

**Committee on Trade and Environment
Special Session**

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

7-8 JULY 2005

Note by the Secretariat

1. The Committee on Trade and Environment in Special Session (CTESS) held its twelfth meeting on 7-8 July 2005 on the basis of the agenda set out in the convening airgram, WTO/AIR/2600.

**I. PARAGRAPH 31 (I) - WTO RULES AND SPECIFIC TRADE OBLIGATIONS IN
MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAS)**

2. The Chairman drew Members' attention to two new papers that had been submitted under this item: document TN/TE/W/53 by the European Communities, and document TN/TE/W/58 by Switzerland.

3. The representative of the European Communities (EC) introduced the EC's new submission entitled *Putting MEA/WTO Governance into Practice: The EC's Experience in the Negotiation and Implementation of MEAs* which had been circulated in document TN/TE/W/53. The EC's objective in tabling this submission was two-fold. First, to contribute to the sharing of national experiences in the negotiation and implementation of MEAs, which some delegations had called for as part of the discussion under Paragraph 31(i). Second, to build on a previous submission which set out governance principles that the EC believed should govern the relationship between WTO and MEA rules.¹ One of the key principles addressed in this paper related to cooperation and increased information flow at national and international levels, which in the EC's view was a precondition to enhance the mutual supportiveness between the WTO and MEA regimes.

4. The first part of the paper described the EC's internal policy coordination mechanisms, drawing attention to its "top down" objective to integrate sustainable development in all policies developed through international negotiations. In order to achieve governance in that process, the EC had worked on guiding principles for formulating policies. These principles included openness, participation, accountability, effectiveness and coherence. The paper set out the internal coordination processes within the Commission and further elaborated on the role of the European Council and the European Parliament. The paper highlighted that reaching out to stakeholders was also an important part of this exercise. The EC referred to its experience in the context of the Kyoto Protocol, for which it had held a stakeholder consultation on the future of climate change policies. The Biosafety Protocol negotiations also provided a good example of a strong and coherent position of the EC in MEA negotiations, for which the EC had consulted with the main players, including the biotech industry and NGOs.

¹ TN/TE/W/39.

5. The last part of the paper focused on the EC's objectives in the negotiations. In this respect, the EC recalled that coordination and coherence started at the national level, but that a similar kind of coordination had to be transposed into the international arena. This formed part of the governance principles to be taken into account when defining the relationship between WTO and MEAs. Some of these issues were being addressed through the negotiations on observer status and information exchange under paragraph 31(ii).

6. The representative of Switzerland noted that their submission entitled *The Relationship between Existing WTO Rules and Specific Trade Obligations (STOs) set out in Multilateral Environmental Agreements (MEAs): A Swiss Perspective on National Experiences and Criteria Used in the Negotiation and Implementation of MEAs* was Switzerland's second submission under this agenda item. In the first part of the paper, Switzerland joined other delegations in sharing their experiences in national coordination; the second part focused on the principles which Switzerland considered should govern the WTO-MEA relationship.

7. Switzerland noted that its institutionalized coordination and consultation mechanisms for the elaboration of its negotiating position, in the context of MEAs or WTO, operated at three different levels. The first level allowed for intergovernmental coordination in the preparation of national positions in view of negotiations. Such coordination took place for instance, on trade-related issues in MEAs, which were subject to the same consultation procedure as the implementation of international obligations following from such negotiations. The second level consisted of mechanisms to deal with issues of particular importance, such as questions relating to the precautionary principle, with some more permanent consultation mechanisms involved. The third level, which consisted of stakeholders' consultation, was presented by reference to the Swiss Federal Law on Environmental Protection. This law stipulated that interested parties were to be consulted in the preparation of international legal instruments and their implementation. In this respect, Switzerland emphasized that the partnership the government had with the industries and the economy had been one of the most important relationships, in the light of effective implementation of MEAs or specific WTO rules.

8. The paper also described the criteria which were intended to guide MEA negotiators when considering trade provisions specifically in MEA negotiations, or when implementing STOs domestically. In doing so, the following principles had been set out, namely that trade measures (1) must serve an overriding public interest; (2) must not constitute arbitrary or unjustifiable discrimination nor disguised trade restrictions; (3) must be proportional to achieve the environmental goal; and (4) must be transparent. With respect to this issue, Switzerland found the submissions by Canada and the United States (US) helpful. Canada had described very similar criteria that its MEA negotiators considered when examining the potential for trade provisions, and the US had suggested some conditions which contributed favourably to the mutual supportiveness of the relationship between WTO rules and MEAs with respect to specific trade obligations.²

9. Switzerland emphasized that the WTO context should be borne in mind and that any recommendation with regard to the criteria for the negotiation of MEAs would have to be endorsed by MEA negotiators. Furthermore, she noted that although negotiators of both MEAs and WTO provisions should strive to ensure mutual supportiveness of the rules in order to prevent disputes, there was no guarantee that conflicts would not occur at the implementation stage. The absence of any conflict between WTO and MEA rules to date did not preclude that such conflict could arise in the future, especially given the steady growth of the interface between the two sets of rules.

10. Switzerland further stressed that since both the WTO and MEA regimes were dynamic and evolved continuously over time, it was important to clarify the principles governing their relationship in order to ensure mutual supportiveness. Switzerland recalled the principles that it considered central to the discussion in the CTESS. First, the principle of no hierarchy, which was based on the idea that

² TN/TE/W/40.

both legal systems were equal and that there was no hierarchy between the trade and environment regimes. Second, the principle of "mutual supportiveness", which was based on the assumption that the objective of both environmental and trade regimes was the same, namely the promotion of well-being. In this respect, Switzerland pointed out that although there were different policy areas, issues and competences between the trade and environment regimes, there was nonetheless a need to ensure their mutual supportiveness. Third, the principle of deference, according to which each framework should remain responsible and competent for the issues falling within its primary area of competence, and accept the competence and decisions of the other regime. This would avoid dealing with issues in the wrong forum because it may be more convenient for one or the other reason. In conclusion, Switzerland noted that while it encouraged the discussion on sharing of experiences with respect to the negotiation and implementation of STOs in MEAs both at national and international level, the CTESS had to go further and draw certain conclusions in order to fulfil its mandate and ensure that both systems can evolve in a mutually supportive way.

11. The representatives of Australia, Norway, Chinese Taipei, Canada, New Zealand, Korea, United States, Argentina, Egypt, India, Nigeria, Mexico, Brazil and Hong Kong, China, thanked the European Communities and Switzerland for sharing useful information on their national experiences. Various delegations, in particular the United States, Nigeria and Mexico, underlined the importance of the discussion of national experiences in helping to tackle the mandate in paragraph 31(i). New Zealand, Korea and Nigeria joined other delegations in pointing out that the two submissions, as well as other papers which had been submitted in the CTESS, underscored that coordination at the national level, particularly between trade and environment officials, was important for coherence and consistency between international instruments.

12. The representative of Australia welcomed the submissions by the EC and Switzerland as useful contributions to the national experience sharing commended by a large number of Members. In particular, the EC submission reaffirmed the importance of effective domestic procedures as a key ingredient in the relationship between MEAs and the WTO. The paper provided useful examples of how the EC's internal procedures had facilitated the negotiation and implementation of MEAs. It also suggested that the key means by which the EC put into practice its principles of governance was through this comprehensive approach at the domestic level. In this regard, the EC's submission added further weight to Australia's view that trade and environment obligations were being implemented in a mutually supportive way. As such, the relationship between the two bodies of international law was working well. This remained instrumental in terms of how Members should approach the mandate of negotiation in paragraph 31(i).

13. Australia noted that some of the questions raised in the EC's paper required further reflection. For instance, it was not clear to Australia how certain parts of the paper fitted within the framework of the mandate in paragraph 31(i). Australia had raised a similar concern with respect to the previous submission by the EC on guiding principles for the relationship between WTO rules and MEAs. With respect to the issue of policy coordination, Australia was not convinced that there was any problem with current levels of communication and understanding at the international level. This was clear from the various declarations adopted at important international meetings, such as the WSSD. In fact, a number of avenues already existed to ensure efficient coordination at the international level. Some of the suggestions made by the EC and Switzerland in their papers regarding information exchange and observer status were useful tools to explore, and had clear linkages with the mandate in paragraph 31(ii). Australia called for more discussion on national experiences and hoped that other Members would contribute to this exercise.

14. The representative of Norway welcomed the two new documents, both of which had emphasized that policy coordination started at home. The Swiss paper had revealed many similarities to the Norwegian system, in particular with respect to the principles which applied to inter-Ministerial coordination. Norway supported the emphasis in the Swiss paper on the principles of no hierarchy and mutual supportiveness. Norway welcomed the views of other delegations on the issue of outcome

of the mandate. In this respect, Norway suggested that Members try to identify some common grounds, perhaps starting with the consensus reached at the Singapore Ministerial Conference.

15. The representative of Chinese Taipei welcomed the EC and Swiss submissions, which had provided a clearer picture of some of the elements that could contribute to harmonize STOs in MEAs and WTO rules at national level. She sought clarification from Switzerland on two points. First, with respect to the issue of the right forum for solving disputes involving MEAs and WTO rules, Chinese Taipei had understood Switzerland as suggesting that the MEAs should have equal competence in resolving such conflicts. Chinese Taipei emphasized that WTO Members' rights to solve trade-related conflicts in the WTO dispute settlement system should be safeguarded on account of the obligations and rights of a WTO Member and the intrinsic responsibility and competence of the WTO. Secondly, with respect to the statement by Switzerland that the conclusion of the negotiations under paragraph 31(i) should go beyond experience sharing in order to fulfil the mandate, Chinese Taipei asked Switzerland what it considered would be an appropriate outcome for these negotiations.

16. Turning to the EC proposal, Chinese Taipei first noted that on the basis of the proposals tabled so far, it seemed there were two approaches which had been introduced by Members, namely the "conceptual or principle approach" and the "national experience sharing approach". It further noted that Members seemed inclined to agree that MEA and WTO rules should be mutually supportive in order to achieve trade and environment "win-win" situations. In order to reach this goal, Chinese Taipei agreed with the EC's suggestion in paragraph 36 of its submission that Members should endeavour to work out solutions to strengthen information exchange and policy coordination between WTO and MEAs, both at national and international levels. Chinese Taipei believed that this point could be further developed as an alternative approach in the paragraph 31(i) negotiations. Finally, Chinese Taipei wished to reiterate that the negotiations under paragraph 31(i) should not prejudice the WTO rights of any Member that is not a party to the MEA in question. The role of the WTO in dealing with trade disputes, within the boundaries of its competence, should not be overlooked. Moreover, the right of Members to resort to WTO's dispute settlement system could not be prejudiced.

17. The representative of Canada agreed with the EC and Switzerland that Members should go beyond national experience sharing and draw some conclusions from this exercise, including possible recommendations on conflict minimization. At the same time, Canada supported Norway's view on the uncertainty over the content of such conclusions. With regard to the Swiss paper, Canada pointed out that there was a lot of commonality in the way Switzerland operated. Canada expressed agreement with some of the ideas and principles put forward by Switzerland, in particular, that there was no guarantee that there would not be any conflicts between MEAs and WTO rules in the future. In fact, in Canada's view, tensions between the two regimes had always existed. Canada wished that Members could draw certain conclusions at the end of this process that would contribute to reinforce this relationship and minimize the potential for conflict.

18. The representative of New Zealand observed that both the EC and Swiss papers had underscored that coordination at the national level was important for coherence and consistency between international instruments. The level of complexity of such coordination varied depending on the administrative structures of a Member's economy. Although the coordination and consultation mechanisms illustrated by the Swiss experience were more relevant to Members than those of the EC, it was certainly helpful to understand the processes that the EC's unique organizational arrangements required. Regarding policy coordination at the international level, New Zealand supported the EC's view that the channels of communication and information exchange between the WTO and MEA Secretariats were important and should be improved as much as possible.

19. New Zealand also clarified its position on the issue of the potential applicability of principles or criteria to the mandate in paragraph 31(i), as suggested by the EC and Switzerland in their

submissions. Switzerland had outlined some basis criteria that guided its MEA negotiators when considering trade provisions in MEA, or in the national implementation of STOs. Switzerland had argued that the development of criteria would contribute to improved coordination at the international level, and would ensure mutual supportiveness between the two sets of law. However, as was noted in the Swiss paper, other countries had also outlined principles or criteria that were potentially useful in examining the WTO-MEA relationship. In particular, their potential application and design of trade provisions in MEAs showed that different countries had different views about what is important for them in this area. With respect to national experience sharing, it was not clear to New Zealand whether this exercise actually contributed to fulfilling the mandate in paragraph 31(i). New Zealand nonetheless welcomed further contributions on this issue.

20. In conclusion, New Zealand raised three questions concerning the two new submissions. First, in relation to the issue of policy coordination within the Commission as outlined in the EC's paper, New Zealand wondered how an unfavourable opinion given by a Directorate-General on a proposal was dealt with in the context of EC's inter-service consultation procedure. In particular, New Zealand was interested in examples where the EC had encountered this problem. The second question related to policy coordination among the different Directorates-General and how it extended to the negotiation of MEAs on the ground. For instance, New Zealand wondered how often trade experts participated in MEA meetings where STOs were being considered. The third question related to the principles proposed by Switzerland, and in particular, the principle of "no hierarchy" between the trade and environment regimes. New Zealand asked Switzerland if it could comment on how this principle related to concepts of international law.

21. The representative of Korea agreed with the position advocated by the EC and Switzerland that delegations should go further than the question of whether well coordinated domestic policies could reduce possible conflicts between the WTO and MEAs, i.e., including the idea of better coordination at the international level. Regarding the need for common policy objectives and the principles advanced in the two submissions, Korea was not convinced that the conceptual discussion could facilitate, at this juncture, Members' efforts to identify the problems between WTO and MEAs and to provide a practical solution. Instead, Korea believed that the CTESS should focus on sharing and understanding concrete cases illustrating the relationship between the two regimes. It further noted that such an exercise did not have to be confined to national coordination.

22. The representative of Hong Kong, China noted her delegation's support of the views expressed by Australia and New Zealand. Hong Kong, China was in favour of a practical approach focusing on Members' national experience rather than to prejudge whether there would be problems in the international arena in the future.

