bridged. The EC indicated that it would also be sharing its national experience with the Committee soon.

23. The representative of Chinese Taipei emphasized that the negotiations should not prejudice the WTO rights of any Member that was not a party to an MEA. Moreover, he supported the view that unilateral action should be avoided, since it ran counter to multilateral efforts to deal with environmental problems, and damaged the multilateral systems established to solve these problems collaboratively. Because the achievement of MEA objectives usually required the involvement of several different governmental agencies within a country, coordination and co-operation between these agencies was of prime importance. There was also a need for coordination between MEAs and the WTO, in order to reduce potential conflicts.

24. The representative of Colombia reiterated her country's support for greater national coordination, which could contribute to conflict prevention. Colombia believed that an exchange of information on the mechanisms that countries used for national coordination could be helpful in the identification of principles of good public management. However, Colombia stressed that the national coordination approach - which rested on the notion that the WTO-MEA relationship could be left up to each WTO Member to decide - would not be a sufficient response to the Paragraph 31(i) mandate. The mandate required that mutual supportiveness be ensured.

25. On the question of which MEAs to focus on, Colombia reiterated the position that it had taken in document TN/TE/W/43, that the CTESS should examine the MEAs of greatest interest to WTO Members or those to which most Members were party. Such an approach would enable the CTESS to gradually expand its investigation to other MEAs that contained STOs. Colombia suggested that the Committee agree on an indicative list (and not a comprehensive one) of STOs in MEAs. The list could be adopted with the understanding that the analysis and balance of the Committee's conclusions on this subject would not be limited to the selected MEAs or STOs.

26. Colombia agreed with the EC that STOs in MEAs should be formulated in a way that corresponded to the objectives of these agreements. WTO Members had to ensure that these STOs were applied in a way that was compatible with WTO rules. This would require careful national coordination, as Australia had recommended. In addition, certain principles could be used in drawing

up STOs in MEAs, such as the principle of a trade measure having a scientific basis, proposed by Australia. However, this principle was not applied as a general rule within MEAs.

27. Colombia believed that it was important to bear in mind the fact that only the Meetings of the Parties (MOP) to MEAs, as their highest decision-making bodies, could provide guidance on the criteria on which trade measures could be based. It was therefore important to recognize that multilateral environmental policy can only be decided within the framework of MEAs, just as multilateral trade policy can only be decided within the WTO. In light of this, Colombia stressed the importance of recognizing the principles of "no hierarchy" and "deference" in the WTO-MEA relationship. To respond to the Paragraph 31(i) mandate, the CTESS needed to consider various scenarios of potential conflict, even if hypothetical, and to draw up principles that would prevent them from arising. Having said that, Colombia believed that an exchange of concrete national experience would be important, as had been indicated by Australia, but that it did not exclude the consideration of hypothetical scenarios.

28. Colombia had understood Australia's approach to mean that in situations of potential conflict between STOs and WTO rules, such conflicts could be resolved at the national level. This implied that each country could define parameters of its own for dealing with such conflicts in an exclusively national or domestic context. However, it believed that it would be useful to have certain parameters agreed to in the WTO on conflicts that could arise at the international level, particularly for situations where a Member that was not a party to an MEA was being subjected to an STO by a Member that was party to that agreement. Colombia agreed with the EC that it would also be useful to look at factors that have prevented conflicts from arising so far. The CTESS did not need to await a real conflict in order to develop guiding principles.

29. The representative of Switzerland welcomed the notion of conflict prevention advocated by the EC and others. Canada's statement had gone beyond mere national experience sharing, going into criteria that could be used for conflict prevention, which was helpful. Switzerland commented on the distinction that was being established between the so-called "demandeurs" and "non-demandeurs" in these negotiations, saying that it was puzzling, since all Members were equally bound by the Doha Development Agenda (DDA). It welcomed the Chairman's report to the Trade Negotiations Committee (TNC) (TN/TE/10), in which he had urged Members to find common ground between the national experience sharing and the conceptual approaches, as well as to identify potential synergies between Paragraphs 31 (i) and (ii). Switzerland was currently working along these lines.

30. The representative of Thailand stated that the Thai Ministry of Natural Resources and the Environment was undertaking a review of how Thailand had implemented various STOs in MEAs, through a literature review, as well as consultations with relevant agencies, NGOs and the private sector. The review would be concluded by the end of September 2005, and its conclusions shared with the Committee.

31. The representative of Japan welcomed the national experience-sharing exercise and indicated that Japan was currently working on a submission of its own.

32. The representative of the Convention on International Trade in Endangered Species (CITES) thanked the WTO Secretariat for having delayed the distribution of document TN/TE/S/5/Rev.1 - *Matrix on Trade Measures Pursuant to Selected MEAs* - in order to incorporate the recent results of CITES' last Conference of the Parties (COP), which was the 13th Meeting held in Bangkok, Thailand in October 2004. The document now reflected the new and revised resolutions that had been adopted at that meeting. In particular, longer-term, interpretative sets of guidance had been agreed upon. However, the document did not show the additional decisions that had been adopted. They dealt with national wildlife trade policy reviews, which were to be undertaken in consultation with interested Parties if funding could be obtained, as well as with further work on economic incentives.

33. The Chairman indicated that the recent decisions to which CITES had referred would be incorporated in the next revision of the TN/TE/S/5/Rev.1.

II. PARAGRAPH 31 (II) – INFORMATION EXCHANGE AND CRITERIA FOR THE GRANTING OF OBSERVER STATUS[3]

34. The representative of Switzerland believed that the mandate given to the CTESS in Paragraph 31 (ii) was of importance for the promotion of mutual supportiveness between trade and environmental policies, and was of the opinion that discussion on this mandate needed to be relaunched. She believed that the development of models of co-operation between trade-related MEAs and the relevant WTO committees would also benefit the discussion on Paragraph 31 (i).

35. With regard to information exchange between trade-related MEAs and the relevant WTO committees, she argued that the MEA Information Sessions that had been held in the CTE had been very useful, and that Switzerland wished to see the procedures for information exchange regularized, while maintaining a certain degree of flexibility. The Swiss submission (TN/TE/W/32) had suggested a set of modalities for co-operation between the WTO and MEAs, such as through the organization of regular meetings with MEA secretariats, back-to-back with the CTESS, focussing on specific themes. Such procedures could enhance co-operation and mutual supportiveness between environment and trade rules, but did not represent an exhaustive list. Hence, Switzerland was open to other suggestions. In this regard, it pointed to the list that had been drawn up by the former Chairperson of the CTESS, Ambassador Yolande Biké, in document TN/TE/7, which had enumerated several forms of enhanced co-operation and information exchange. She proposed that future discussions be organized around that list.