23. The representative of the United States expressed appreciation for the two new papers which provided a valuable contribution to the discussion on national experiences. The US also considered that improved coordination at the domestic and international levels was key to ensuring a mutually supportive relationship between trade and environment policies. While the US agreed that international coordination was relevant to another aspect of the mandate, namely paragraph 31(ii), it agreed with Australia that it was certainly not a substitute for national coordination between trade and environment officials. The US also agreed that delegations should focus on sharing national experiences regarding STOs set out in MEAs rather than addressing broad overarching principles on the WTO-MEA relationship that could fall outside the scope of the mandate in paragraph 31(i).

24. The representative of Argentina expressed his appreciation for the new submissions by the EC and Switzerland, which set a good example for countries that did not have such elaborate mechanisms for internal coordination. Argentina distinguished two phases so far in the negotiations under paragraph 31(i). First, the identification of STOs contained in certain MEAs, and second, the sharing of national experiences in the negotiation and implementation of MEAs. With respect to the first phase, Argentina noted that the exercise had been useful in terms of understanding how MEA

provisions are formulated as compared to WTO rules. From this exercise, Argentina observed that there did not seem to be any direct conflict between WTO and MEA rules. The second phase, which involved national experience sharing, had revealed the need to refine internal coordination mechanisms and to improve information exchange between competent agencies in the areas of trade and environment. However, in Argentina's view, neither phase had identified any problems that called for the development of international principles within the WTO. It was therefore premature to try to clarify, or define, the relationship between MEA and WTO rules. Therefore, delegations should pursue the examination of national experiences.

25. The representative of Egypt said that it would be useful if the EC and Switzerland could provide examples of situations of conflict between trade and environment provisions, how they had dealt with them, and how they had tried to make the final outcome of the MEAs compatible with both environment and trade.

26. The representative of India joined other delegations in expressing its doubt over some of the conclusions drawn in the submissions by the EC and Switzerland. India joined New Zealand in seeking some clarification from Switzerland on the principle of no hierarchy and its application in the context of international law.

27. The representative of Nigeria noted that his delegation had benefited from the national experience sharing exercise so far. Nigeria was convinced that national coordination could enhance the mutual supportiveness between trade and environmental rules and contribute to avert conflicts, even though conflicts could not be entirely ruled out. Nigeria hoped that the outcome of the negotiations would be beneficial to all participants.

28. The representative of Mexico agreed with other delegations on two points: first, that both the EC and Swiss submissions pointed to the absence of conflict between WTO and MEA rules; and second, that it was premature to define criteria or principles to govern the WTO-MEA relationship, as suggested by Switzerland.

29. The representative of Brazil noted that the different objectives and rationale of environmental agreements and WTO rules could explain some of the tensions that existed between the two sets of law. Brazil also wished to stress that the situation of developing countries was reflected in both regimes through different sets of rules, and that this was an important aspect that needed to be taken into account. Brazil agreed with other delegations that while the EC and Swiss experience was useful, any discussion regarding overarching principles to govern the WTO-MEA relationship would be premature.

30. The representative of Brazil explained how Brazil had improved national coordination among different Ministries in the subject areas at issue through the equal participation of both trade and environment experts in relevant discussions. This resulted in greater convergence between the different sets of rules that were being developed. Brazil noted that the issue of coherence between the two sets of rules would remain important as both types of agreements became increasingly encompassing. In that sense, national experience sharing was a useful exercise. However, the international dimension also required close consideration. Since both sets of norms carried equal weight in the international arena, Members had to address the issue of possible tensions or conflicts between them. This was done, for instance, in the TRIPS Council with respect to intellectual property and disclosure of origin of genetic resources. In Brazil's view, this was an example where issues of compatibility between the Convention of Biological Diversity and WTO rules should be made clearer in order to reinforce their mutually supportiveness.

31. The representative of the European Communities noted that the Swiss paper had been helpful in bridging the gap between the national experience sharing exercise, and what could be learned from these experiences in order to come closer to a result in the negotiations. The Swiss paper addressed

this concern by recalling some of the discussion on the criteria used in the context of MEA negotiations. The EC supported the criteria outlined in the Swiss paper. He noted that the final part of the Swiss paper was a valuable attempt to distil from the debate on national experiences something concerning the relationship between the WTO and MEA rules. The EC had focused in its paper on one aspect of these principles, which it considered as part of a bigger universe of criterion principles which Members could work on.

32. The EC disagreed with the delegations who had suggested that the relationship between MEA-WTO rules was free of tensions. In this respect, the EC referred to the statement by Canada which had emphasized that even in current processes tensions clearly existed. Moreover, the EC attributed the success in solving these problems to the criteria already applied and the attempts to get a debate on the issue. The EC expressed its hope that the WTO would recognize these issues in a more precise fashion, and that the principles at issue would be taken into account in current and future work.

33. Turning to the interventions made by delegations, the EC welcomed the references by some delegations to paragraph 31(ii) as an encouragement to revisit that part of the mandate. It felt that there were some practical and non-controversial points that could be drawn out in the context of the negotiations under paragraph 31(ii) on which Members could focus in order to make progress.

34. In response to the comment by Chinese Taipei, the EC noted that nothing in the EC proposal was intended to restrict or diminish Members' rights. With respect to the comment by some delegations that it was premature to discuss principles under paragraph 31 (i), the EC noted that although the sharing of national experience was useful, Members would at some point have to draw certain conclusions from this exercise. According to the EC, the example of the relationship between the CBD and the TRIPS Agreement invoked by Brazil was actually similar in nature in terms of defining how the objectives of the CBD and the TRIPS Agreement could be reconciled in a useful manner. The EC also believed that it was more relevant to think about what could actually be learned from the discussions related to the Cartagena Protocol on Biosafety or the relationship between the CBD and the TRIPS Agreement. With respect to the question concerning the EC's Inter-Service consultations, he noted that any disagreement was dealt with in a transparent manner involving all interested parties.

35. The representative of Switzerland expressed her appreciation for the interventions made by delegations, and thanked the EC for its submission. In Switzerland's view, there were two main lessons to be learnt from it: first, policy coordination was needed at both national and international levels; and second, policy coordination was a prerequisite for preventing conflict between policy areas and to ensure the achievement of any overarching policy goal. In response to the question by Chinese Taipei, Switzerland noted that in no way did it wish to question the right of any Member to bring a trade-related dispute to the WTO dispute settlement mechanism, and there was certainly no such restrictions in the Dispute Settlement Understanding (DSU). However, Switzerland considered that it was more appropriate for any dispute arising between parties to an MEA to be resolved through the mechanisms provided for within the MEA.

36. With respect to the issue of outcome of paragraph 31(i), Switzerland noted that it was open about the form of such outcome, but that delegations would have at some point, to come to a conclusion on the need for some kind of operating or clarifying rules. In response to the question put forward by New Zealand and India on the principle of "no hierarchy", Switzerland indicated that the principle did not contradict the Vienna Convention on the Law of Treaties, but it would come back with a more detailed answer upon closer examination of the issue. Finally, Switzerland noted that the proposals in its paper were not presented as a substitute for national coordination mechanisms, but were rather intended to provide some further clarification of the relationship between WTO and MEAs.

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

37. There was no discussion under this agenda item

III. PARAGRAPH 31 (III) – ENVIRONMENTAL GOODS AND SERVICES

38. The Chairman drew Members' attention to a number of new documents that had been submitted under this item: TN/TE/W/49 by New Zealand, complemented by the statement in TN/TE/W/49/Suppl.1; TN/TE/W/50 by Canada, complemented by the statement in TN/TE/W/50/Suppl.1; TN/TE/W/51 and TN/TE/W/54 by India; TN/TE/W/47/Add.1 and TN/TE/W/56 by the EC; TN/TE/W/52 by the United States; TN/TE/W/55 by Cuba; and TN/TE/W/59 by Brazil. The Secretariat had also updated its *Synthesis of Submissions on Environmental Goods*, which had been circulated in document JOB(05)/57/Rev.1.

Presentation of new submissions

39. The representative of New Zealand presented document TN/TE/W/49, which contained New Zealand's first list of environmental goods. This list had first been introduced at an Informal CTESS Meeting on 10 June 2005, and the statement by New Zealand at this meeting had been circulated in TN/TE/W/49/Suppl.1. In these documents, New Zealand sought to explain how it believed it was time to move away from theoretical and conceptual discussions and to start "defining by doing". It also provided some explanation of how it had constructed its list, including through the use of reference points. In particular, New Zealand had proposed the OECD's definition of environmental industries and the APEC's conceptualization of environmental goods as possible reference points. It had also suggested as another possible reference point the lists of environmental goods established through free trade agreements (FTAs), though it had been unable to identify any such products from its own FTAs.

40. New Zealand's submission also proposed three new categories of environmental goods, namely EPPs defined by end use or disposal characteristics; cleaner or more resource-efficient technologies and products; and waste and scrap utilization. The paper also made reference to the "living list" concept. He noted that in introducing its list, New Zealand had sought to identify where developing country interests lied, as a way of making a distinction between the perception of a lack of developing country interest, and the reality as revealed by the data.

41. The representative of Canada presented document TN/TE/W/50, which contained an initial list of environmental goods, and document TN/TE/W/50/Suppl.1 which contained Canada's statement at the Informal Meeting on 10 June 2005. He stressed that the list presented was without prejudice to Canada's position as negotiations proceeded. Canada explained that while the products on the list were identified by the Harmonised System (HS) 6-digit code, the products that required greater specificity were identified by a description in the "Additional Product Specification" column.

42. Canada considered that the categories used in its list were a useful tool to catalogue products whose purpose or function might not be explicit from the HS descriptions. He emphasized that a flexible approach should be taken with respect to the use of categories in working on a list of environmental goods. Regarding the linkages between the environmental goods and services and the negotiations, Canada noted that there were many environmental activities that entailed the delivery of services in conjunction with the use of goods. In developing its list of environmental goods, Canada had considered products used in the context of the delivery of environmental services in order to ensure a mutually supportive approach.

43. Canada emphasized that it viewed the negotiations under paragraph 31(iii) as an important contribution to sustainable development. In particular, Canada considered it important to ensure that

developing country Members had the opportunity to effectively participate in the negotiations, and that their interests were appropriately reflected through a multilaterally agreed list of environmental goods. Canada expressed its hope that an initial list of environmental goods reflecting the interests of all Members would be presented at the Hong Kong Ministerial Conference. In concluding, Canada stressed that these negotiations were not only about liberalizing trade, but were also about allowing Members to improve and protect their environment.

44. The representative of India noted that its first submission in document TN/TE/W/51 had been tabled at the Informal Meeting on 10 June 2005, and that the second paper in document TN/TE/W/54 built on India's first submission. India wished to emphasize in its submissions the importance of the objectives of the mandate in paragraph 31(iii), which were to achieve economic, developmental and environmental benefits. In this regard, he recalled that the WSSD had supported voluntary, WTO compatible initiatives for the creation or expansion of domestic and international markets for environmentally-friendly goods and services. India pointed to the convergence of objectives in these various mandates and programmes, and stressed the need to develop synergies between the Doha Ministerial Declaration and other mandates, e.g. the Johannesburg Plan of Implementation, in order to achieve sustainable development.

45. Discussion so far under paragraph 31(iii) had focused on tariff reductions for environmental goods, and there had been little discussion on environmental services. According to India, this could create an imbalance in the negotiations. Many environmental activities did not only entail the delivery and use of goods, but also the delivery of services in an integrated manner. Separation of services from goods in a particular environmental activity could prove difficult. India's suggested Environmental Project Approach (EPA) intended to address environmental goods and services together. It also intended to address the diversity in environmental standards of Member countries, with common and differentiated responsibilities. The approach addressed the mandated requirements in a direct, cohesive, focused and integrated manner. The commitment of each Government Member would be commensurate with clearly identified environmental benefits to be achieved, as this approach was based on a conscious national assessment of both developmental and environmental concerns specific to each Member country, within the broad parameters agreed in the CTESS. In this sense, the approach was need-based and objective-oriented.

46. India explained that under the project approach, concessions would be given on goods and services included in the project, for the duration of the project. Each Member would have a Designated National Authority (DNA) that would evaluate project proposals on the basis of defined criteria. The DNA would oversee all approvals to be granted for tariff reduction on environmental goods and services related to a specific project. According to the proposal, while the composition and the structure of the DNA would be determined by Member countries, such authorities could invite participation of stakeholders across the board from the government, non-government organizations and civil societies. It would be, therefore, in the nature of a public-private partnership. In this context, India drew a parallel with the national authorities created under the Clean Development Mechanism of the Kyoto Protocol, and noted that the experience gained in setting up such authorities could guide Members in their implementation of the project approach.

47. India believed that the list approach, unlike the EPA, was too diffuse to achieve any particular environmental objective. In the case of dual-use products, for instance, the benefit for the environment could not be measured. The fact that the current lists were largely based on the APEC and OECD lists was also a concern for India. Some studies had shown that these lists did not give any particular market access advantage to developing countries. Trade significance for developing countries based on these lists of environmental goods was low, whereas export dynamics for developed countries were high. A recent UNCTAD study on environmental goods had confirmed this even for an extended list of environmental goods. Their study showed that the export to import ratio of developing countries, which included China, followed by Mexico, Singapore, Korea, Malaysia, Brazil, Thailand, Indonesia and India, countries which accounted for 90% of the developing countries'

exports, did not have any particular market access advantage. China with a ratio of 0.7 was at the maximum, followed by Singapore and Mexico at 0.59, Brazil at 0.52 and India at 0.43. In most of the cases, large parts of the exports were south-south. This meant that China imported 30 per cent more of environmental goods than it exported. The advantage or disadvantage for other countries could accordingly be assessed. India considered these figures to be indicative of the kind of market access that developing countries could expect if the Doha mandate for tariff reduction was read only for environmental goods, without looking at other aspects of the mandate enshrined in paragraph 31 (iii).

48. In addition, India pointed out that the list approach did not take into account technology transfer. India recalled that the EPA, which aimed at developing synergies between trade and environmental interests, addressed these issues in a comprehensive manner. The objective was not only to enhance the national capacity to produce environmental goods and services, but also to facilitate compliance with sanitary and phytosanitary measures and remove technical barriers to trade, with a view to improving market access for developing countries.

49. The EPA proposed a way forward on paragraph 31(iii) that was essentially environmental. In this context, market access was not the end in itself, but simply a means to that end. In this sense, the EPA would engage Members in addressing the mandate independently of considerations relevant to NAMA negotiations. The project approach recognized the principles of the multilateral trading system, such as transparency, predictability and non-discrimination. It would also help to tackle the issue of dual-use of goods since the concessions granted would be entirely project-driven. The role of the CTE in this context would be to formulate criteria to be applied by the DNA in determining whether an environmental project qualified for concessions on environmental goods and services. The projects would range from commercial ventures to individual purchases, and would not be differentiated in terms of private, governmental, non-governmental or non-profit ventures. Furthermore, the project approach could be accommodated within HS Chapter 98. India noted that the list approach had failed to garner effective participation from developing countries, who had found it difficult to elaborate a list and contribute to the discussion. The project approach was simple in its content and easy to implement. India stressed that the EPA was presented as a stand-alone approach, rather than as a complement to the list approach.

50. The representative of the EC noted that document TN/TE/W/47/Add.1 provided the HS codes for the environmental goods identified in TN/TE/W/47. The EC noted that the HS codes had been provided in order to facilitate the identification of products, without prejudice to the EC's position on whether there should be full coverage in the negotiations of the products falling within the 4- or 6-digit code. With respect to the Secretariat's Synthesis, the EC suggested to consolidate the information in order to reflect the actual number of products contained in the lists submitted, even though the descriptions provided by Members varied.

51. The EC's new paper in document TN/TE/W/56 built on its earlier submission, in particular with regard to Part A, which covered pollution control and resource management issues. The EC had also added information concerning relevant objectives set out in the Millennium Development Goals and the Johannesburg Plan of Implementation. This provided some kind of "reference point", as called for by New Zealand. The EC welcomed Members' views on whether the products identified could actually contribute to achieving these objectives.

52. The EC noted that there were many products on the list, including in Parts A and B of its paper in respect of which there was a lot of potential for all Members. He also called for a debate on the issue of renewable energies, and what could be achieved in this particular area. The EC felt that there were a number of other issues, especially in Chapters 45 and 46, 56, 57, 59, and perhaps 33, which would merit closer examination, including with respect to products made out of vegetable plaiting materials, vegetable textiles, and fibres. The EC emphasized the importance of both the environmental and developmental dimensions of the negotiations. With respect to the developmental

aspect, the EC noted that its list contained many products for which tariffs were significant, and which were not exported only by developed countries.

53. The EC drew Members' attention to the need to have a mechanism to avoid technological lock-in. It also believed that the process of putting forward products to be included on the list should continue on an ongoing basis. In the EC's view, the current list of products was lengthy, and he encouraged Members to start thinking about what would not be acceptable to them. For instance, in the case of dual-use products, delegations could reflect on whether the products that were more predominantly oriented towards other objectives than environmental protection should be excluded.

54. Turning to the issue of eco-labels raised in its submission, the EC noted that it was not its intention to suggest that eco-labels be used as a criteria, but rather as a tool to differentiate products. The EC underlined that this did not necessarily open the issue of non-product-related PPMs, since many eco-labels were awarded on the basis of the physical characteristics of the products. This was the case, for instance, with recycled paper. The EC noted that delegations would have to be pragmatic and creative for negotiations to result in a balanced outcome. He invited delegations to reflect further on this suggestion. The EC was willing to show flexibility in the process and take into account concerns related to special and differential treatment. Finally, the EC welcomed Members' comments not only on the approach followed, but also on the individual items identified in its submissions.

55. The representative of the US presented document T/N/TE/W/52, which contained the US' initial list of environmental goods. This list was based on a practical, bottom-up approach. It focused on end-use criteria, and did not rely on product distinctions based on PPMs or end-use certificates. The list of 155 products had been developed following consultations with US stakeholders, advisory committees, interested US government agencies, and the US Congress. The US reserved the right to update its initial list as consultations with these groups proceeded. Apart from other Members' lists, the US had also drawn from the list developed by APEC economies in 1998, the list published by the OECD in 2001, and the list published by UNCTAD in 2003.

56. With regard to the structure of the list, the US explained that the products were listed in chronological HS order, and the Annex identified the Harmonized System code for each product at the 6-digit level, as well as a description of each product. In some cases, the US had provided a more detailed product description (what had been referred to as an "ex out"). The list also included the specific environmental category of each good to identify its relevance to environmental protection. However, the US had not organized products into categories like other Members had, given that some of the products had multiple environmental uses. For purposes of transparency, the US had included import and tariff data for all goods identified, and provided cross-references to other lists, including lists of other Members (at the HS 6-digit level). On the issue of overlaps with other lists, the US agreed with the EC that information contained in the Synthesis document could be further condensed.

57. The US had also added some information in order to address a point that had emerged in the course of the discussion, namely that developed countries were only willing to list goods which were already duty free, and/or goods in which they had only a major export interest. Such information included average MFN tariff data, which showed that less than half of the products listed were duty free in the US market, and that some of the products carried a tariff of up to 14 per cent. It had also offered import data to show that the US was a major importer of most of these goods. While it was true that the US was a major exporter of many of these products as well, the trade data showed that US imports had outpaced exports.

58. Turning to the content of its list, the US noted that most of the products fell into the categories of environmental remediation, pollution prevention, and renewable energy. The US was also encouraged by the discussion on EPPs and supported New Zealand's suggestion to include EPPs based on end-use or disposal characteristics, and not on PPMs. She noted that the US list included a few EPPs. The US had also added to its list a few products which did not fall into any of the

environmental categories previously discussed, and proposed natural resources protection as a new category. In this category, the US had listed circle hooks, which reduced the accidental death of sea turtles, and fish nets that incorporated turtle excluder devices (TEDs). These goods were estimated to reduce mortality of sea turtles in the order of 70-90 per cent compared to conventional fishing methods.

59. The other area on which the US had focused in preparing its list was renewable energy. She noted that energy demand was forecast to rise by almost 60% between 2004 and 2030, according to the International Energy Agency's (IEA) World Energy Outlook. While more traditional sources of energy were rising in price, the cost of renewable energy was dropping significantly. For example, solar cells had become 20% cheaper in just the last few years, and this drop in price had been accompanied by major improvements to the technology itself, meaning lighter panels that had better energy absorption and storage capability. A recent OECD paper suggested that renewable energy technologies were particularly attractive energy sources in rural areas, where traditional grid-based power could be difficult and costly to provide. This was an important fact, as currently around 1.6 billion people in the world, predominantly in rural areas, did not have access to electricity. The same paper noted the increasing use of solar PV systems in Africa, usually sold by independent businesses operating locally, as well as a joint venture project between a major Asian producer and an African consumer on a PV module assembly line. In addition to developing country users of solar energy, there was a growing number of developing country manufacturers. For example, a web site listed around 35 Indian manufacturers of solar PV cells and 115 suppliers of solar electric power systems. One of them reported going from a three-person start-up a few years ago to becoming India's largest producer of solar systems. As solar cells themselves accounted for more than half of the cost of an installed residential solar electricity system, reducing tariffs would have a significant effect on overall costs. MFN tariffs were as high as 20% in some countries, including those with high solar potential, such as Djibouti and Vanuatu.

60. The US noted that its list had been analysed internally in terms of developing country trade in environmental goods and related trends. She noted that the trade data was reported at the HS 6-digit level and could be overstated in some cases where the environmental good was designated by an "ex", but this reflected the best data available and was helpful in assessing trade flows and trends.

61. She noted that developing countries were both producers and consumers of a wide variety of goods found on the US list. Developing countries exported a range of environmental products including goods produced using advanced technology (such as electro-magnets) to other low-tech items such as sacks and bags made of jute. Forty per cent (40%) of all US imports of environmental goods on the US list came from developing countries in 2004, up three per cent from 2002. In addition, developing country imports (as a share of US imports of environmental goods) had grown at a rate of 15% over the same three year period. This represented a faster growth rate than for many of the manufactured and agricultural imports more generally.

62. In addition to looking at the US market, her delegation had considered the global market for the goods on its list. Some examples of the extent to which developing countries were notable global exporters and importers in world markets of these highly diverse products included: developing country exports of hydraulic turbines and wheels (HS 841013) comprised approximately 15 per cent of world trade in this product. For example, Brazil exported more than 5 million dollars in 2003, and shipped more than two-thirds of its hydraulic turbines and wheels to developing countries. The US had also noted a significant amount of ASEAN trade in many of the products on the US list, not only inter-ASEAN trade but trade with other countries: for example, virtually 100 per cent of Indonesian exports in water tube boilers (HS 840212) went to Africa. Malaysia's exports of instrumental measuring parts (HS 3090) comprised 6 per cent of world export of this product, and over half of these came to the US.

63. Developing country exports of sacks and bags made of jute (HS 630510) represented 88 per cent of world exports in this product and were valued at more than \$58 million in 2003. More than US\$47 million of these exports were from Asian economies and just over \$6 million were imported by developing countries, i.e. more than ten per cent. For a number of developing countries, growth in global exports of items on the US proposed environmental goods list exceeded 50 per cent between 1998 and 2003. For instance, taken together, China, Malaysia, Thailand, Hong Kong, Singapore, Indonesia, Kenya, India and Brazil's exports in goods on the US list had grown by over 82 per cent between 1998 and 2003 (from roughly \$18 billion in 1998 to \$33 billion in 2003).

64. The US had also considered as part of its data analysis the global growth trends for pollution prevention and clean technology products in contrast to some of the EPP products. For developing country exporters, from 1998–2003, sisal (HS 530490) exports had grown 7 per cent, mats and matting (HS 460120) exports had grown 5 per cent, and jute (HS 560710) exports had grown 8 per cent. In the US' view, this was an impressive growth, but looking at the same period for the same developing country exporters in some of the pollution prevention and clean technology products, the US had found significantly larger growth rates. For example, over the same period, growth in developing country exports of super heated water boilers and steam generator boiler parts (HS 840290) was 77 per cent, and for vapour and steam turbines (HS 840682) they had grown 156 per cent, for spark ignition combustion piston engines (HS 840991) they had grown 71 per cent, and for centrifugal pumps (HS 841370) growth in exports had been 117%. This was not to say that sisal and jute were not products worthy of inclusion on a list, but rather it was helpful in reminding Members that many developing countries were becoming major exporters of pollution prevention and cleaner technology environmental goods, not to mention the fact that they were significant importers as well.

65. Moreover, the US noted that there were many synergies between some of the goods included on its list and the provision of environmental services and other services. The US emphasized the importance of considering such synergies in the context of the paragraph 31(iii) negotiations. In fact, the use of particular goods in performing an environmental service had been one of the guiding considerations of APEC members in the development of their environmental goods list in 1998.

66. The US looked forward to continuing to work with Members on a list of environmental goods, and urged other delegations to fully engage in this important discussion.

67. The representative of Cuba noted the lack of consensus in the CTESS on how to carry forward the mandate, and on the actual benefits for developing countries in the paragraph 31(iii) negotiations. In Cuba's view, it seemed premature at this stage to anticipate any results for the Hong Kong Ministerial Conference. In its submission contained in document TN/TE/W/55, Cuba had emphasized that the CTESS should focus on outstanding matters and consider modalities for the negotiations in order to make progress. In particular, Cuba called for more proposals on how the principle of common but differentiated responsibilities contained in the Rio Declaration could be taken into account in the context of the negotiations.

68. The representative of Switzerland presented document TN/TE/W/58, which contained Switzerland's initial list of environmental goods. She recalled that the aim of the mandate in paragraph 31(iii) was to facilitate trade in environmental goods with a view to generate benefits from the point of view of trade and the environment. The CTESS had the mandate to identify environmental goods and establish a list of such goods, which would then be forwarded to the NAMA negotiating group for actual negotiations on tariff reductions and/or elimination. In this context, two main questions had to be addressed: first, which environmental goods should figure on the list; and second, how to ensure that the list could evolve in the future. On the first point, Switzerland agreed with the EC that only the goods which could contribute to a globally agreed environmental goal should be on the list. Switzerland was aware of the challenges of reaching agreement on a definition of environmental goods. The definition should therefore be sufficiently general, flexible and inclusive

to capture future innovations in the rapidly evolving environmental goods industry. It should therefore be a useful screening tool that would serve as a basic definitional threshold. In order to identify environmental goods, the clarification of the concept should be firmly grounded in the work and existing definitions developed by other bodies. Switzerland's analysis of existing approaches suggested that the OECD definition of the environmental industry was best suited for the purpose of identifying environmental goods, and could therefore be an appropriate reference point in this exercise. This was also supported by the fact that the APEC list of environmental goods was itself produced largely on the basis of the OECD definition. The OECD definition also encompassed all the main categories proposed so far by Members.

69. Switzerland noted that most products on its list fell within the Pollution Management and Resource Management categories, which corresponded to the first part of the OECD definition. In order to ensure a balanced outcome in the negotiations, Switzerland proposed to add goods under the categories of Cleaner Production and Products, and also EPPs on the basis of their end-use or disposal characteristics. These two product categories corresponded to the second part of the OECD definition. Switzerland suggested they could accommodate products of export interest to developing countries, in particular EPPs. Many of these EPPs were natural and biodegradable products that presented export opportunities for natural product-based industries utilizing raw materials and skills for which developing countries had a comparative advantage. With respect to a majority of products on Switzerland's list, developing countries had a substantial trade interest and were net exporters. Switzerland indicated that the list included products such as solar cooking appliances; as well as means of sustainable transport, such as railways, solar mobiles, bicycles, barges and boats and their related accessories. All products on the Swiss list had been screened by the Swiss Agency for the Environment, Forests and Landscapes. Products which, if used improperly, entailed risks to human beings or the environment, as well as products whose production was overly damaging to the environment, had been eliminated from the list.

70. Switzerland gave some explanation of its table, which contained the following information: the HS headings or sub-headings; the product description at HS 4- and 6-digit level; remarks concerning the ex out; the relevant environmental category according to the OECD definition (Cleaner Technology and Cleaner Products, or EPPs based on end-use or disposal characteristics); and import data for the year 2004 for all goods proposed on the list. With respect to this last item, Switzerland noted that the value of imports of the proposed environmental goods amounted to roughly USD 4.6 billion, which was around 5 per cent of all goods imports for 2004. Switzerland reserved the right to add further items or to amend its proposed list as appropriate.

71. Given the evolving nature of the environmental goods industry in both developed and developing countries, Switzerland considered it would be necessary to agree on a process of review and update of the list of environmental goods. For this purpose, the OECD definition and its main categories could serve as a reference point. This review could be undertaken every two years, for instance, in the Regular CTE.

72. Finally, Switzerland noted that it was committed to ensuring that developing country Members had the opportunity to effectively participate in the negotiations, and that their interests were reflected in a mutually agreed list of environmental goods. To this end, Switzerland announced that it would provide a financial contribution to support UNCTAD's technical assistance to developing country Members in preparing their lists of environmental goods.