36. On observer status, Switzerland believed that the granting of observer status to MEA secretariats and UNEP should take place in the regular CTE and its Special Session. Discussions should be based on criteria set forth in Annex 3 of the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council (WT/L/161). The Swiss delegation had presented, in its previous submissions, three main criteria: First, that decisions be taken on a case-by-case basis based on a written request; second, that the MEA secretariats and UNEP requesting observer status have a direct interest in the Doha negotiations on trade and environment; and third, that reciprocal treatment be provided to the WTO. Switzerland saw these criteria as a good starting-point for the negotiations. The representative of Colombia welcomed the criteria proposed by Switzerland, although Colombia believed that progress on Paragraph 31(ii) would to some extent be dependent on 31(i).

37. The representative of the European Communities wished to see more progress made on this part of the mandate, which was not controversial. The observership issue could be more difficult than that of information exchange, but the CTESS could try to make progress on the easier parts first. The EC reminded the Committee of the various submissions that had already been tabled on this Paragraph, and supported the Swiss suggestion of basing discussions on the list drawn up by Ambassador Biké. The representative of Norway welcomed the statements by Switzerland and the EC, and the idea of using Ambassador Biké's list as a basis for future discussions.

38. The representative of Japan also welcomed the Swiss and EC statements, and wished to see the discussion on this part of the mandate reactivated. On information exchange, Japan believed that the Information Exchange Sessions with MEAs that had been held back-to-back with the CTE had been useful, and that the CTESS could discuss their frequency. On observer status, Japan argued that such status needed to be granted to organizations with a strong linkage to the CTE's mandate. It was

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[3] Document TN/TE/S/2/Rev.1, entitled *Existing Forms of Cooperation and Information Exchange between UNEP/MEAs and the WTO*, was circulated at the meeting.

unclear on why this part of the mandate was being linked to general principles for observership. Japan did not wish to see these negotiations politicized.

III. PARAGRAPH 31 (III) – ENVIRONMENTAL GOODS AND SERVICES[4]

39. The Chairman informed participants that, at the last meeting of the Negotiating Group on Non-Agricultural Market Access (NAMA) (31 January to 4 February 2005), there had appeared to be an understanding that the definitional exercise on environmental goods would be conducted in the CTESS, taking the form of a list or otherwise. Therefore, he urged Members to contribute to the definitional exercise, drawing their attention to three new documents that had been submitted under this item: documents TN/TE/W/46 by New Zealand, TN/TE/W/47 by the EC, and TN/TE/W/48 by Korea.

Document TN/TE/W/46 by New Zealand

40. The representative of New Zealand presented document TN/TE/W/46, indicating that his country would be submitting its list of environmental goods in advance of the next meeting. It would be a "living list," and would be compiled using the "reference points" and categories outlined in New Zealand's submission. He urged Members not to place the CTESS' deliberations of the living list of environmental goods in the context of Members' so-called "offensive interests" (i.e. expansion of exports) or "defensive interests" (i.e. restriction of imports). Rather, he hoped that Members would place them in the context of both the economic and environmental benefits that could be derived. Furthermore, he indicated that trade liberalization in this area was not likely to be as difficult as some Members had assumed, since recent research by the WTO had demonstrated that the applied tariffs on environmental goods were already quite low. On average, the tariffs of developed countries were less than 5%, whereas those of developing countries were less than 10%. Of course, non-tariff barriers (NTBs) would also need to be considered.

41. The representative of Indonesia, speaking on behalf of Indonesia and the Philippines, welcomed New Zealand's proposal and its suggestion for the use of reference points. These would be useful in screening products, and as New Zealand had itself confirmed, would not confer automatic "environmental goods" status onto any product. However, the concept of a living list raised some concern, particularly with respect to the modalities that would be applied to future environmental goods. Indonesia asked how these modalities would be decided.

42. The representative of Thailand indicated that his country was preparing its own environmental goods list in consultation with relevant governmental agencies, the Ministry of the Environment and Natural Resources, the private sector, the Federation of Industries, and various chambers of commerce. It had proved to be a difficult task. Thailand welcomed the paper from New Zealand and the approach of "defining by doing." It also welcomed the first two reference points in that paper, indicating that the OECD and APEC lists could act as useful tools at this stage of the negotiations. On the two-list approach, Thailand's view was that since the goods on the complementary list would not require consensus, the 85% benchmark of support set by New Zealand was too high. Furthermore, Thailand was uncomfortable with the concept of a living list, but in any case believed that the modalities for the negotiations should be handled by NAMA.

43. The representative of Hong Kong, China was open to the idea of reference points and a living list. The concept of a living list would allow the list of environmental goods to be updated to reflect economic, as was well as technological progress. However, Hong Kong China argued that it would be important to leave the modalities of the negotiations for NAMA to decide.

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[4] The *Report on the Workshop on Environmental Goods* that was held on 11 October 2004 was circulated to Members as document JOB(05)/21.

44. The representative of Switzerland welcomed the reference points suggested by New Zealand, even though she was aware of some of their shortcomings (such as the relativity of the concept of environmental friendliness and the dangers of technological lock-in). Despite these shortcomings, however, they provided a useful starting-point - one that would allow the CTESS to build on what was "already out there." Switzerland found the concept of a living list to be an interesting one, and would be giving it further consideration. The representative of the European Communities also welcomed New Zealand's paper, and the idea of reference points and of a living list.

45. The representative of Mexico welcomed the reference points in New Zealand's paper, but cautioned that the use of criteria for the identification of environmental goods did not necessarily mean that these goods were acceptable to Members, or that consensus had been achieved. Negotiations would still be required.

46. The representative of Japan stated that it would be very important to develop a "raw list" of environmental goods as soon as possible, as suggested in paragraph 10 of the New Zealand submission, and to submit a WTO list of environmental goods to NAMA at the Hong Kong Ministerial Conference so that the negotiations on modalities could begin. The reference points suggested by New Zealand could be a useful tool in the preparation of that raw list.

47. The representative of Chinese Taipei supported New Zealand's reference points, and the idea of preparing a raw list of environmental goods. Furthermore, he supported the suggestion of both Canada and New Zealand to work within the framework of certain categories in order to develop lists. However, Chinese Taipei was particularly interested in starting CTESS discussions on the basis of the lists that Members had already tabled, and which had already undergone national consultation processes.