73. The representative of Brazil introduced Brazil's new submission in document TN/TE/W/59. Brazil stressed that a meaningful outcome in the negotiations should take into account the concerns and interests of developing countries, and the principles of special and differential treatment, as well as less than full reciprocity in the reduction commitments. The liberalization of trade in environmental goods should offer opportunities for developing countries to increase their exports of such goods, in particular in the areas where developing countries had a competitive advantage. The

mandate in Paragraph 51 of the Doha Declaration was also relevant in this respect. Furthermore, the CTESS was instructed to focus on the development dimension in the context of the Paragraph 31(iii) negotiations. For most developing countries, development would be best addressed if the outcome of the negotiations resulted in improved market access for products that had a low impact on the environment and/or were derived from or incorporated cleaner technologies, and that would enhance the use of technologies adapted to the needs of developing countries. In Brazil's view, such an approach would also address current imbalances identified in the environmental goods market, which was largely based on "end-of-pipe" technologies and products. According to studies by UNCTAD, developed countries held about 90 per cent of this market for environmental goods. Therefore, if negotiations were to take into consideration only this type of market for environmental goods, the results of the negotiations would be unbalanced.

74. The principles of special and differential treatment, as well as less than full reciprocity in reduction commitments should apply, to the extent that the environmental goods identified would be considered as part of the NAMA negotiations. Brazil considered that there should be opportunities for developing countries in this process, and that such opportunities would result from an adequate definition of environmental goods, i.e. a definition that would be supportive of trade promotion, environmental improvement, and poverty alleviation. More specifically, Brazil suggested that products such as natural fibres, colorants and other non-timber forest products, as well as renewable energy, including ethanol and bio-diesel should be included in a list of environmental goods. Furthermore, Brazil considered that the negotiations should lead to improved market access for products that incorporated cleaner technologies, such as flexi-fuel engines and vehicles, as this would encourage the use of environmentally efficient products.

75. Brazil emphasized the need for criteria in the identification of environmental goods. It considered that a list approach should not be based on parameters negotiated outside the WTO, such as the criteria used in the context of the OECD and APEC lists. Brazil supported UNCTAD's EPP approach as a basis for developing a definition of environmental goods in the CTESS. This did not mean, however, that Brazil was in favour of using PPMs as a criterion. Brazil stressed that the result of the negotiations should reflect a balance between developing and developed country interests, as well as between trade interests and environmental considerations. Further progress in the negotiations would depend on how this balance could be achieved.

Discussion of new submissions

76. The representative of Venezuela expressed its appreciation for the Cuban submission. His delegation also shared the concern of Cuba that the discussion under paragraph 31(iii) had not garnered the necessary consensus among Members. In particular, Venezuela agreed that there was uncertainty as to how the negotiations would benefit developing countries, and help achieve the objective of sustainable development. In Venezuela's view, it was premature to anticipate any results from the discussion in the lead-up to the Hong Kong Ministerial Conference. He recalled that most of the environmental goods put forward were from the APEC and OECD lists and did not adequately reflect the interests of developing countries. He further recalled that many issues remained unresolved in the negotiations, such as, whether agricultural products would be considered as part of the negotiations under paragraph 31(iii); how environmental goods liberalization would be undertaken within the NAMA group; or how special and differential treatment and transfer of technology would be taken into account.

77. Venezuela expressed its support for the "environmental project approach" suggested by India, and called for a closer examination of the proposal. Such an approach would bring the Doha Development Agenda together with the principles of the Rio Declaration, Agenda 21, and the Johannesburg Plan of Implementation. The fact that general criteria would be defined by the CTESS would enable Members to give appropriate consideration to the needs of national governments in adopting their policies. Furthermore, the Indian approach would allow developing countries to further

define their need for capacity building, technology transfer, and technical assistance. Venezuela noted that the Indian proposal should be further examined in the context of Paragraph 51 of the Doha Declaration. Venezuela sought clarification from India regarding the difficulty of establishing a distinction between goods and services in specific environmental activities, as flagged in its paper.

78. Venezuela said it would resist any attempt to submit lists of environmental goods to the NAMA group before a satisfactory conclusion to negotiations was found within the CTESS. With respect to the documents submitted by the US, EC, and Switzerland, Venezuela indicated that it would examine them in the light of the approach suggested by India.

79. The representative of Chinese Taipei said she wished to make some preliminary comments on the new submissions presented in the CTESS. With respect to EC's proposal, Chinese Taipei supported the EC's suggestion to include on the list EPPs and eco-labelled products, which were to a great extent in the interest of developing country Members. Chinese Taipei noted the legal uncertainty surrounding EPPs and eco-labelling, in areas such as non-product related PPMs, or the question of standards for the granting of eco-label certificates. Chinese Taipei wondered what the EC's views were on these legal issues, and whether they might raise any practical difficulties. Chinese Taipei was also interested to know how the EC proposed to deal with the agricultural products included in its list of environmental goods, and issues such as the appropriate forum in WTO for conducting negotiations on organic agricultural products.

80. Turning to the US' submission, Chinese Taipei particularly commended the inclusion of a column in the table showing the overlap with other Members' proposed lists, showing the level of consensus among Members on the products considered as environmental goods. Referring to a previous US submission circulated in document TN/TE/W/38, Chinese Taipei asked the US whether the current list under consideration was a core list, and if so, whether a complementary list could be expected from the US in the near future.

81. With respect to India's submission, Chinese Taipei explained why it still considered the environmental project approach as complementary to the list approach: firstly, it could not find in the EPA any of the multilateral characteristics that most Members agreed were needed to ensure and sustain the mutual supportiveness between trade and the environment, such as transparency, predictability and non-discrimination; secondly, this approach put too much of a burden on the Designated National Authority (DNA) to review and approve the scope and duration of projects; thirdly, Chinese Taipei felt that some of the SME exporters and importers would not be able to approach and get the necessary approval from the DNA; and fourthly, Chinese Taipei did not agree with India's suggestion in paragraph 9 of its paper that EPA could be accommodated in HS Chapter 98. Chinese Taipei pointed out that HS Chapter 98 was for contractual services rather than for a commercial purpose, and if it was to be included in the project for a commercial purpose, another classification would be needed. In addition, Chinese Taipei wondered how long spare parts could be subject to the project entitled to concessions. She noted that the WCO could assist Members in addressing some of these questions.

82. Chinese Taipei noted Switzerland's suggestion to take into account the OECD definition, as well as the categories of Cleaner Technology and Products and EPPs so as to ensure a balanced outcome in the negotiations. Chinese Taipei noted that the evolving nature of the goods at issue was not a specific feature of the environmental industry, and noted that the proposal by Switzerland to review the list of environmental goods every two years would require further discussion. In response to Brazil's proposal to adopt UNCTAD's approach on EPPs, Chinese Taipei indicated that it had some concerns with regard to classification, customs matters and WTO legal issues. She noted that her delegation looked forward to Brazil's list of environmental goods.

83. The representative of Paraguay noted that any outcome in the negotiation would have to promote trade in environmental goods and services, improve environmental quality at the global level,

and promote sustainable development for all Members. Paraguay considered that the list approach was not the most suitable approach to achieve these objectives. Paraguay agreed with India that such an approach would have disadvantages for developing countries, and therefore welcomed the alternative approaches suggested by India and Brazil. Paraguay asked if India could provide a model or an outline to illustrate, on a step-by-step basis, how its environmental project approach would work. Paraguay also sought clarification from Brazil as to whether its proposed definition would cover clean products or technologies, products with low environmental impact, or high-technology products such as those found in some of the tabled lists.

84. Finally, Paraguay expressed support for Cuba's submission, which in its view reflected the concerns of a number of developing country Members with respect to the process of the negotiations and the potential benefits for developing countries.

85. The representative of Malaysia shared the concerns expressed by Cuba in its submission concerning the lack of clarity as to how environmental goods would be treated in the context of the NAMA negotiations. She noted that as long as the question of the level of liberalization remained unclear, it would be difficult for her delegation to engage in the discussion and come forward with a list of environmental goods.

86. The representative of Thailand, also on behalf of Indonesia, Malaysia, Brunei and Singapore, questioned the inclusion of eco-labelled products in the EC's list. The eco-labelling issue was complex and often divisive in WTO, given the relationship between PPMs, and in particular non-product-related PPMs, and the WTO principle of non-discrimination.

87. With respect to India's submission, Thailand indicated that it appreciated the general thrust of the paper, which allowed scope for developing countries to develop capacities and achieve national priorities. Thailand indicated it would further reflect on how the Indian approach could complement or facilitate the work undertaken in the CTESS, including with regard to the list approach.

88. The representative of Chile said that her delegation would need to reflect further on the two main approaches suggested so far, as it was not convinced by either of them. Chile had some concerns, for instance, with respect to environmental goods identified on the basis of PPMs or eco-labelling. Chile reiterated that the treatment given to products identified on any list of environmental goods that would come out of the CTESS would have to be discussed in the NAMA group. Chile also pointed out that if by the time of the Ministerial Conference delegations were not clear on the basic interests of developing countries, it would not be realistic to expect any agreement on a list of environmental goods in Hong Kong.

89. With respect to India's proposal, Chile noted that the underlying logic that each country would determine the treatment to be given to goods on the basis of criteria agreed in the CTE was an interesting one. While Chile welcomed the link between environmental goods and services in the Indian approach, it wondered whether, in the context of an environmental project, only the goods imported to carry out the project would benefit from preferential treatment. If this was the case, a single product could have a different tariff treatment depending on whether or not its final use was related to an approved environmental project. Chile pointed out that if the concessions were project-driven it would reduce predictability for exporters. Furthermore, it was not clear to Chile what commitments or concessions would apply in the case of public-private partnership (PPP) projects.

90. Chile thanked the delegations of the US and Switzerland for submitting their list of environmental goods. He appreciated the fact that these lists focused on products' end-use, and did not include PPMs. Chile also welcomed the fact that Switzerland had included information concerning imports and MFN tariff for each product. He noted that further information from the US and Switzerland concerning the volume of exports for such products would be useful. Chile recalled

that a Secretariat study circulated in December 2002 in the NAMA group had provided statistics on Members' trade in environmental goods³, and noted that a revision of this study would be useful.

91. Finally, Chile agreed with Cuba that it was premature to anticipate the result of the discussion at the Hong Kong Ministerial Conference, given the lack of consensus among Members.

92. The representative of Colombia stated that the work on the definition of environmental goods should continue on the basis of the categories and lists proposed. Colombia supported the inclusion of a category of EPPs based on end-use or disposal characteristics, which in its view would ensure that products of interest to developing countries were included on the list. Colombia also believed that priority should be given to proposals that catered for international guidelines, such as those set in the Rio Declaration and the Johannesburg Plan of Implementation of the WSSD.

93. According to Colombia, many issues raised in the discussion remained unresolved, including, for instance, the application of the concept of a living list and the question of developing countries' interests in the negotiations. Given the constraints faced in developing a list of environmental goods, Colombia did not envisage to table a list of environmental goods that could be discussed before the Hong Kong Ministerial Conference.

94. Discussions should continue with a view to consolidating a definition of environmental goods and services, to the extent developing countries were able to identify and draw up lists of such environmental goods and services of interest to them. In this respect, Colombia expressed its appreciation for the technical assistance provided to strengthen the capacity of developing countries in this area.

95. The representative of China welcomed the new submissions put forward, which he had found enlightening and constructive. He also noted that some of the proposals were considerate for developing countries' interests. In the exercise of identifying environmental goods, China had focused its attention mainly on industrial goods at the expense of consumer goods. While some consumer goods had found their way onto the lists tabled, China considered that more could be added. Some of the consumer goods had a direct impact on the environment as well as human health. These goods related, for instance, to purifying or cleaning air and water, treating solid waste, and reducing noise and radiation. They could be identified mainly by their end-use. In addition, both developing and developed countries seemed to have an interest in these kinds of products. He invited delegations to keep an open mind and think creatively to ensure that developing countries' interests were fully reflected in the negotiations. Without prejudice to its position on PPMs, and keeping in mind the need for special and differential treatment for developing country Members, China argued that agricultural goods should be included on the list.

96. China agreed with Brazil that the EPP category could help Members take into account the development dimension of the negotiations. It also found merit in India's proposal, which recognized the importance of capacity-building and transfer of technology. In concluding, China noted that the products banned under certain MEAs should not be included in a WTO list of environmental goods.

97. The representative of Ecuador recalled that tariff reduction was not the main objective in the negotiations, and should be based on the product's environmental goal. She emphasized the need to address the mandate in a more holistic manner, by considering not only goods, but also services as well as non-tariff barriers.

98. Ecuador wished to make preliminary remarks on the new submissions tabled. On the proposal by India, Ecuador noted that it shared India's concerns with respect to the list approach; the ambiguity in the criteria for defining environmental goods; the issue of multiple use; transfer of

³ TN/MA/S/8.

technology; and the difficulty of identifying certain products under the HS system. These concerns indicated that there were too many uncertainties regarding the results of the negotiations for Members to consider having an agreed list of environmental goods by the time of the Hong Kong Ministerial Conference. In this regard, Ecuador agreed with Chile that it would be necessary to take due account of the single undertaking. Moreover, Ecuador considered Cuba's submission as being of particular importance, because it underscored pending issues in the negotiations, such as the lack of clarity regarding modalities for the negotiations and the application of special and differential treatment for developing countries.

99. With respect to the issue of a living list, Ecuador disagreed with the proposal to carry out a review of the list every two years in order to include new products. According to Ecuador, this would aggravate existing imbalances in the list and would further widen the technological gap between developing and developed countries.

100. Ecuador indicated that it had faced certain difficulties in the process of identifying environmental goods and services of national interest, including with regard to the multiple use of products identified in other Members' lists. Furthermore, issues such as PPMs, certification and labelling, put into question developing countries' comparative advantage in goods derived from natural resources. Finally, Ecuador noted that addressing problems related to non-tariff barriers in the context of the negotiations presented an opportunity to further strengthen the mutual supportiveness of trade and the environment.

101. The representative of Australia said that his delegation still considered the list approach as providing a viable way forward in the negotiations, and that the issues raised could be worked through with greater engagement from Members. Some of the concepts put forward in Members' submissions, such as the use of reference points and ex outs, could also help in this respect. Australia emphasized the need to broaden the discussion to ensure that issues of interest to developing countries were included in the discussion. While Australia supported the list approach, it was still reflecting on whether to submit a list. Australia agreed with the EC that Members needed to focus on some of the specific products listed, work out whether or not they could agree with such products being included on a list of environmental goods, and provide some feedback accordingly.

102. With respect to the new proposals tabled, Australia agreed with the US that a bottom-up approach made sense, and appreciated the focus on end-use criteria while avoiding the issue of PPMs. Regarding the suggestion to add a category for EPPs, Australia was still reflecting more generally on its position towards the EPP concept. Turning to the EC paper and the point raised on eco-labelling, Australia emphasized that the issue was not part of the negotiating mandate, and did not believe that comprehensive environmental labelling schemes, such as those promoted by GEN, were useful to a definition of environmental goods.

103. On the Indian proposal, Australia raised a concern that the project approach could lead to further barriers and obstructions rather than facilitate trade. Australia also flagged concerns regarding how the approach would fit within the rule-based multilateral trading system; whether HS Chapter 98 could be used for such projects; and whether the approach would be suitable for SMEs. Australia supported India's attempts to focus on services in the proposal as part of the mandate and encouraged further discussion of the issue.

104. Australia welcomed Brazil's submission, which it felt contributed to a better understanding of developing countries' interests in the negotiations. According to Australia, these interests were not incompatible with the list approach. As a number of delegations had pointed out, there were potential benefits from these negotiations for developed and developing countries alike. Regarding Brazil's suggestion to focus on EPPs, Australia was not convinced that the PPM issue could be avoided in the discussion.

105. Finally, Australia welcomed the intensification of the work under this agenda item and the constructive dialogue that had taken place. He thanked the Secretariat for the Synthesis of submissions on environmental goods and requested that the document be kept updated as new information became available.

106. The representative of Argentina wished to emphasize the point made by Brazil that trade liberalization in the context of the paragraph 31(iii) negotiations was not an end in itself. The negotiations also had to bring benefits for the environment and development. Argentina noted that despite the fact that some Members had submitted initial lists of products, the question of what goods were really environmental remained unanswered. Argentina agreed with the EC that delegations would have to start discussing the environmental justification of the individual products, but noted that this should not preclude the initial lists from being circulated in other negotiating groups, such as NAMA. Argentina noted some of the difficulties in trying to identify environmental goods as a subset of goods in general, namely with respect to multiple use and tariff classification. Similar difficulties arose when trying to define the development dimension of the negotiations. In this regard, Argentina observed that the mere identification of goods of export interest to developing countries would not guarantee development. He noted that other aspects, such as transfer of technology, were also relevant to the development dimension of the negotiations.

107. In Argentina's view, the main problem in the negotiations was not one of identification of goods, but rather one of approach. It noted in this regard that India's environmental project approach seemed to provide answers to some of the difficult issues identified by delegations, while giving due consideration to the environmental and developmental aspects of the mandate.

108. The representative of Bolivia shared India's concern regarding the discrepancies in the composition of lists and the perceived imbalance in terms of reflecting the interests of developing countries. For these reasons, India's environmental project approach provided an interesting alternative. One way of ensuring developing country participation would be to consider combining trade liberalization with the transfer of technology and know-how, on the basis of the principle of common and differentiated responsibilities. Bolivia shared the view expressed by Cuba in its submission that the debate on how to fulfil the mandate had not achieved the necessary consensus, and that it would be premature to consider tabling a list of environmental goods at the Hong Kong Ministerial Conference. Finally, she recalled that any result achieved under paragraph 31(iii) in the CTESS, be it a list of environmental goods or principles and criteria for environmental projects, would be subject to negotiations in the NAMA group.

109. The representative of Jordan said that although her delegation had not yet reached a final position on the subject, it considered that the final list approach was the best way to proceed in the negotiations. Jordan was in the process of consolidating its initial environmental goods list. She thanked Canada for its financial support in this process, and insisted on the important role of international organizations in providing technical assistance to developing countries at this stage of the negotiations.

110. The representative of New Zealand welcomed the tabling of new lists of environmental goods, which in New Zealand's view indicated that progress was being made on paragraph 31 (iii). In particular, he welcomed the fact that the submissions were characterized by pragmatism and emphasized "defining by doing" by identifying specific items and informing those choices by drawing on existing work, including that of the OECD, APEC and UNCTAD.

111. With respect to the EC proposals, New Zealand welcomed the fact that the EC had provided HS codes for the products it had put forward. New Zealand noted that further clarification could be provided by the EC with regard to the products identified at the 4-digit level. Furthermore, he noted that an entire chapter which contained agricultural products had been proposed. New Zealand urged

the EC to confine its proposals to the areas that the NAMA group was expecting, and to try to refine its list to include items identified at the HS 6-digit level, with relevant "ex-outs".

112. With respect to the potential use of the Global Eco-labelling Network system to define environmental goods, he noted that a small number of producers in New Zealand were members of the GEN's voluntary non-governmental global programme. While the use of non-discriminatory voluntary eco-labels was important to inform consumer choice, he emphasized that they were not appropriate reference tools for use by customs officials seeking to apply tariff rates agreed as a result of WTO negotiation on environmental goods. Therefore, the importance of voluntary eco-labels lay ultimately at the point of sale, rather than at the border as concerned the application of tariffs. New Zealand was not convinced that the work of GEN, which used PPM-based criteria, was relevant to the negotiations.

113. With respect to document TN/TE/W/56 which referred to "sustainable agriculture or gardening", New Zealand expressed the view that agricultural products were not a matter for discussion in the CTESS. Furthermore, the discussion of what constituted "sustainable agriculture" or "sustainable gardening" would not be helpful in making progress in the CTESS towards the Hong Kong Ministerial and beyond.

114. He welcomed the EC's suggestion to establish an "open list" of environmental goods, and considered this suggestion akin to the concept of the living list.

115. New Zealand also asked for some clarification concerning the HS codes that the EC was considering for rainwater catchment systems and fog or dew catchers, and the environmental benefits of such products. He also asked about the HS code that the EC intended to use for products related to wind energy. Also, New Zealand was interested in the specific ex-out or 6-digit code for category 3920, which referred to plastic or paper sheeting for water and heat savings, and in the environmental benefits of polyurethane foam (HS code 392113).

116. Turning to the US submission, New Zealand noted that it brought balance to the negotiations. More specifically, he noted that the US submission was transparent; it offered meaningful reference points; it dealt with the dual use issue in a practical manner; it addressed the important question of how to deal with evolving environmental technologies; and it included a number of items of specific interest to developing countries. It also welcomed the transparency shown by the US in the development of its list, with the inclusion of average MFN rate, as well as import data. Such information would be particularly useful once discussions began on the items that should appear on the consensus list to be provided to Ministers for Hong Kong. In New Zealand's view, the US list was sensible and practical, in that it set out clearly how the goods had been identified, by making reference to the work of the OECD, APEC and UNCTAD.

117. Furthermore, New Zealand welcomed the use of the term "ex-out" for differentiating products at a level greater than the six digit HS codes. It also agreed with the US that an approach would be needed in the negotiation in order to take into account the evolving nature of the environmental industry. Finally, he asked the US for further information concerning the environmental benefits of the following products: HS 560811 (made up fishing nets); 849290 (super-heated water boilers); 846596 (splitting, slicing or paring machines); and also 900290 (prism mirrors, mounted and parts and accessories).

118. With regard to the Swiss proposal, New Zealand noted its appreciation for the practical application of the "defining by doing" approach. He also welcomed the use of the reference points approach as a screening mechanism, e.g. the OECD definition. Switzerland had used the categories of EPPs and cleaner technology and products to structure its list, and New Zealand hoped that Switzerland would concur with the tighter focus it had given to the EPP category by using the phrase "defined by end-use or disposal characteristics".

119. He also welcomed Switzerland's determination to ensure transparency by the incorporation of import data and ex-outs in the list, thus providing greater clarity and certainty about the products being proposed. He also noted Switzerland's comments in paragraphs 16 and 17 of its submission on the need to establish a living list.

120. He pointed out that the environmental benefit of some of the items on the Swiss list, including, for instance, HS 830110 (padlocks), HS 830160 (parts of padlocks), and HS 830170 (keys presented separately) was not obvious to his delegation.

121. New Zealand had hoped that some of the questions raised at the informal meeting in June regarding India's first submission (document TN/TE/W/51) would have been clarified and resolved in India's second submission. However, New Zealand still had some concerns, and sought some further clarification from India as to what prevented its proposal from being implemented immediately in countries that considered it worthwhile. New Zealand was aware of similar mechanisms already in place in certain countries, and wondered why the environmental project approach had to secure endorsement at the CTESS. He also asked how the project-based approach would contribute concretely to improving the transparency and predictability of the multilateral trading system. From his perspective, he was not sure how that outcome would be assured, since the submission seemed to set out a complex administrative process that allowed the raising and lowering of tariffs in an ad hoc manner over time, essentially at the direction of a centralized body independently of market forces. In particular, companies seeking certainty about projects might be uncertain as to which project would qualify for tariff preferences and which would not, until the designated national authority had made a judgment on these.

122. The submission suggested that the project approach was the best way to ensure positive environmental benefits. Environmental projects of the type described in the submission were not only major national projects determined by the central government. It was often small, localized groups of concerned citizens or NGOs who worked to improve environmental circumstances, for example, through clean-up programmes and campaigns for a specific local area or polluted waterway, bush and forest, and these groups frequently required access to the kind of products under negotiation in the CTESS. For these groups, such projects were vital and did make a measurable difference to environmental outcomes. However, according to the Indian proposal, projects seeking to import products under preferential rates required central government approval, and the process of securing that approval could be burdensome for many of the local or sub-national groups which had their objectives and resources focused on localized situations.

123. New Zealand noted that the project-based approach could become administratively burdensome and could have a chilling effect on trade for relatively small economies built around SMEs. He also wondered how the project approach could assist in making progress on the trade facilitation aspect of the Doha Round, directed at reducing red tape for traders to further expedite the movement, release and clearance of goods.

124. With respect to Brazil's submission, New Zealand shared Brazil's view that the negotiation must ensure that environmental goods were used for the benefit of the environment and of development. New Zealand supported Brazil's suggestion with respect to the categories of EPPs and Cleaner Technologies and Products. These were areas of considerable trading interest to developing countries, which at the same time had an important environmental significance. With regard to EPPs, he emphasized that this category of products should be defined by reference to end-use or disposal characteristics only, and recalled that PPM-based criteria would not be in the interest of this wider negotiation.

125. He was impressed by the importance of the trade in the categories proposed by Brazil, which was further proof that the negotiations had real commercial meaning for developing countries.

New Zealand welcomed Brazil's suggestions regarding natural fibres and renewable energy, including bio-diesel.

126. He noted that there might be synergies between some of the items that had been proposed in various lists and the items that Brazil had suggested. He asked Brazil about the HS codes and ex-outs that it would like to propose, for instance, for motor cars and flexi-fuel car engines. He also noted that a number of Members had proposed bio-diesel as an item for negotiation, and asked which HS code or ex-out Brazil had in mind for this particular product, and whether it could agree with New Zealand's ex-out description.

127. With respect to Cuba's submission, New Zealand welcomed Cuba's interest in products such as renewable energy, or energy-efficient technology, and natural products such as bio-diesel. New Zealand looked forward to Cuba's more specific suggestions in respect of these products, including the relevant HS description.

128. The representative of Korea recalled its delegation's position that the practical approach of submitting concrete lists would be a more useful way to advance the negotiation. Once a workable list of environmental goods was established, the CTESS would have a concrete basis for proceeding with its discussion. In this regard, Korea welcomed the initial lists of environmental goods tabled by New Zealand, Canada, the US, the EC and Switzerland.

129. Korea noted that there were some variations among the different lists in terms of Members' considerations and product coverage. For practical reasons, Korea had excluded from its list the categories of EPPs and Clean Technology, and continued to have reservations with respect to their inclusion. However, Korea was willing to show some flexibility with respect to the use of these categories, given that some delegations found them helpful to structure their lists, but noted that this was without prejudice to Korea's position with respect to the particular products at issue.

130. Several Members had underlined the importance of achieving a "balanced list" of environmental goods that reflected the areas of commercial interest to developing countries. Korea fully agreed with the notion that the final outcome of the negotiation should strike a balance between developing and developed country interests. Keeping in mind this important goal, Korea was considering a range of products to supplement its initial list. Korea believed it would be helpful if more delegations came forward with lists of products of particular interest to them in order to develop a balanced list of environmental goods, and was encouraged to know that some developing countries were already in the process of drawing up their lists.

131. Korea also shared the concerns of other Members regarding the fact that the Indian proposal was presented as an alternative to the list approach. His delegation had doubts as to how the environmental project approach could be implemented within the framework of the multilateral trading system.

132. Korea noted that the WTO list of environmental goods should be regarded as a living list, and that it was willing to engage in a discussion to develop a mechanism to update the list so as to take into account the evolution of environmental technologies. Finally, Korea considered that the CTESS was making good progress towards the Hong Kong Ministerial, and needed to further expedite its work in order to achieve a meaningful outcome in the trade and environment negotiations.

133. The representative of the United States thanked the Members who had put forward papers at the meeting and noted that it was an encouraging sign that progress was being made in these discussions.

134. She stated that the US welcomed Brazil's additional views provided in its submission on the types of products that should be considered under the CTESS mandate, and the fact that the approach

advocated in the paper did not favour PPMs. However, she asked for further clarification on how the CTESS could adapt UNCTAD's approach on EPPs as a definition to guide the discussion. For example, she wondered if Brazil had given any thought to whether this approach was broad enough to take into consideration the various environmental and developmental challenges faced by developing countries, and the priorities set out in the Rio Declaration and WSSD Plan of Implementation (e.g. with respect to waste management and sanitation), and whether it was broad enough to capture the dynamic and diverse export interests of developing countries. As she had noted previously, preliminary data analysis undertaken by the US suggested that many developing countries were significant exporters of pollution prevention and remediation goods. These markets appeared to be growing rapidly, and more quickly than markets for EPPs. The US welcomed further submissions from Brazil as it continued to refine its thinking in terms of products of interest.

135. With respect to the Swiss paper, she appreciated Switzerland's attempt to expand upon two categories of goods, namely cleaner technologies and EPPs. The US had also noted that two more categories - pollution management and resource management - were identified in the paper. She asked Switzerland whether it was planning to table a list of products in these other two areas, or whether it was content with other Members' lists representing those categories of goods.