48. In paragraph 9 of the New Zealand paper, New Zealand had suggested using the 12 categories that had been proposed by Canada, in addition to two others. Chinese Taipei welcomed this approach, which would give greater clarity to the pollution prevention category in particular, for which there was substantial support. Nevertheless, too many categories could also lead to the danger of the same product being classified under different categories by different Members. For instance, in the OECD list, product HS 842220 had been classified under pollution prevention, whereas Japan had included it under resource management. Therefore, some streamlining of categories would be required, with countries refraining from using more categories than necessary. With respect to the concept of a living list, Chinese Taipei believed that it went beyond the Doha mandate.

49. The representative of Australia agreed with New Zealand's suggestion of "reference points" as an initial screening mechanism for environmental goods. The reference points, as a minimum, had to be both practical and scientifically based. They could assist in identifying products in different end-use categories. Australia saw product lists and categories as the most constructive way forward.

50. The representative of the United States reminded delegations of the division of labour between the CTESS and NAMA, and supported the idea that the discussion on modalities should be left for the moment. The CTESS' main task was to identify environmental goods, irrespective of a subsequent decision by the NAMA on how trade liberalization would be accomplished and S&D treatment applied. The US welcomed the reference points suggested by New Zealand, which offered a simple and common-sense solution to the question of criteria. It wondered whether New Zealand intended the reference points to be self-selecting, meaning that any Member that put forward a list of goods would use the points that it deemed most appropriate to describe them. Some Members had already followed this approach in the lists that they had submitted to the CTESS, demonstrating the relevance of their products to the environment. The US had also found the categories proposed by Canada, and added to by New Zealand, to be useful. While some support had been expressed at this meeting for the US idea of a core and a complementary list (an idea reflected in the New Zealand submission), the representative of the United States, supported by Canada and Japan, argued that it would be best, at this stage, to focus on the product identification exercise.

51. The representative of Canada welcomed the reference points suggested by New Zealand, and believed that there could be linkages between these points and the product categories. Canada also welcomed the idea of a living list, but did not have firm views on whether this idea should be handed over to NAMA or whether it could be dealt with by the CTESS. It also wondered how the NTB part of the mandate would be operationalized and whether it would need to be handed over to the TBT Committee or to NAMA.

52. The representatives of Chile, Venezuela, China, Brazil, Colombia and Ecuador argued that the reference points suggested by New Zealand were too restrictive for developing countries. They stated that some developing countries would need to go beyond the APEC/OECD conceptualization of an environmental good, since they were net importers of the products on the APEC and OECD lists. The representatives of Chile and Venezuela also pointed out that the vast majority of WTO Members had not actually participated in the preparation of these lists.

53. The representatives of Venezuela, Colombia and Ecuador also requested an explanation of New Zealand's third reference point, of bilateral or regional trade agreements. The representatives of Venezuela and Colombia, in particular, informed the CTESS that their countries were not party to regional or bilateral trade agreements that had considered the notion of an environmental good. On the same subject, the representative of Chile enquired whether New Zealand had had a model free trade agreement (FTA) in mind, and if it intended Article XXIV of GATT to serve as the benchmark. Chile indicated that, in the FTAs that it had been involved in, ambitious outcomes had been sought that liberalized trade in all products, and not just in those that met environmental requirements.

54. The representative of Argentina agreed that the New Zealand paper raised concern with respect to its reference points, since these did not seem to be purely indicative. They were designed to act as a "filter," and in that sense were conclusive in nature. Furthermore, Argentina could not understand, either, the third reference point that had been suggested by New Zealand, of high quality regional or bilateral accords. The representative of Egypt, like the US, enquired if New Zealand’s reference points were intended to be self-selecting. If they were, then Egypt would be satisfied. However, Egypt, like Argentina, had its doubts, since paragraph 7 of the New Zealand paper had suggested that these points constituted a "threshold." The representative of Thailand argued that the bilateral FTAs suggested by New Zealand would be unacceptable as a reference point, due to the fact that these agreements did not represent the interests of all WTO Members. With respect to the regional ones, Thailand hoped that New Zealand could provide some examples.

55. Turning to the modalities suggested in the New Zealand submission, and to the notion of a core and a complementary list, the representatives of Colombia and Ecuador saw this discussion as premature. The representative of Ecuador added that the issue had to be left up to NAMA, and that the requirements of Paragraph 16 of the DDA would need to be taken into account, including on reciprocity. Furthermore, Ecuador indicated that it had been confused by the concept of a living list and by how products would be added onto such a list. The representative of Colombia also pointed out that, whereas there appeared to be an emerging consensus on pollution control products, agreed criteria would need to be developed prior to tariff reductions and modalities being considered. Agreeing on criteria for an environmental good would of course be time consuming, but that was the reason why time and effort would be needed in these negotiations.

56. The representative of Chile believed that the New Zealand paper had gone beyond the mandate of the CTESS in suggesting a dual-list approach. This prejudiced NAMA negotiations. Furthermore, with respect to the concept of a living list, Chile could not agree that the future liberalization of additional environmental goods somehow be mandated or endorsed at this stage. When the results of the Doha Round became clearer, Chile would see whether these results were insufficient, and whether a political decision would be needed to review the results of the Round as a whole, and not just in the environmental goods area. As justification for the living list, New Zealand had argued that this particular area was a dynamic one and that any list would need to be updated.

However, Chile believed that dynamism was not a feature that was unique to the environmental goods area of the negotiations.

57. The representative of Argentina also commented on the idea of a core and a complementary list. Argentina wondered how New Zealand's reference points would be used with respect to the two-list approach. Would the reference points filter products that went into both lists, or simply those that went into the core list? And would consensus be required in addition to the application of the reference points? Argentina's understanding of the two-list approach was that the core list would capture products on which there was consensus, and the complementary list, other products. With respect to the living list, New Zealand had explained that the list needed to be living, not just for technological advancement, but for other reasons as well. Argentina wondered what those other reasons were. Furthermore, it wondered what the relationship would be between the CTESS and NAMA.

58. The representative of Cuba was disappointed that the concept of Special and Differential Treatment (S&D) had been missing from New Zealand's paper. Cuba could not agree to a "living list," which would require negotiation between Rounds. However, it found New Zealand's reference points to be helpful.