136. Regarding the issue of dual use raised in the Indian and Cuban papers, she noted that efforts could be made to focus on the inclusion of goods that significantly served environmental purposes. She recalled that Members had to consider these challenges in the broader context of the DDA, which was aimed at further liberalization across industries and across products. The task of the CTESS was to identify goods used to protect the environment, reduce pollution, and help countries meet sustainable development goals, so that these goods could be liberalized in a manner that would benefit the environment, economy, and development of all Members. The manner in which this liberalization would take place would be decided in NAMA. In the US' view, the dual use issue was not as significant as it would be in a "one-off" type of liberalization exercise.

137. In tackling these challenges, the US had advocated a pragmatic approach based upon both the prevalence of the environmental goods in a given tariff heading and the importance of the good for the environment industry, i.e. including all products within a 6-digit HS category on the list. She noted that even if only a minority of products of a 6-digit category served an environmental purpose, or were of critical importance to the environmental sector, the entire 6-digit HS category should be included on the list.

138. In other cases, the US had advocated including a specific environmental good that was best described in terms of the product descriptions found at the narrower, national tariff line level (the 8- or 9-digit level). This explained the use of "ex-out" or additional product descriptions on the US' list. To the extent that WTO Members could agree that certain goods within a 6-digit category were environmental and could be distinguished physically, they could implement such break-outs in their tariff schedule as appropriate. The US did not currently have product descriptions broken down at the national tariff line level, and would have to implement changes to their tariff schedule, if and as agreed.

139. She noted that other options available, such as end-use certificates, would pose practical and administrative difficulties. A project-based approach, like end-use certificates, would be restrictive and administratively burdensome. Such an approach would require that a good be used in a government-designated project in order to be exempted from duty. The US wondered how the Indian proposal could deliver the kind of benefits that WTO Members and their exporters expected from these negotiations.

140. She questioned the lack of binding commitments, transparency, predictability, and accountability presented by this approach. She also stressed that it would not guarantee access to exporters, and in particular SMEs, since smaller companies selling directly into markets would have

to continue paying duties, while those directly supplying major projects would not. She noted that duties were quite high on some of the goods of interest to US companies, such as water filtering and purifying machinery. This also led to the question of benefits for direct consumers, small distributors, rural communities, or sub-federal entities that would need these goods, but would not have the resources or knowledge to apply for their own project approval. She agreed with New Zealand that SMEs were hesitant to export their products because of hurdles such as additional paperwork and bureaucracy, and the associated delays, and she noted that the environmental project approach could add to these challenges.

141. The US also argued that full market access would promote technology transfer more than the environmental project approach, since the latter was directed at protection from imports, and seemed to involve only selective technology transfer. She wondered how the project approach would address the export interests of the Members whose goal was to increase EPPs exports. In this regard, she wondered if there were any major projects in countries that were currently importing fibres or flexi-fuel tanks, which were two of the categories for which interest had been flagged. She agreed with India on the need for a practical approach that could help meet the environmental, economic, and developmental needs of all Members, but she stressed that her delegation was not convinced that this was the right approach.

142. The US thanked the EC for its additional efforts to identify HS codes for its proposed products. She noted that there was an overlap between the EC and US lists with respect to certain products identified at the 6-digit level. However, in some cases, the EC had only identified HS codes at the 2- or 4-digit level, or had not identified any, so it was difficult for the US to say whether the overlap extended to the more detailed product description that the US had offered in certain instances.

143. She observed that the EC had reiterated its offer on eco-labelled goods, but had not identified the types of products to be covered by such labels, nor tackled the workability issues raised by some delegations at the February meeting. While voluntary eco-labels could be a useful tool to differentiate products in the market place, they were not a good tool for purposes of tariff treatment. In the interest of moving the discussion forward, and given that many delegations continued to resist the inclusion of PPM-based products on any list of environmental goods, the US suggested that the EC focussed instead on other parts of its list, such as pollution control, resource management technologies, renewable energies, and natural fibres.

144. She also wondered if the EC had given any additional consideration to the goods described as "high environmental performance or low environmental impact". She argued that while the EC had identified a few products in these categories, such as energy-efficient light bulbs, it did so mostly at the 4-digit level, which fell short of addressing the feasibility issues noted at the February meeting.

145. The US thanked Canada and New Zealand for their contributions to a practical, bottom-up approach. She supported both of the papers' focus on goods with a clear environmental end-use, avoiding goods identified on the basis of PPM distinctions. She noted that her delegation was still reviewing these lists, and would have additional comments and questions at future meetings.

146. In response to questions and concerns raised by Members concerning the linkages between this discussion on environmental goods in the CTESS and negotiations taking place in other negotiating groups, the US stressed that the CTESS must identify goods used to protect and preserve the environment and let the NAMA group proceed with its work, without prejudice to what might be decided in terms of a modality, or when it might be decided.

147. With regard to the Services negotiations, the US noted that these discussions were further ahead, given that they already had a defined scope for their work, and that quite a few offers had been made in environmental services, including some from developing countries. She also wondered if the

delegations that had had called for more discussion on the environmental services component of paragraph 31(iii) saw a particular role for the CTESS to play in these negotiations.

148. The representative of Canada felt encouraged by the number of papers presented by other Members, which considered a wide range of goods across the board. With regard to the paper by New Zealand, Canada agreed with the suggestion of using reference points to identify the environmental merit of a particular product. New Zealand's use of categories also provided the necessary flexibility to help create a living list. Canada agreed with New Zealand that any WTO list of environmental goods should be a living list, and welcomed further discussion on how this concept could be put into practice.

149. Canada noted the interest by some delegations in further addressing the issue of definitions. There had been some discussion of the APEC, OECD and UNCTAD lists, as well as other approaches, which looked at environmental goods from a slightly different perspective, e.g. end-use, remediation, control, or EPPs. In Canada's view, a broad definition of environmental goods could help to achieve a balance between environmental benefits and export interests among all Members.

150. With respect to the issue of services and the links with goods, he recalled the agreement in the CTESS to leave substantive work on environmental services to the Council for Trade in Services in Special Session. However, there could be a role for the CTESS to play on this part of the mandate, and it could be useful for delegations that had developed lists of environmental goods to share their experience on how they had taken services into account. Regarding the issue of the treatment given to environmental goods in the context of the NAMA negotiations, Canada hoped that there would be some extra benefit, i.e. a "NAMA plus reduction" for environmental goods.

151. Turning to the EC's paper and the suggestion of including eco-labelled goods, Canada noted that it would be difficult to link eco-labelled products with tariff concessions, and that products should be identified as a tariff item rather than on the basis of eco-labels.

152. Regarding the EC's point on duplication of items in the Secretariat's Synthesis of submissions, Canada noted that in some cases delegations had used different terms to describe the same product. With further clarification from delegations, the Secretariat could proceed to reduce the number of items. The WCO could also give some assistance to Members in this respect. Canada also noted the EC's comment on using a negative list approach, which could be one way of reducing the list.

153. Canada welcomed the US submission and supported the inclusion of two additional categories of environmental goods, namely natural resources protection and renewable energy plants, which could also be of interest to Canada.

154. He noted that Switzerland had put forward some interesting ideas in its submission. While Canada also supported the OECD definition, it considered that it could be widened for the purposes of the negotiations in order to achieve the expected results.

155. With respect to the Brazilian submission, Canada noted that the products proposed were highly relevant to the environment, and looked forward to a more precise description of the products. Regarding the submission by Cuba, Canada understood some of the concerns raised and would try to provide some further comments at a later stage.

156. With regard to the proposal of India, Canada noted its concern that such conditional liberalization would not respond to the mandate in paragraph 31(iii) for the reduction or elimination of tariff barriers. The project approach would not provide any certainty regarding the benefits to specific products. Furthermore, the products that would benefit from the project approach would tend to be higher-technology products produced by large companies which would disadvantage SMEs.

In Canada's view, EPPs and other items of interest to developing countries would be unlikely to benefit from such an approach.

157. The representative of Indonesia recalled that the underlying objective of paragraph 31, and particularly paragraph 31(iii), was to ensure that the negotiations led to a win-win-win outcome for the environment, development and trade. She noted that a list approach had been followed by delegations and that various products had been proposed for inclusion on a list of environmental goods, based on different criteria and environmental categories. Indonesia had launched a process of consultation with relevant stakeholders to develop a list of goods that would ensure environmental gains, based on end-use, rather than PPMs criteria, and using the APEC and OECD lists as reference points. Indonesia's provisional list would include goods in six environmental categories.

158. Indonesia emphasized that the criteria used in the preparation of a list of environmental goods would be determinant in terms of ensuring that negotiations benefitted developing countries' interests. She agreed with other Members that including EPP criteria could result in the inclusion of many products of interest to developing countries. However, some EPPs could result in diluting the environmental objectives, particularly natural resource-based EPPs. Indonesia was of the view that the scope of EPPs differed in the various lists presented. The EC list included a wide range of EPPs, including products such as railway locomotives. The EC had also offered to include eco-labelled products, which in Indonesia's view would bring further complications. The US list had fewer EPPs, and New Zealand's list included some EPPs that could be of interest to certain developing countries. She noted that the concept of EPPs would have to be clearly defined in order to ensure that inclusion of such products would benefit developing countries.

159. The list approach was a pragmatic way forward for the negotiations under paragraph 31(iii). However, Indonesia was open to a complementary approach that would ensure that development concerns were taken into account. She noted that the Indian approach could provide flexibilities and incentives to target environmental programmes, and contribute to maximizing gains for the environment, development and trade.

160. The representative of Hong Kong, China joined others in thanking the delegations that had put forward their lists of environmental goods. She noted that her delegation was currently considering the lists put forward in the light of their export interests, and hoped to be able to contribute to the discussion with its own list of goods. With respect to the Secretariat's compilation of submissions, she indicated that some consolidation of overlapping items would be useful.

161. She reiterated concerns about the introduction of non-product-related PPMs through eco-labelled products and EPPs. Given the importance of such products to developing countries, Hong Kong, China was willing to continue to work with other delegations to address the relevant technical issues. In this context, Hong Kong, China welcomed Brazil's submission.

162. Concerning the Indian proposal, she noted that the environmental project approach could indeed proceed without waiting for the work of the CTESS. In her delegation's view, the Indian proposal was a stand-alone approach, rather than an alternative to the list approach. Similar practices were probably in place in some countries, outside the framework of the WTO multilateral trading system. In this respect, she noted that the issue of applied versus bound tariff reduction would be less pertinent in a non-WTO setting. She also wondered if having a mechanism which involved the central approval of projects was the most cost-effective way to pursue the mandate in paragraph 31(iii) for small and open economies such as Hong Kong, China. Transaction costs could be a deterrent for the private sector, and this could be counter-productive with respect to the environmental protection goal that Members were trying to achieve.

163. With respect to paragraph 31(iii), she believed that the core business of the WTO concerned trade liberalization. The reduction and possible elimination of tariffs and non-tariff barriers for

environmental products could help to promote trade in those products, and contribute to the objective of environmental protection, thereby resulting in a win-win outcome. She emphasized the importance for the CTESS of producing a list of products that would reflect the interests of developing countries, while the modalities, including special and differential treatment, would be worked out in the NAMA negotiating group.

164. She appreciated the development concerns raised in the submissions of India and Cuba. These submissions had helped when considering how to enhance the participation of developing countries in the negotiations, including issues such as technical assistance and technology transfer. She also welcomed the interest Members had shown in environmental services, and would welcome more work on the issue of classification.

165. The representative of the EC wished to make some preliminary comments on the submissions tabled, which provided a clearer picture of what remained to be done in order to reach agreement on a balanced list that reflected the interests of all Members.

166. The EC requested some further clarification from New Zealand on some aspects of its proposal. First, the EC enquired about the living list and how it would function in practice, including, for instance, how changes would be introduced. The second question related to the concept of EPPs, which the EC believed could be a way of ensuring that the interests of all Members were taken into account in the negotiations. In particular, the EC asked New Zealand about its reasons for defining the concept of EPPs by reference to products' end-use and disposal characteristics, and whether there were any other alternatives for expanding the concept further.

167. The EC supported New Zealand's response in paragraph 9 of its statement to the comment that developed countries were interested in "costless negotiations". In particular, the EC welcomed the information provided by New Zealand on the tariffs at stake. The EC noted that it had included products with tariffs of up to 12 per cent in its own proposal. The EC welcomed the kind of information provided by New Zealand in paragraph 17 of its statement with respect to the evolving nature of the environmental goods industry and the growing commercial interest of developing countries. With respect to HS 854140 (photosensitive semiconductor devices, including photovoltaic cells), for instance, the EC had a negative trade balance with developing countries of 688 million Euros per year. The EC noted that information related to specific tariff lines could further enrich the discussion.

168. Turning to Canada's submission, he asked whether Canada had given any consideration to EPPs in developing its environmental goods list.

169. With respect to the submissions by India, he was grateful for the creativity and the genuine attempt to move the debate forward on issues such as intellectual property, transfer of technology, and services. However, his delegation had doubts about the proposed way forward. The EC did not agree with India that there had been some ambiguity in the CTESS discussions, and noted that some convergence was emerging on many issues. Regarding India's point in paragraph 5 of its submission where it raised the issue of intellectual property protection, he asked India whether it could indicate the particular products for which intellectual property protection and transfer of technology conditions needed to be improved.

170. Concerning India's point in Paragraph 7 of its submission that the list approach was too diffused, he noted that the debate had moved on, and that there was some agreement that environmental benefits were key to this exercise. The EC noted that it could not support the project approach as an alternative to the list approach. Furthermore, he raised some concerns with respect to the practical implementation of the project approach, and expressed support for the point made by some delegations that such an approach could create difficulties for SMEs.

171. The EC noted that the US list included some EPPs. He asked the US about its discussion on the inclusion of such products, and whether it could consider extending its proposal further in this direction.

172. Turning to the paper from Cuba, the EC noted that it raised some challenging issues, such as dual use. Regarding the issue of definition, he thought there was no need to agree on a definition as such, but on criteria to identify relevant products. Regarding the issue of the work in the NAMA negotiating group, he argued that the CTESS mandate was limited to identifying which products would qualify for additional liberalization. As the CTESS discussion was meant to facilitate work on NAMA, discussions in the NAMA negotiating group should not prevent the CTESS from moving ahead with its own work.

173. The EC considered that Brazil had presented a pragmatic way forward in its submission with respect to the identification of products of interest. He asked Brazil whether they would be able to provide the HS codes for the products which they had identified, whether it was willing to expand on sustainable use products and whether it could provide some further explanation of the figures mentioned in its submission. He also supported Brazil's suggestion to follow UNCTAD's approach on EPPs.