59. The representative of Qatar argued that if Members analysed the APEC and OECD lists closely[5] they would find that they only contained products of interest to developed countries, and that the developing world's export to import ratio of these products was low, standing at 0.48.[6] Many of the lists submitted by Members to this meeting had been based on the APEC/OECD lists. These lists did not contain products, such as natural gas, which were produced and exported by many different countries such as Qatar, Algeria, Indonesia, Norway, and Russia. Natural gas, which was now widely used in electricity production, contributed to sustainable development, and its inclusion in a WTO environmental goods list would demonstrate how developing countries had environmentally friendly exports. Qatar had numerous unanswered questions about how the APEC and OECD lists had been compiled. For instance it wondered why "separators" that were used on oil platforms to separate oil from water and gas had been included these lists, but not natural gas itself.

60. Qatar also expressed its support for the idea of a core list of environmental goods, with built-in flexibility that would allow it to be a living list. It did not support the idea of a complementary list, which could waste negotiators' time in moving products out of the core list and into the complementary list. It reiterated its request for the inclusion of natural gas products in the negotiations, providing three justifications: (1) the fact that the demand for energy was rising, and that, according to the International Energy Agency (IEA), the share of renewable energy on the market was going to rise to 25% by 2050 due to the Kyoto Protocol. Natural gas emitted 28% less CO_2 than oil and 44% less CO_2 than coal; (2) that there were synergies between natural gas and renewable energy, for instance in hybrid systems; and (3) that the Kyoto Protocol had itself recommended the increased use of natural gas to combat global warming. Finally, it indicated that it wished to see progress made under Paragraph 31(iii) by July 2005. The representative of Ecuador found the Qatari proposal to be interesting, to have environmental benefits, and to be worthy of further consideration. The representative of Oman agreed with a Qatar on the need for a single list with built-in flexibility.

61. The representative of New Zealand explained that New Zealand was aiming for ambitious results in the environmental goods area. It did not wish to see modalities discussed in the CTESS, and understood that that was NAMA's role. It welcomed the widespread support for "defining

[5] See document TN/TE/W/33, entitled *OECD Joint Working Party on Trade and Environment. Environmental Goods: A Comparison of the APEC and OECD lists.*

[6] See page 5 of the *Report on the Workshop on Environmental Goods* (JOB(05)/21).

environmental goods by doing," and explained that it did not see its reference points as a definitive set. Members could propose their own. The idea behind the reference points was simply to ask Members to justify why the products included on their lists could be characterized as environmental. The OECD definition, and not its list, as well as the APEC conceptualization, could in that sense serve as a good basis for this exercise. New Zealand reassured delegations that the use of the APEC/OECD conceptualization would not necessarily mean an endorsement of the lists that these organizations had developed.

62. In response to the question from Argentina, New Zealand clarified that the reference points would be used to structure both the core and complementary lists, since the threshold for the second list could not be lower than that which Members applied to the first. Several delegations had asked whether the absence of reference points would preclude products from the list. New Zealand believed that it should. It was not too much to ask countries that submitted products to explain why they were environmental.

63. Turning to the issue of dual lists, New Zealand clarified that its paper had clearly called for the development of a "raw list." It had not asked for the negotiation of parallel lists. The raw list had to come first. New Zealand had also pointed out in its paper that a single list would be the first best outcome. A number of Members had enquired if New Zealand could provide examples of the regional or bilateral agreements that it had suggested. The answer was that it could not. By proposing this third reference point, New Zealand's intention had been to encourage this sort of development.

64. With respect to the living list, New Zealand explained that the concept would simply enable Members to update and expand the list in response to technological development. It did not mean that a high-tech lock-in would occur; rather, the living list could allow for low-tech products to be included as they were discovered. New Zealand gave the example of diatomaceous earth, which was a filtering agent for cleaning water in water and soil remediation processes, and which did not appear on either the OECD or APEC lists. New Zealand had recently discovered that this product was also a very effective insecticide that had been widely used in developing countries' agriculture. A living list would allow Members to incorporate such products when discovered. New Zealand explained that, in developing its own list, it would be looking not only at items of export interest, but of import interest as well. Cheaper imports would help with the efficiency and competitiveness of its domestic industry.

Document TN/TE/W/47 by the European Communities

65. The representative of the European Communities presented document TN/TE/W/47, indicating that the starting-point in the preparation of this submission had been to see how the WTO could best contribute to the fulfilment of MEAs, the Millennium Development Goals (MDGs) and the results of the World Summit on Sustainable Development (WSSD). Assessing the interests of developing countries, and reflecting them, had constituted another starting-point. The EC agreed with the New Zealand approach of a "living list" and had itself cautioned against any "technological lock-in" in its submission. As a background for the products on its lists, the EC explained that it was not its intention to engage in a protracted discussion on the "definition" of an environmental good. Rather, its aim was to contribute to the emergence of a common understanding of the concept through the use of some sort of a filter, or what some Members called "reference points."

66. The EC focussed on explaining the second list of products contained in its submission, which was a list of "High Environmental Performance or Low Environmental Impact" products, stating that it had drawn on the work that the United Nations Conference on Trade and Development (UNCTAD) had conducted on Environmentally Preferable Products (EPPs). Most of the products on its list were identifiable through their composition. In paragraphs 14 and 15, the EC had sought to expand the products on that second list to ones that could be identified through labelling. However, the labelling issue was not relevant to the second list as a whole, and therefore the EC hoped that the second list

could be discussed prior to the labelling issue being taken up. It saw these as separate issues. The labelling issue had to be seen as an "offer" by the EC to expand the second list to products that could be of interest, in particular, to developing countries. The EC indicated that it would be tabling a more complete list of products in the near future, and that it was conscious of the fact that its current submission had only provided examples of products that could be included in the negotiations.

67. The representative of Colombia agreed with the EC that the products identified in these negotiations needed to contribute to the fulfilment of MEAs, to the MDGs and the results of the WSSD. However, while Colombia agreed that trade liberalization in environmental goods and services could allow developing countries to purchase environmental technology more cheaply, it warned of technological dependence if an appropriate balance between developed and developing countries interests was not struck. Many of the products that were currently being proposed were high-tech products for which developing countries did not have a clear export interest. In fact, it was the challenge of identifying products that could benefit Colombia that had prevented Colombia from tabling its own list until today. However, it was clear that any list would need to have the conservation and sustainable use of natural resources as its primary aim, including the *in situ* preservation of biological resources and their marketing and promotion.

68. With respect to eco-labelling, Colombia wondered whether this could be considered a new NTB. It enquired whether mutual recognition agreements (MRAs) would then be needed. The International Standardization Organization (ISO) labelling standards that had been referred to by the EC could indeed be examined, but Colombia hoped that these standards would not obstruct developing country trade. It felt that it would also be premature at this stage to discuss the modalities proposed by the EC. However, it indicated that it was in favour of a single list of environmental goods.

69. The representative of Ecuador agreed with the objectives of the WSSD and Agenda 21, which had been mentioned in the EC paper. However, Ecuador was concerned that many of these objectives had not been fulfilled, particularly with respect to technology transfer. Like Colombia, Ecuador was also concerned about technological dependence, and about the fact that many technologies were difficult to access, due to patents. In terms of the actual negotiations, it indicated that it would be necessary to tackle the problem of dual use. Ecuador did not have firm views yet on the second EC list, but argued that NTBs were some of the main barriers confronting the products of export interest to developing countries. It wondered, therefore, what the positive incentive would be for developing countries to subscribe to the second EC list.

70. The representative of Thailand was of the view that the second EC list of goods would make it harder for countries to prepare their lists, rather than easier, in particular since it would bring process and production methods (PPMs) into the discussion. Eco-labelling would not help the discussion, either. The representative of Cuba believed the negotiations needed to take into account the different levels of development that countries were at. Cuba believed that PPM-based products had indeed been included in the EC's second list of products, and that that was the reason why certification and labelling had been deemed necessary by the EC.

71. The representative of Mexico found that the second EC list brought NTBs into the negotiations, through eco-labels and certificates. He was convinced that the best way to handle agricultural products in the negotiations would be through agriculture negotiations under the DDA. The representative of Argentina stated that he was aware of the serious reservations that some Members had regarding the second EC list, but indicated that he did not have a final position on it yet.

72. The representative of Malaysia felt that the EC's submission took the CTESS down a conceptual, definitional, track which could be too time consuming for the Committee. End use criteria were the best and simplest way of identifying environmental goods. She could not agree that labels and certificates be explored in these negotiations, since they would slow them down. On the

concept of a living list, proposed by the EC and New Zealand, Malaysia preferred to see the CTESS focus on the development of a Doha list at this stage, rather than looking too far into the future. The list had to include products of interest to developing countries.

73. The representative of Indonesia, speaking on behalf of Indonesia and the Philippines, addressed the EC's suggestion of using the environmental objectives of MEAs and other international agreements as benchmarks. Indonesia and the Philippines believed that this would problematic for a number of reasons: (1) certain MEAs had more than one environmental objective, some of which could be viewed as more important than others; (2) greater market access for environmental goods was not the only way of contributing to the objectives of environmental agreements. Financial aid and technology transfer were other approaches; and (3) different WTO Members were parties to different agreements. Furthermore, with respect to the suggestion that Members' national environmental objectives guide the negotiations, they argued that this had to remain the prerogative of each individual Member. Members that felt that "high environmental performance products" were in their interest could undertake autonomous liberalization. Indonesia indicated that it was working on its own list of environmental goods.

74. The representative of Chile welcomed the EC’s suggestion that Members try to facilitate the implementation of MEAs, the MDGs and the results of the WSSD through these negotiations. However, he was concerned about the implications of bringing global environmental standards into WTO negotiations. Furthermore, the EC had referred to the fulfilment of national environmental policies, but this could lead to the national policies of some Members turning into obligations for others. With respect to the second list of EC products, Chile doubted the merits of working along the lines of UNCTAD's EPPs. EPPs would usher certification and labelling into the negotiations, leading the CTESS to stray beyond its mandate. Chile sought further clarification from the EC on the criteria that could form the basis of a WTO list.

75. The representative of India believed that, while many developed countries were operating on the assumption that these negotiations would deliver trade as well as environmental benefits through the acquisition of environmental technologies at a lower cost, these assumptions were not necessarily substantiated. While India was environmentally conscious as a country, and was party to numerous MEAs, it had not succeeded in acquiring the environmental technology that was suited to it. For instance, imported windmills used to generate renewable energy had failed in supplying energy to some of India's poorest households. The problem, therefore, was not just one of market access. There were other factors that needed to be considered for the technological advancement of developing countries, such as increased investment opportunities, development coordination and so on.

76. Furthermore, the current negotiations were focussing exclusively on environmental goods, and the services component was being left aside. Synergies between these two areas of the negotiations were vital. On another note, India observed that, with the exception of the EC's paper, no other submission had included agricultural goods. It indicated that products such as jute, biofuels, organic agricultural products and bio-pesticides were of interest to developing countries, and that the reduction of the NTBs to their export would be important to consider. The representative of Hong Kong, China agreed with the points that had been made by India. However, she felt that environmental goods were more complicated than environmental services, since a services classification already existed.

77. The representative of Switzerland agreed with the EC that the negotiations should somehow contribute to the fulfilment of MEAs, MDGs and to the results of the WSSD. The first list of products submitted by the EC was a "pollution control and resource management" list, which was the category on which most Members agreed. It corresponded to the OECD's definition of the environmental industry. However, this list did not cover the entire spectrum of environmental goods. The second EC list, therefore, was intended to capture the rest, much of which could interest developing countries. The second list was based on the "life cycle approach," and dealt with the component of a product's

life cycle that took place in the territory of the importing country, i.e. with a product's use and disposal. The idea proposed by the EC of expanding this list through products that could be certified and labelled, was also an attractive one. Switzerland welcomed the EC's suggestions on modalities, even if a final decision on modalities could only be taken by NAMA. It hoped that NTBs would also be turned to at some stage through creative ideas.

78. The representative of Norway expressed his support for the policy goals articulated in the EC's submission of helping fulfil MEAs and the MDGs. He was also supportive of the concept of a living list, which would enable the WTO to keep abreast of rapid technological advancement. Norway did not have a final position on the second EC list, but believed that certification and labelling could actually enhance market access, rather than the reverse. Many products on the second list could be particularly relevant for developing countries. Technical assistance for these countries would also be vital.

79. The representative of China appreciated the consideration that the EC had given to the concept of S&D treatment in its submission, and its proposal that developed and developing countries follow different timetables in the negotiations. However, China reiterated the suggestion that it had made for a "common" and a "development" list, in which it had also proposed different rates of tariff reduction. For China, the issue of eco-labelling, that had been taken up by the EC, went beyond the Doha mandate.

80. The representative of Japan believed that it would be difficult to agree on criteria that could form the basis of the second EC list. In particular, he argued that it would be very difficult to distinguish EPPs from non-EPPs for the same product category. However, Japan would comment in more detail once it found out, from the EC, the specific products that belonged to this category.