174. The EC noted that it generally supported the structure and conceptual approach taken in the Swiss paper. He welcomed the suggestions concerning the evolving nature of a list of environmental goods and the need for regular reviews. These were useful suggestions and should be explored in further detail.

175. In response to the questions concerning the HS codes and product description provided in the EC's submission, he said that he would come back to them at the next meeting.

176. The representative from Mexico thanked the delegations who had made submissions and also thanked the Secretariat for the revised version of the Synthesis of Submissions. She said that the diversity of proposals had enriched the discussion and generated many questions, in particular on eco-labelling and EPPs. She joined other delegations including Thailand (speaking on behalf of ASEAN), Australia and New Zealand, the US and Canada who could not accept the EC's suggestion of including eco-labelled goods in a list. She also noted that the US's and New Zealand's lists included the EPP category of products on the basis of end-use and disposal and Brazil's clarification to the effect that it did not favour the PPM approach in defining an EPP. However, she questioned the practical impact of this approach in the negotiations and agreed with Indonesia that the scope of the EPP approach should be defined.

177. Regarding the forthcoming Ministerial, she agreed with those who considered it premature to state that there would be a list of agreed environmental products for Hong Kong. In this regard, she noted that some of the initial lists that had been presented included goods for which the environmental justification was not apparent, and which had not been sufficiently discussed.

178. As regards the modalities to be agreed in the NAMA group, she concurred with Chile that the mandate of the NAMA group for environmental goods did not differ from its mandate for other non-agricultural products. In NAMA, the Mexican delegation continued to work constructively with specific proposals to ensure progress in the negotiations.

179. The representative of Japan shared the sense of urgency to proceed with the CTESS' work to fulfil the mandate in paragraph 31(iii). His delegation supported the continuation of the work based on the list approach, taking into account the concerns of developing countries that had been raised.

180. He also suggested, in line with the Canadian delegation, to have a detailed discussion on each item on the lists from the viewpoint of end use or degree of environmental merit or impact. This

would give each delegation the possibility to state its own preferences, interests or concerns, including those of developing countries and adding or deleting items, and would enable the CTESS to move forward to a balanced, agreed list, on the basis of which the NAMA group would discuss modalities of tariff reduction at an appropriate time.

181. He could not agree with India's view in paragraphs 19 and 22 of its submission that the list approach could not reflect the developing countries' concerns nor that it could not be complementary to the project approach. He was open to discussion on each item on the list as a next stage.

182. With regard to the EC's submission, he agreed with New Zealand that Chapters 14 and 15 concerned agricultural products, and that the focus should be on non-agriculture market access.

183. He also explained that, like the Korean delegation, they had excluded EPPs in their initial list. However, since the EPP category had been included in many of the lists submitted, Japan was willing to discuss the issue further.

184. The representative of Cuba stressed that the solution of the dual nature of environmental goods would be dealt with provided that the mandate under paragraph 31 was correctly fulfilled. He felt that if modalities of negotiation were clearer in the NAMA negotiating group, there would be greater motivation for ideas on what to do with respect to the lists and other variants for negotiation. He was also concerned with the concept of a living list, and noted that developing countries would not have the capacity to deal with every new product.

185. He welcomed the fact that the European Communities had recognized the importance of special and differential treatment, and wondered how the concept to be negotiated would be put into practice in NAMA negotiations.

186. He felt that the Indian proposal was innovative and approached the problem of sustainable development from a practical point of view. He also welcomed the approach of Brazil and other countries, which had spoken of the need to take EPPs into account.

187. The representative of Egypt thanked New Zealand for including some of the products of interest to developing countries in their list. He believed that the figures included in the statement by New Zealand (TN/TE/W/49/Suppl.1) were accurate, but were not sufficiently comprehensive. For example, when stating in paragraph 17 that many of the high technology items were exported by developing countries, one needed to look at how many developing countries exported goods such as photosensitive semiconductor devices or photovoltaic cells. In paragraph 8, it was stated that 90 per cent of EPPs were exported by developing countries. It would also be interesting to have a figure for the value of these exports. Perhaps the main disadvantage of EPPs was that they were rather low value, and the agreed tariff reduction would instead benefit high-tech or high-value goods as compared to EPPs. In the US's paper, trade in sisal or jute or such types of EPPs were compared to high-tech products.

188. He also expressed reservations on the category of waste and scrap utilization suggested by New Zealand in its submission. He acknowledged that some Parties to the Basel Convention were facing difficulties with in controlling permissible wastes or non-hazardous wastes (Article 9, as listed in Annex 9). In their responses to a questionnaire by the Secretariat of the Basel Convention on Annex 9 of the Basel Convention, 20 countries had said that they were not imposing any restrictions on the importation of goods under this item; 12 countries including Egypt had said that prior informed consent was required; and 8 countries had indicated that imports were completely prohibited. He mentioned that there was not a clear line between goods listed under Article 9 and Article 8 (100% hazardous wastes), which created difficulties for customs officials, since HS codes did not differentiate between hazardous and non-hazardous goods. For example, waste and scrap would have to be identified as hazardous or non-hazardous in order to be able to determine whether it

is an environmental good. One would also have to verify whether the product is controlled or prohibited, and if the prior informed consent had been fulfilled. Other problems faced by customs officials included illegal trafficking in hazardous waste; false declaration; the distinction between waste and regular recyclable goods; hazardous waste mixed in a larger legal shipment; mislabelling of individual containers; difficulties in testing, sampling, analysing, detecting and investigating products to determine if they were hazardous waste or not. Focusing on the magnitude of the problem he mentioned that a recent study conducted by the Rotterdam Port Authority had found that 70 per cent of the 1 per cent of the outbound container shipments inspected was either illegal or considered irregular traffic. Another example mentioned was items 70, 90 to 100, zinc waste and scrap, where zinc could be recycled and be environmental friendly, unless it was mixed with heavy metals like lead, in which case it would be characterized as hazardous. In his view, such a debate should be left to experts, namely the relevant MEAs.

189. Regarding the New Zealand list, he was of the view that weighing machines with capacity of less than 30 kg or more than 30 kg were difficult to accept as environmental goods, given that they could be used for other purposes.

190. With respect to the Indian submission, he recognized the importance of the notion of negative impacts of imported environmental goods on locally produced goods, especially if the latter were best suited for the local environmental conditions. He referred to the case of windmills in India as an example of the failure of market forces to auto-regularize the demand, importation and production of environmental goods. He concurred with India that the aim of the negotiations was also to achieve development and preserve the environment. He explained that a study conducted in Egypt demonstrated that liberalizing some of Egypt's environmental goods would not necessarily be conducive to an improvement in the environment. For example, Egypt had found that the demand for filters was inelastic. Therefore, a reduction in tariffs would not increase their imports and the result would be the loss of tariff revenues, with no impact on the environment.

191. He welcomed the new submission of the United States in which concrete data such as tariffs and imports, were included. He said he would like to see data for exports of the same goods, and also wondered if the Secretariat could provide data on average MFN tariff rates, and general trend of imports and exports.

192. He supported many ideas presented in the Cuban submission, such as special and differential treatment and the need for technology transfer. Regarding the Swiss submission he felt that it was not clear how some of the goods proposed in the list would help to achieve sustainable development, improve the environment, or would qualify as an environmental good.

193. The representative of Switzerland said that her delegation was encouraged by the number and the quality of the papers submitted. She welcomed the US submission and the information it contained, e.g. the overlap with other proposed lists and import data.

194. Switzerland also welcomed the EC submission and the additional clarification on the kind of products the EC was considering in the different categories, especially in the category referring to goods with high environmental performance or low environmental impact. Regarding the issue of eco-labelling raised by the EC, she stated that many delegations had concerns over what it might entail at the practical level. She therefore asked the EC to explain further their proposal of using labelling schemes included in the GEN network.

195. Turning to the Indian paper, she acknowledged the effort of the Indian delegation to find an alternative approach to fulfil the mandate under paragraph 31 (iii), but expressed substantial concerns with the approach suggested. She was not sure that the project approach fulfilled the mandate, and agreed with some other delegations that the project approach could be implemented by Members individually outside of the CTESS. She noted that the proposal of assigning HS Chapter 98 to

specific parts of a project would not be practical from a customs point of view. She indicated that it was not transparent and was discriminatory from the perspective of like products, because a product would have different duty rates depending on whether it was part of a project or not. In her view, another serious concern was that SMEs might be disadvantaged as compared to larger companies, because of the burden and process of requiring the approval of a project. Furthermore, the proposal would not be in line with the objective of trade facilitation pursued in the Doha Round, as more paperwork and more bureaucracy would flow from such an approach. She also had difficulties understanding India's point in Paragraph 2 of TN/TE/W/54 concerning the Cuban submission, that market access was just a means for achieving environmental benefits, but not the objective in itself. While it was true that delegations had raised many questions in their submissions, Switzerland did not believe this should prevent the CTESS from pursuing its fruitful discussions. She disagreed with the statement in Paragraph 21 that the lack of negotiating modalities was actually a disincentive to developing a list. Not having modalities in NAMA should not stop the preparation of a list.

196. She stated that the submission from Brazil was useful, and that the Switzerland shared the Brazil's view that EPPs was an important category to meet developing countries' export interests. She encouraged Brazil to come up with a list including relevant HS codes to discuss such products further.

197. Other issues mentioned in the Brazilian paper were non-tariff barriers and services. She indicated that non-tariff barriers were an important and difficult issue that had to be tackled in NAMA. On the issue of services, she wondered whether the role of the CTESS would be different from that of the Council for Trade in Services in Special Session. She stressed that the services issue was an important part of the mandate and should be further discussed.

198. She also said Switzerland would make available export data in an additional list. In response to the request by New Zealand on providing further information on why HS 830110 padlocks, HS 830160 parts of padlocks and HS 830170 keys had been named under multiple use category, she noted that such products could have other uses. Responding to questions by the US delegation, she said that at this stage Switzerland did not intend to propose further products on the categories of pollution management and resource management.

199. She said the Secretariat's Synthesis of submissions would provide Members with an overall view of what had been submitted, and would help take decisions on how to proceed. She called for an intensification of work in order to prepare a preliminary list of environmental goods for the Hong Kong Ministerial.

200. The representative of Venezuela welcomed the fact that the EC was prepared to work on transfer of technology, which was one of the most important concepts in the DDA and a priority issue for Venezuela. He asked the EC if they had identified any working modality, and if the transfer of technology would be negotiated bilaterally or multilaterally. He reminded delegations that paragraph 37 of the Doha Declaration provided guidelines to the Working Group on Transfer of Technology which emanated from the General Council. He also indicated that the US had provided statistics on environmental goods beneficial to developing countries exports without figures that reflected imports from developing countries and their share in trade.

201. The representative of Qatar said that each country had their own interests when proposing their lists, and recalled that Qatar was one of the first in so doing. He hoped that Canada, other natural gas exporting countries and countries exporting related clean technologies, would mention those products in their lists.

202. The representative of India pointed out that some of the problems relating to multiple and dual-use had not been addressed in the environmental goods lists submitted. He explained that India had proposed an alternative approach to the list approach because, in its view, the debate was going

only in the direction of preparing a list without addressing the concerns flagged in the submissions of India, Brazil and Cuba.

203. Regarding the concerns related to services, he asked whether the CTESS had indeed made the decision to leave the issue to the Services negotiating group. In his view, environmental services had been a neglected area and attention was not equally paid to environmental goods and services. He noted that India had presented the project approach as an alternative approach, because services and technology transfer were important aspects for market access. The lists tabled so far were all from developed countries, and the basic concerns of developed countries seemed to be missing altogether.

204. He also explained that India's intention was to present an alternative approach. Their conceptual paper should be seen not through the prism of an environmental goods list. It should be considered as providing a different perspective, which tried to address developing country concerns. He noted that the Indian proposal would allow the know-how, the procedures, the management skills, and the related technology, to come together in order to harvest the benefits that came with those environmental goods. He argued that technology transfer mostly resulted from trade in services rather than trade in goods. He emphasized that services would basically build capacity over time; there would be better access and acceptability of goods in other countries, and more compatibility with the applicable TBT-related measures.

205. In response to the question regarding the issues of predictability and transparency under the project approach, he indicated that it was addressed in their second submission (TN/TE/W/54). Given that none of the environmental projects could work without goods, he agreed that concessions would have to be made to give access to items, from which environmental benefits could be derived. One of the reasons for that was that some countries had a large and viable industrial base and their livelihood and sustenance could not be ignored, despite a lower level of tariffs, and that exports to developed countries from developing countries were still very low. The idea was to build a consensus on an item which looked at the market access in a futuristic manner also for developing countries, but national priorities should be given the place they deserved as well. He recognized the need to build a common and differentiated approach, but not ignoring the priorities of national governments. He gave the example of the water treatment plant, where membranes imported to reduce waste might not take care of the silt, and therefore there would be a problem in filtering the water. In that case, even with the tariff concession and the availability of goods, the environmental objectives would not have been achieved, since a large number of villages would continue to get non-drinkable water. He highlighted the need for working in a cooperative manner and looking for a mutually beneficial arrangement from which each Member country could benefit.

206. Finally, India noted that it did not want to close the door on the list approach. However, India remained to be convinced that the list approach took into account all of its concerns.

207. The representative of Oman noted his delegation's need for technical assistance in preparing its environmental list. He thanked the Members who had provided financial support to UNCTAD in order to assist developing countries in preparing their environmental list, and noted that his delegation would also try to benefit from such assistance.

208. Regarding the submission and presentation by Qatar highlighting the advantages of clean fuels, he stated that those were reviewed by Oman with respect to the objectives of environmental goods, non-carbon and pollutant emitting fuels and emergency and the energy-efficient technologies. He indicated that Oman supported the proposal for its sound merits regarding the social, economic and environmental benefits for the world community, and not just for a few countries.

209. The representative of the WCO Secretariat thanked Members for their invitation to participate in this meeting. The WCO stressed the need for all WTO Members involved in the negotiations to consult, cooperate and coordinate with their customs administrations. He reminded delegations that a

full description of the commodities that countries wanted to include in their lists was indispensable for other parties to identify whether or not they could accept the proposals. Consultation with customs were necessary, since customs gave the appropriate classification that would determine the applicable customs tariff, and would have to implement any results of the WTO negotiations.

210. He advocated using the HS terminology when a complete 4-digit heading or complete 6-digit sub-heading was referred to. However, there were many cases with "ex-outs" from HS codes, in which a full description of the commodity should be used, as well as the HS terminology.