81. The representative of Brazil believed that the different lists that had been tabled by Members clearly showed that different methodologies had been used. Therefore, there were various differences between Members that had to be bridged, and it would be important not to rush the negotiations. Brazil saw merit in pursuing a practical approach, rather than engaging in an overly conceptual discussion. However, it felt that it would still be necessary to agree on some basic principles or criteria for what constituted an environmental good. The most important principle could be found in the Doha Development Agenda (DDA), which was that of "development." The negotiations had to contribute to development. Brazil was uncertain about the concept of a living list, which introduced uncertainty into these negotiations, and which had been referred to by both the EC and New Zealand. It amounted to writing a "blank cheque" for the future, which, of course, was very difficult to do.

82. Brazil welcomed the EC’s reference to Agenda 21, which had been the outcome of the Rio Earth Summit. However, Agenda 21 had called for "common and differentiated responsibility," which was a concept that was closely tied to technology transfer. However, this concept had not featured in the EC's submission, and Brazil wondered why. The EC had called for PPM-based eco-labelling in its submission, which it argued had drawn on the work of UNCTAD. However, UNCTAD had made an important suggestion at the WTO Workshop on Environmental Goods, in which it had proposed that a PPM waiver only apply to developing countries. Brazil wondered whether this was what the EC had had in mind.

83. The representative of Chinese Taipei saw the EC’s "Guiding Principles" as being similar to New Zealand’s "reference points," which could be used in the preparation of a raw list. However, as Indonesia had stated, the reference to the objectives of Agenda 21, WSSD and MEAs could complicate, instead of facilitate, the negotiations, and it could be easier to use the work of the OECD and APEC as a basis. Second, in paragraph 9 of its paper, the EC had suggested using specific HS codes for entire plants and systems, and Chinese Taipei wished to find more about that. Third, on the EC’s second list of products, Chinese Taipei sought clarification on the international environmental and eco-labelling standards that would come to underpin the list, and on how that list would comply with the WTO’s

TBT Agreement. Finally, it welcomed the Korean submission, which had been based on a very similar approach to its own.

84. The representative of Australia welcomed the EC's first list of products, which seemed to correspond to the list that had been presented by Chinese Taipei. However, it differed from Chinese Taipei's in its inclusion of renewable energy products. Australia regretted that the second EC list ushered labelling and PPMs into the negotiations. Responsibility for discussing environmental labelling lay with the TBT Committee and regular CTE. Furthermore, the list also ushered in subjective criteria on what an environmental good was. For instance, why was insulation material that was made of vegetable fibre environmental, but not material that was made of animal products? That said, Australia was encouraged by the statement in the EC's paper that consensus on a definition was not a prerequisite for the product-based approach. Australia believed that it would be important in these negotiations to identify products of export interest to developing countries, and felt that there were numerous sources of information from which ideas could be drawn, such as the UNCTAD, the APEC and the OECD lists, as well as the WTO Workshop on Environmental Goods.

85. The representative of the United States welcomed various elements of the EC's paper, in particular the EC's presentation of environmental products within the bounds of certain categories. However, the US wished to see products identified on the basis of HS codes, without adjustment or introduction of new tariff headings, but with flexibility for "ex-outs" in Members' national nomenclatures. That said, the US hoped that Members would err on the side of liberalization and simplicity where possible. It looked forward to a future EC submission in which the various sectors and sub-sectors that they had included could translate into concrete HS codes and corresponding products. In the absence of these codes, the US would find it difficult to react to the EC's proposal. However, the US was pleased with what appeared to be a general endorsement of many of the technologies that had been included in the APEC list, including products such as pipes, filters, and monitors. This presented a potential area of common interest among delegations.

86. With respect to the second part of the EC's paper, the US was more sceptical on the potential for common ground. The OECD had conducted a study on the feasibility of including energy efficient goods in an initiative such as this one, and had concluded that there were significant obstacles, such as how to determine the goods that qualified for energy efficient status when different countries defined energy efficiency differently, and when the concept was constantly evolving and differed by product. The US was interested in hearing from the EC how it intended to overcome these issues, and, also, how it could ensure non-discrimination. For instance, as had been mentioned at this meeting, on what basis was the EC going to distinguish between insulation made from wood waste and conventional insulation?

87. The CTESS had to be careful not to create new NTBs when it defined the concept of an environmental good, such as by means of eco-labels, since it could not move in an opposite direction to the trade facilitation negotiations. Even if the scope of the EC proposal went beyond the narrow membership of the Global Ecolabelling Network (GEN), it would still be objectionable to the US. While eco-labels were a useful tool in differentiating products in the marketplace, the US believed that they were not the appropriate tool for determining tariff treatment. In terms of identifying common ground in these discussions, it argued that it would be useful to use the first EC list, which identified pollution control and resource management equipment.

88. The representative of Egypt asked for a clarification of paragraph 9 of the EC paper, where it appeared that the EC was suggesting a solution for the problem of dual-use. With respect to the MDGs and the goals of the WSSD that had been cited by the EC, Egypt wondered if the EC would also be committed to their goals in other areas of the negotiations. For instance, would the EC agree to liberalizing agriculture and services trade to reach their goals, and to halve world poverty by 2015? Egypt felt that it may not be practical to work on the basis of these goals in environmental goods negotiations.

89. The representative of Venezuela commented on the EC paper, by expressing his support for the work of UNCTAD. At the WTO Workshop on Environmental Goods, UNCTAD had suggested that the Working Group on Trade and Technology Transfer be asked to examine environmental goods from a technology transfer angle, i.e. with respect to the transfer of clean technology. This issue had to be dealt with so that progress on Paragraph 31(iii) could be made by the Hong Kong Ministerial.

90. The representative of Canada welcomed the EC's reference to the WSSD and to environmental objectives, since this gave context to the work of the CTESS in these negotiations. The first EC list was fairly uncontroversial and had attracted substantial support. With respect to the second list, Canada felt that it would be challenging for the EC to reconcile its suggestions for eco-labelling and certification with the opposition that had been voiced at this meeting for PPMs. The EC had not yet provided the Committee with a list of products with HS codes, and the discussion of eco-labelling was likely to slow the CTESS down.

91. Canada indicated that developing countries had expressed divergent views at this meeting on the kinds of products that could be of export interest to them, and the concepts that they could work with. For instance, Chile and Thailand had stated that they supported the entry of UNCTAD's EPPs into the negotiations, whereas Venezuela had taken a different view, and India had asked for organic agriculture to be considered, and hence PPMs. Brazil, on the other hand, had requested that UNCTAD's suggestion for a PPM waiver for developing countries be considered. Canada believed that the only way forward in these negotiations therefore, was for Members to develop their own lists, since developing country interests diverged and could not be discussed in the abstract. Thus, Canada was pleased that both Indonesia and Thailand had indicated that they were working on their lists. The representative of Brazil clarified that Brazil had not argued in favour of PPMs. Rather, it had simply asked the EC to clarify the reference to PPMs that it had made in its submission.

92. The representative of Panama wished to see the CTESS develop criteria for environmental goods as expeditiously as possible. Products of export interest to developing countries would need to be identified, and the NTBs they faced somehow addressed.

93. The representative of Oman, supported by Venezuela and Panama, suggested that the Chairman conduct informal consultations on technical assistance for developing countries in the preparation of their lists. The representatives of Colombia, Ecuador and Venezuela emphasized that technical assistance needed to come during the preparation of lists, and not after, as suggested in the EC paper.

94. The representative of the European Communities clarified, in response to the question from Chile, that it was not asking any WTO Member to accept an environmental objective that it had not already committed itself to – whether in terms of the MDGs or otherwise. In other words, all it was seeking was that Members provide some sort of justification for products that they included in their lists based on the commitments that they had already undertaken, or based on their national environmental policies. It would not be sufficient for a country to offer as justification the fact that a product had featured on the APEC or OECD list.

95. In response to the comment from Brazil, the EC explained that the principle of "common but differentiated responsibility" had not been addressed in the EC paper because it was not an environmental objective. In response to Egypt's question on whether other objectives of the WSSD were guiding the EC in different areas of the negotiation, the EC stated that they certainly formed part of the backdrop. In response to the comments made on the two EC lists, the EC agreed with Members that its first list was not controversial. The second list was more so, but the EC indicated that it was an important list in that it tried to render the negotiations more inclusive. It had proposed avenues that could be of particular interest to developing countries, since they were the main exporters of EPPs. Furthermore, high performance, low impact, products were not necessarily PPM-based. Many of these products were perfectly distinguishable on the basis of their composition.

96. On labelling, the EC stressed that this discussion had to be distinguished from the one held in the regular CTE. Here labels were being discussed as a way of identifying environmental goods, i.e. as a way of increasing market access through the development of a more comprehensive list. There were examples in the bilateral field where labels had been used to this effect. They were not a NTB to trade, but rather represented a market opening opportunity. On technical assistance, the EC stressed the importance of delivering technical assistance to developing countries during, as well as after, the preparation of their lists. It asked the Chairman to consult on the matter, and to contact the WTO Technical Cooperation and Training Division.

Document TN/TE/W/48 by Korea

97. The representative of Korea presented document TN/TE/W/48, indicating that Korea's objective had been to base its list of environmental goods on as simple and practical an approach as possible. It had prepared its list of 89 products in consultation with industry, NGOs and various stakeholders, and most of these products fell into the pollution management category – the category that appeared to be the most uncontroversial in the CTESS. It hoped that current discussions could be focussed on products with Harmonized System (HS) codes.

98. The representatives of Australia, the United States, China, Thailand, Malaysia, Indonesia, the Philippines, Mexico, and Israel argued that the Korean approach represented the most practical way forward, and that the environmental end-use or purpose of a product was the most appropriate criterion to use. The representative of Thailand asked that further discussion be held on the concept of end use. Korea had stated that: "the end-use of products should be primarily for an environmental purpose," and Thailand wished to see further discussion of the concept of a "primary" purpose.

99. The representatives of Australia, the United States, China, Thailand, Malaysia, Mexico and Israel called on the identification of products to be made on the basis of HS codes (with ex-outs if needed), and on EPPs or PPMs to be avoided as suggested in the Korean submission. In fact, to raise everyone’s comfort level in the negotiations, the representative of Australia, supported by the United States, suggested that an early decision be taken to exclude PPMs from the negotiation.

100. The representatives of Canada and Ecuador also welcomed the Korean paper and the very practical approach on which it had been based. Canada indicated that it could agree to many of the products on the Korean list. The representative of Japan was also encouraged by the Korean list, which represented a good starting-point for the negotiations, and included energy-saving products.

101. The representative of the European Communities believed that the 89 products that had been included in the Korean list had included products which were not only in Korea’s interest, but in other Members’ interest as well, and hence the EC welcomed them. However, in contrast to Korea, the EC wished to take these negotiations further.

102. The representative of Brazil welcomed Korea’s emphasis on practicality, but wondered whether the narrow approach taken in the Korean paper would allow the Committee to consider the products of export interest to developing countries.

103. The representative of Chile explained that he did not believe that the Paragraph 31(iii) mandate provided for deeper tariff cuts on environmental goods. The mandate was on a par with Paragraph 16 of the DDA. Chile appreciated the practical approach that had been taken by Korea in its submission. In paragraph 2, Korea had explained the process through which it had developed its list; this had been helpful. However, Chile indicated that it would be appreciated if future submissions could provide trade figures on the products that they proposed.

104. The representative of Norway stated that while Norway wanted these negotiations to deliver environmental benefits, it was also keen to have them deliver trade benefits, in particular to

developing countries. Norway had been in favour of a two-track approach in the CTESS on Paragraph 31(iii), a conceptual track and list-based track. It felt that there were a number of outstanding conceptual issues that were vital to the final outcome, such as that of dual-use. For instance, Korea had argued in paragraph 6 of its submission that the end-use criterion would be easier to work with than that of PPMs. Norway was not convinced and asked that this statement be explained. There were other conceptual issues that also needed to be addressed. For example, it asked what would happen if a product used for an environmental purpose contained substances that were harmful to the environment, such as mercury or PCBs. To some extent, its inclusion would have to depend on whether the importing country had appropriate procedures for its handling. Therefore, there was clearly a need for a "yardstick" in these negotiations (or for "reference points" as New Zealand had called them).

105. The representative of Argentina stated that, while some Members had argued that these negotiations should not be looked at from a purely commercial perspective, trade had to remain central to them, since the WTO was a trade organization. Argentina felt that it would not be easy for Members to agree on a common definition of environmental goods, and therefore preferred to pursue a practical approach that would simply try to develop criteria or categories that countries could adhere to. These would be more than sufficient to create a shared vision of where the negotiations should go. The Korean paper represented a restricted view of what these negotiations could include. The New Zealand paper had been more ambitious, and the EC's even more so. However, the Korean paper, which only included 89 products, did not appear to include products that could be of interest to developing countries.