211. With respect to the Indian proposal of using Chapter 98, he clarified that Chapter 98 was not part of the Harmonized System Convention. Chapter 98 was reserved for specific uses by contracting parties to the Harmonized System, for example, for temporary export and import of goods and for transboundary movements. The project approach could give some additional burdens to customs administrations because they might be involved in the administration and the management of that type of systems. He wondered how spare parts would be dealt with under that approach, for example, how to administer spare parts that would be delivered after the actual imports of the goods under the project.

212. With regard to the question of the classification of bio-diesel, he informed delegations that the Harmonized System Committee had classified a product referred to as bio-diesel under HS 382490, and that a Sub-Committee would later consider how to identify separately in the Harmonized System that type of commodity in the 2012 amendment. He noted that the Harmonized System nomenclature was available in English, French, Russian, Spanish and Portuguese.

213. With respect to issues raised by Egypt on the problems of distinguishing between hazardous and non-hazardous waste and scrap, there was a legal definition of waste and scrap in the Harmonized Nomenclature System which applied to all its Contracting Parties. He also mentioned that the figures making reference to the amount of containers checked at export being incorrectly classified or containing material which should not had been there (70 per cent of the 1 per cent of containers checked) was not a surprise given that risk assessment had been used. He noted that WCO had advocated the use of risk assessment as a tool to identify products.

214. The representative of the OECD Secretariat drew Members' attention to recent studies, including on "Synergies Between Trade and Environmental Services and Trade in Environmental Goods". The paper considered some of the services that were exported to developing countries and asked what kind of goods were associated with those. The study focussed mainly on business-to-business services to reflect the fact that developing countries were trying to attract foreign investment and have manufacturing plants that met pollution control regulations. One way of doing this would be to engage a company that would have the expertise in running pollution control plants. The plant would initially be highly dependent on imports but as equipment was needed this would stimulate a domestic industry for manufacturing those particular type of goods.

215. The other two submissions referred to liberalizing trade in renewable energy, and liberalizing trade in EPPs. The renewable energy paper looked at trade in charcoal, solar photovoltaics and associated systems, and wind turbines where the market was dominated by large OECD-based companies. However developing countries were quickly getting into the business, both through joint ventures and acquiring small companies that were originally based in OECD countries in building them up. For example, India was one of the leading producers of wind turbines and solar photovoltaics; the cells tended to be made by only a few companies but the modules and the larger systems were increasingly made in developing countries.

216. He indicated that before India had tabled their submission on the project-based approach, OECD had found that there were times when items supplied to a developing country as part of a package, involved a deal that the importing country would waive the tariffs. However, many of these

types of technologies went under the radar screen of this type of treatment; for example, household- or village-scale electricity systems was one of the fastest growing markets in rural parts of developing countries, where studies had shown that it was often a lot cheaper to build village-scale electricity systems than knocking down rain forests and building long transmission lines to try to connect those villages. Those goods rarely benefited from tariff waivers since they were too small and the people involved were too dispersed for them to benefit from that type of treatment.

217. Similarly, in the case of wind, he indicated that there were a large number of exports of large-scale utility turbines from OECD countries, but that small-scale turbines (1,5 KW instead of 1,5 MW) used at a village level often for water treatment plants and irrigation were not benefiting from tariff waivers.

218. He also explained that the OECD was looking at a wide range of additional products that could possibly be as considered EPPs.

219. The representative of UNCTAD stated that using statistical analysis was one way to evaluate reciprocity, but delegations should not lose sight of the other very important parameters in the negotiations including tariff profiles, tariff height, incidence of non-tariff barriers, nature and size of the markets, elasticity of demand and supply, and bearing in mind the work that would take place in the NAMA group.

220. UNCTAD's intention was to provide empirical data to address all concerns and to promote discussions. UNCTAD would be ready to provide technical assistance on a demand-driven basis. Finally, he indicated that they were mindful of the drawbacks implicit in the statistical analysis done at the 6-digit level.

221. The representative of the Basel Convention welcomed the comments by Egypt on the variety of products falling within the HS 6-digit product categories that could also, depending on the circumstances, fall within the scope of the Basel Convention. He noted that there were ongoing discussions within the Convention about distinctions between wastes and other materials, and a range of practical challenges faced at the national level in managing transboundary movements. He acknowledged the challenges faced by customs officials which were significant even in developed countries, including mislabelling of containers, and difficulties of sampling, analyzing and detecting hazardous waste strains. He indicated that the Basel Convention was responding to many of these challenges in a very practical way through technical assistance, capacity-building, and through activities at eleven regional centres.

222. The representative of Brazil thanked delegations who had presented submissions. Brazil was not convinced that the list approach alone would address the concerns of developing countries to identify items that would be of export interest to them and that would be relevant in terms of their environmental benefits. He mentioned that the lists had been put forward mainly by developed countries and built on previous experiences in the OECD or APEC. The lists tabled also reflected mainly the trade aspect and not the win-win-win situations. There were many products that were not obviously win-win-win type products. On the whole, Brazil considered that the lists were unbalanced, and reflected export interests that prevailed in many developed countries in the so-called environmental-related industries.

223. He considered that other elements, which had not been included in the proposals put forward by developed countries, had to be included in the negotiations, i.e. development elements, special and differential treatment, and environmental concerns. He also recognized the efforts made by some Members in their submissions to consider EPPs. UNCTAD's work could be an interesting basis to achieve a preliminary definition of environmental goods that would work for developed and developing countries.

224. He thought that the definition of an environmental good should be connected with the national environmental and developmental needs. The alternative Indian project proposal created that connection. He noted that developing countries had quite a large portfolio of ongoing environmental and developmental projects, including many with international assistance. He argued that the environmental project approach could also be some sort of a living experience, and enable Members to follow how the situation evolved in developing countries.

225. Brazil indicated that they would not support a living list based on trade only, which would involve an evolution towards the more technological and sophisticated type of products that were being produced mainly in developed countries, and that would not necessarily have a connection to the environmental and developmental needs of countries.

226. With respect to ethanol and bio-fuels, he noted that national environmental projects could lead to job creation and the provision of a sustainable and environmentally friendly lifestyle for populations that would otherwise migrate to the large urban centres. He explained that the concept behind bio-fuels was that the projects should be small-scale, should be regionally based, should lead to greater energetic autonomy in regions of Brazil that were outside of the more developed centres, and that it could be a means for communities to develop. Therefore, they supported looking further into the possibility of making use of the environmental project approach as a mechanism for the identification of those products that could meet trade, environment and development objectives.

227. In response to questions raised by Egypt regarding waste, the representative of Canada expressed the view that non-contaminated waste was sometimes discriminated against as regard tariff treatment simply because it was waste, despite the fact that it might have the same characteristics as raw materials. The principle used was that it was environmentally virtuous to make sure that waste material was recycled and not disposed of in landfills or left to pile up, and that might help in solving other countries' problems. Their view was that one should be looking at waste as raw materials for production processes. For example, the requirement to have recycled content in paper in newsprint would imply having a source of waste paper and to import waste paper in the metals area, smelters were increasingly using raw scrap which was of a very high quality. Lead was a heavy metal absolutely not essential for batteries and it was necessary that these batteries were recycled and not just face barriers simply because they were considered as waste.

228. In response to issues raised by Qatar, he explained they had not come to a conclusion at the moment with regard to natural gas, and therefore it had not been included in the list. He indicated that the problems with energy were relative. For example, if coal were the basic fuel, then gas would be an improvement, but for a hydro-economy gas would not look quite as interesting.

229. He pointed out that clean development projects under the Clean Development Mechanism (CDM) of the Kyoto Protocol were of interest to developing countries. He thought it would be interesting to do an analysis of how much tariffs were an impediment to having CDM or other projects approved and an impediment to investors investing in them.

230. In response to the comments of the WCO, the representative of Egypt clarified that the reference made to Rotterdam port was from a study made by an independent consultant in 2001, at the request of the Parties to the Basel Convention. He quoted from the study: "Authorities in Rotterdam, one of the world's largest ports, recognized that they could only stop, open and inspect a small percentage of outbound container shipments, including shipments that may be suspicious." Therefore, he could not agree that it was just an issue of trade facilitation and risk assessment. He observed that the fact that there was a specific definition of hazardous waste did not preclude problems such as mis-classification. In response to the example of lead batteries presented by Canada, he stressed that the solution was not to liberalize trade, but rather to have more restriction and transparency.

231. The representative of Venezuela said that his delegation attached great importance to UNCTAD's work on providing trade figures. He made reference to UNCTAD's statement that there were some interesting studies which reflected the disadvantages many developing countries might face in this area. He agreed with Brazil to exchange and compare UNCTAD's statistics with the statistics of some industrialized countries favouring the list approach, and to discuss more extensively their statistics on dual-use products and EPPs. He recalled his request to the US to provide trade figures indicating the benefits to the developing countries.

232. The representative of UNCTAD explained that the trade figures were derived from the COMTRADE database of the UN and the world integrated trade statistics, which was a joint effort of several organizations. He explained that the document mentioned was in fact an informal paper for discussion and not an official UN document. He clarified that the data had been compiled bottom up from the country level and that they had broken it down to the HS 6-digit code level. Then, products had been grouped according to the criterion that they should be of export interest to developing countries, but that criteria for the groups was for discussion, given there were pros and cons. He noted that dual-use was a significant problem, and that many of the most dynamic products were in fact dual-use items.

233. The representative of New Zealand said that the living list and how it would operate was something that would have to be discussed in the CTESS. The consideration of new items to be added to the list would be a transparent process, since NAMA would already have decided which formula to apply. In response to Brazil's question, he clarified that discussions would not just include the question of trade, but would also address the environmental and developmental benefits.

234. In response to the EC's question related to the use of the EPPs definition on the basis of end-use or disposal characteristics, he recognized that the idea was taken from UNCTAD. New Zealand had made some modifications, given that a broad range of products that might potentially be placed into an EPP category might require an eco-label to identify them. He noted that labels were an important information tool for consumers, but should not be used at the border to determine tariff rates, because of the implications with regard to the like products issue in the WTO.

235. In response to the question raised by Egypt on breaking down data, he found it was more interesting to look at the global trend figures rather than what came into New Zealand, although New Zealand had tried to point out what kind of products were imported, and what percentage was from developing countries. He also mentioned that the issues raised by the representative of the Basel Convention underlined the importance of the type of MEA information exchange needed. In response to the questions from Egypt, he specified that HS 842381, weighing machines less than 30 kilograms, was a product used in sewage treatment processing, basically part of a wastewater management system, where the systems weighed the flow of sewage, indicating the chemicals needed to clean the sewage. He welcomed the constructive response of India suggesting they were not closing the door on lists, and that there was a possibility of working together.

236. The representative of the United States welcomed the statement by India that it remained open to the various approaches, and agreed with the need to continue the constructive dialogue and exchange. She asked whether any trend-related data had been prepared by UNCTAD on EPPs, and if they had done any work on the environmental and developmental benefits of those products. The US agreed that there should be a balance of interests and win-win-win situations across the product categories. She also explained that the data used by the US was from the UN database.

237. In response to Chinese Taipei on whether there would be a complementary list in the future, she clarified that submission TN/TE/W/38 intended to outline a possible way forward on the question of what environmental goods were, and suggested a framework which would allow for some flexibility in defining environmental goods through the use of a core list and a complementary list.

The US's contribution suggested a way to balance the various interests. Ultimately, the use of a core list and a complementary list was an issue for Members to decide.

238. In response to questions raised by Chile, Egypt, and Venezuela concerning export data and data analysis, she explained that the import data was included because it was indicative of the market opportunities that were available for products in the US market. Given that US tariffs were already relatively low, the US thought it would be somewhat indicative of the global market opportunities that existed when trade was relatively free in these products. She did not believe that stakes in negotiations should be evaluated by looking at overall trade surplus in environmental goods generally, or for one product in particular, but rather to have a multi-dimensional look at products and balances on a product-by-product basis in terms of imports, exports and other considerations, as Brazil had also suggested.

239. In response to New Zealand's questions on products, she explained they had put two netting categories on the list, but only those nets which included the Turtle Excluder Devices (TEDs), i.e. a steel frame which would allow a turtle to escape from the fishing net, had been put on the list. She also indicated that super-heated water boilers were used in renewable energy plants in producing both heat and electricity, particularly those operating on biomass. The splitting, slicing and paring machines were used in recycling plants to prepare plastics and rubber for recycling, and they could also be used in preparing and conditioning biomass fuels. Prism mirrors, parts and accessories were used in concentrating solar energy.

240. In response to the questions from the EC on whether there was any scope to enlarge EPPs, she said they had attempted to include a few products, indicating there could be scope for others. The US noted that it could show some flexibility in this area where products were of interest to many developing countries, but would not be considering PPM-related EPPs. Finally, given the interest expressed by many delegations on their submission, the US was considering hosting a workshop on the margins of the following CTESS meeting, where experts could explain the various goods and the data associated with them.

241. The Chairman noted that there had been a suggestion for the Secretariat to merge several entries in the list where there appeared to be commonality, i.e. where several entries had been made under the same 6-digit HS code without any indication of an ex-out. The 6-digit HS code was still very wide in scope, and it was not clear whether Members intended to designate all the different products under that broad category, or only a small subset of them, as environmental goods for the purposes of the negotiations. He explained that he could not ask the Secretariat to merge the listings unless Members themselves indicated that the description in the HS code, as per WCO classification, rather than the description provided in their initial submissions, was of interest to them. He said that the Secretariat would update the paper to incorporate the latest submissions.

IV. OTHER BUSINESS

242. The Chairman informed delegations of his intentions for the TNC meeting of 21-22 July 2005. With respect to CTESS work, he intended to prepare a "State of Play" report that would cover all areas of the negotiations, showing what had been achieved, and the work that remained to be done.

243. He would be covering all areas of the mandate but focusing in particular on Paragraph 31(iii), as that was the area where there had been the most significant engagement, signalling the progress that had been made in the negotiations in terms of the submission of lists, and also in terms of the submission of ideas on how these negotiations might be taken forward. He felt encouraged by the number of new submissions tabled at the meeting, and was also mindful of the workload that such large lists entailed.

244. He also informed delegations of his intention to convene a formal meeting on 13-14 October 2005. However, given the Members' high level of engagement in the negotiations, there was a possibility that another meeting be held in September.⁴ The CTESS agreed to the renewal of the ad hoc invitations issued for that meeting at the next meeting.

⁴ The meeting was subsequently scheduled on 15-16 September 2005.