106. The representative of Korea explained that, in terms of 6-digit HS codes, Korea's list covered 60% of the products on the APEC list, and 50% of the products on the OECD list. Korea did not intend to comment on whether its list had been narrow or broad, since each WTO Member had to determine, in light of its own interests, the scope of the offer that it could make. In terms of finding products of interest to developing countries, Korea believed that this would be a challenging task, since trade flows in environmental goods were heavily skewed in favour of developed countries. To address some of the products of export interest to developing countries, the controversial PPM criterion may need to be introduced. This would raise its own set of problems. Hence, there was no easy answer to developing country concerns. In terms of paragraph 6 of the Korean submission, on which some Members had sought clarification, Korea explained that it saw the end-use criterion as easier to work with than PPMs, since it addressed the dual or multiple end-use problem. It would also allow for specific proposals to be made through the use of ex-outs.

107. In response to Chile's question on trade statistics, Korea explained that the tariffs imposed by Korea on the products on its list ranged between 2-8%. Some products were already imported duty free. However, Korea had not selected products on the basis of low tariffs. Rather, most of the products on the OECD and APEC lists continued to be subjected to tariffs of below 8% in Korea.

Statements by the Ad Hoc Invitees

108. The representative of UNCTAD briefed the CTESS on the expert meeting that UNCTAD had organized on renewable energy on 8 February 2005. The experts present at the meeting had indicated that trade in renewable energy was gaining in importance. However, the level of tariffs imposed on renewable energy varied between 40% to 100%, with relatively high tariffs imposed on finished renewable energy products in some developing countries. These countries were using tariffs to protect their domestic industry, where the scope for other protective measures was limited. Lowering tariffs in these countries could run the risk of choking off new opportunities for the production and export of their own renewable energy products. Therefore, market deployment policies were required, which were policies that helped countries with the costs of introducing renewable energy into their markets. These policies were generally intended to be of a limited duration, until renewable energy could become competitive.

109. The competitiveness of renewable energy depended on the cost of conventional energy. Some experts at the meeting cited the subsidies to oil, coal, gas and nuclear power that various countries provided, and which were a barrier to the development of renewable energy. Developing countries were relatively competitive in renewable energy due to the fact that various sources of renewable energy were available to them, and due to their lower costs. There was scope for cooperation between developed and developing countries in this area, since certain renewable energy technologies, such as hydropower, geothermal energy, and biomass, were reaching "pre-saturation" stages in developed countries.

110. The experts wondered about the role that the WTO Agreements on Agriculture and TBT could play in the renewable energy sector. For instance, they wondered how the Agreement on Agriculture could affect fuel farming and bioenergy, and how the TBT Agreement could discipline the technical regulations that were used to limit the use of ethanol blends. One question for the WTO was whether it should focus on renewable energy, or expand into considering low-carbon energy sources and technologies, such as natural gas – which was the fastest growing source of energy after non-hydro renewables. UNCTAD indicated that some of these issues would be revisited at the forthcoming Commission on Trade in Goods and Services and Commodities, which was going to be held on 17 March.

111. The representative of OECD believed that many of the criticisms levelled at the APEC and OECD lists related to the fact that these lists had not been developed by the WTO. He explained that the OECD list had not been developed for the purposes of Paragraph 31(iii) negotiations. Rather, it had been developed as part of an analytical exercise that had been undertaken to identify the products used for environmental protection. The APEC process had been more systematic, and had involved a number of developing countries. Recently, the OECD had studied the synergies between the two lists and found that many of the products on both lists were used in the context of environmental services, which responded to the concern that India had raised. The study found that what often happened in the market-place was that, when environmental services were provided, local producers in developing countries started increasing their production of the associated environmental goods and, in some cases, even exporting them. He reminded delegations that the OECD included three developing countries, Korea, Mexico and Turkey, and that its studies also contained a developing country perspective.

112. New Zealand had provided the following definition of the environmental industry in its submission (which was the OECD definition): "activities which produce goods and services to measure, prevent, limit, minimize or correct environmental damage to water, air and soil, as well as problems relating to waste, noise and eco-systems." The OECD wondered how this broad definition could be characterized as either restrictive or regional.

113. The representative of Venezuela welcomed UNCTAD's statement. However, despite what had been stated by the OECD representative, he was not convinced that the OECD definition of the environmental industry captured developing country interests. It did not refer to sustainable development, and was unclear in its cover of the products of biological diversity, genetic resources, and energy. Furthermore, it did not cover the human genome, whose patenting Venezuela prohibited. OECD documents could not be treated as a *fait accompli* by the CTESS.

Requests for Secretariat Assistance and the Chairman's Concluding Remarks

114. The representative of Hong Kong, China, supported by Australia and the United States, asked the Secretariat to synthesize or compile the information that was before the Committee, so that a more focussed and effective discussion could be held. The representative of Canada supported the idea that the Secretariat prepare a compilation of the environmental goods lists that have been submitted to the CTESS to date, which could evolve as further lists were developed.

115. The representative of Egypt asked the Secretariat to compile data on Members' applied and bound tariff rates on the goods that had been submitted to the CTESS. The representative of Korea did not believe that tariff statistics would help in these negotiations. Rather, of more use would be data on trade flows. This could be made available by the Secretariat in its compilation of the various lists submitted by Members.

116. The Chairman stated that the Secretariat would prepare a document that would compile the key issues raised by Members in their submissions under Paragraph 31(iii), including on their various product categories and lists to the extent possible. The Secretariat would also respond to the request for tariff data that had been made by Egypt. Furthermore, he indicated that he would be holding informal consultations on the issue of technical assistance.

IV. OTHER BUSINESS

117. The representative of Qatar signalled his intention to give a presentation at the next formal meeting of the CTESS on the Qatari proposal on natural gas, in order to assist Members in understanding its environmental merits.

118. The representative of Japan suggested that the ad hoc invitation to the International Tropical Timber Organization (ITTO) be renewed, but the representative of Malaysia objected. No consensus was reached on this matter.

119. The Chairman indicated that the ad hoc invitation to the organizations that had been invited to this meeting[7] would be renewed for the next formal meeting of the Committee, which would take place on 7-8 July 2005.

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[7] These organizations include: UNEP, UNCTAD, the World Customs Organization (WCO), the OECD, and the following seven MEAs: The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); the Convention on Biological Diversity (CBD); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol); the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention); the Stockholm Convention on Persistent Organic Pollutants (POPs Convention); and the United Nations Framework Convention on Climate Change (UNFCCC).