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

6-7 JULY 2006

Note by the Secretariat

1. The Committee on Trade and Environment in Special Session (CTESS) held its sixteenth meeting on 6-7 July 2006 on the basis of the agenda set out in the convening airgram, WTO/AIR/2846.

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

2. The Chairman noted that one new submission had been presented under this agenda item by the delegation of the European Communities (EC). The submission, circulated in document TN/TE/W/68, was entitled "Proposal for a Decision of the Ministerial Conference on Trade and Environment."

3. The representative of the European Communities (EC) stressed the reason why the EC had come forward with a submission at that time. Despite failure the previous week to establish modalities in Agriculture and NAMA, the EC was of the view that matters could evolve quickly and a breakthrough could allow Members shortly to enter into the final phase of the DDA negotiations. With this timeframe in mind, the EC wished to ensure that all aspects of the trade and environment mandate were included in the picture.

4. The EC believed that all parts of the Paragraph 31 mandate were important. If it were true that recently there had been more activity on Paragraph 31(iii), Members needed to be faithful to the whole mandate and deliver concrete results on each paragraph. For the EC, no outcome on Paragraph 31(i) simply would not be acceptable. That said, the EC had for some time been asked to clarify its intentions with regard to Paragraph 31(i); now that Members could enter the end-game, it was time to be specific.

5. The representative explained that the submission was basically divided into two parts, the first recalling general principles and the second being more operational, aimed at ensuring the principles were followed by the WTO. Concerning the principles, it was stressed that the submission simply reiterated principles the EC had insisted upon in a previous submission on the subject discussed in April 2004.[1] In this regard, the submission should not come as a surprise to the CTESS, even if the EC had added a few operational suggestions.

6. The EC proposed to have a formal WTO reconfirmation of the basic principles governing relations between MEAs and the WTO. The principles the EC wished to agree upon were well known

[1] The submission by the European Communities is in document TN/TE/W/39. See also document TN/TE/R/8 containing the Summary Report on the Eighth Meeting of the Committee on Trade and Environment in Special Session.

to all, not only because they were discussed in 2004, but also because those same fundamental principles were endorsed already by the international community in other multilateral fora, for example in Rio in 1992 or more recently in Johannesburg. The EC believed it should not be a problem for the WTO to do again what it started to do in Singapore in 1996, that was to say restate its full support for basic governance principles reflecting the state of play of public international law.

7. The basic principles the EC wished to have restated were as listed in operative paragraph 2 of the submission: mutual supportiveness, meaning that efforts to safeguard the multilateral system must go hand-in-hand with commitment to sustainable development and the right to take measures to protect the environment; no subordination, meaning that WTO and MEAs rules have equal standing; deference – which recognised that MEAs and WTO have distinct competences and specific expertise and that this expertise must be valued and utilized; and, finally, transparency, which was self-explanatory, ensuring mutual supportiveness through increased transparency.

8. The representative noted that a good question might be asked as to why the EC had come forward at that time with a proposal to restate those well known principles. After all, the relationship between WTO and MEAs had not been marked by any serious problem so far. The reason was simple: the fact that there had not been any conflict so far between the two bodies of law did not mean anything; there was no such thing as "stare decisis" in the WTO and in the absence of a legal system based on precedents, Members could not rely on existing panel and Appellate Body decisions to ensure no conflict would take place in the future. For the EC, good governance and conflict prevention between WTO and MEAs lay at the heart of the Paragraph 31(i) mandate and the best way to fulfil the mandate was to agree principles and procedures to ensure no conflict would occur in the future.

9. For the EC, if WTO restatement of support for governance principles was key, it was not sufficient. It was for this reason that in the third part of their paper, the EC proposed to put in place mechanisms to ensure the WTO did not act in clinical isolation from international environmental law. The EC believed the most obvious way to ensure that good governance was implemented was firstly to ensure that MEAs and WTO were fully informed of what each other was doing. Information exchanges had to be improved between MEAs and WTO and this was the purpose of the proposal in operative paragraph 3(a) of the submission. The WTO was already an observer to many MEAs; in the EC's view, MEAs had to be granted observer status in WTO committees as well.

10. Improvement of information exchanges would not in itself guarantee that conflict would not take place in the future. To achieve this, the EC suggested both in operative paragraphs 3(b) and 3(c) of their submission that the WTO would not decide on matters which were not of its straight competence. For the EC, the WTO was a trade organization and the fact that it had a very efficient dispute settlement system did not give it competence nor expertise to decide on issues of competence to MEAs. The best way to ensure WTO laws co-existed peacefully with MEAs rules was to agree that WTO bodies and WTO panels should call for and defer to the expertise of the MEAs when confronted with issues that were of the competence of MEAs in question.

11. To be concrete, the representative provided a "real life" example of a country taking a trade restrictive measure to prevent depletion of fish stocks caused for example by excess in fishing. This was an issue currently before the Negotiating Group on Rules, namely how to handle and regulate over fishing. If the trade restrictive measure was brought to WTO dispute settlement, would it be for a WTO panel or the Appellate Body to decide on whether the fish stock was being depleted? Would the WTO Secretariat have the expertise, knowledge and resources to decide on such a technical issue? The EC's answer was no and it further believed that it would be dangerous to allow an organization specialized in trade to rule on this type of issue. In the specific case, fishery agreements were the relevant international organizations dealing with fish stock preservation and should be the ones to decide on whether the fish stocks were depleted.

12. Continuing the example, the representative explained that the WTO would still decide on the trade-related aspects of the measure where it was competent. It would only defer to the fishery agreements on whether the measure was justified from a fish depletion viewpoint. A distinction was needed between the fundamental justification for the measure (i.e., was the fish stock being depleted?) – a matter for the fishery organization; and the manner by which the measure was applied – a matter for the WTO to decide upon. It was clear to the EC that the WTO would remain competent to decide on issues of its competence and would be the organization to decide if the measures were not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevailed, or a disguised restriction of international trade.

13. The representative anticipated that some Members would not be able immediately and wholeheartedly to support the EC proposals. In his view, however, the proposals were not revolutionary, nor were they proposing to amend existing WTO rules nor change the rights and obligations of WTO Members. The submission was an effort to propose a concrete outcome for this part of the negotiations, an objective the EC hoped was shared by all. It would be a modest outcome that would ensure that basic international good governance principles were reconfirmed and effectively followed by the WTO. The representative encouraged all delegations to consult their legal and environmental experts and to reflect on what the EC had proposed as an outcome for Paragraph 31(i).

14. The representative of Chile thanked the EC for the submission and said his delegation shared the emphasis on Paragraph 31 and in particular Paragraph 31(i). The representative noted the EC submission (in the form of a proposed ministerial decision) contained both legal and concrete elements as proposed outcomes for the discussions and said a more detailed study of the legal implications would be required. In the meantime, he had preliminary comments and questions.

15. The representative noted the submission contained no mention of the Doha Ministerial Declaration nor Doha mandate. Therefore, somebody unaware of the background and reading the draft might wonder where it came from and what was its context. There was no reference to Paragraph 31 nor Paragraph 6 of the Doha Declaration, so it seemed the decision appeared from nothing; that Ministers just thought it might be a good idea to come up with guidelines on the relationship between MEAs and WTO. The representative further noted the submission did contain a reference in preambular paragraph 1 to Article IV.1 of the WTO Agreement. However, Article IV.1 concerned the authority of the Ministerial Conference to take decisions on matters under agreements already taken up and the present theme was not dealt with in such agreements. There was, therefore, a major vacuum as to the context in which the draft decision appeared.

16. Concerning the draft decision itself, the representative said Chile agreed with the fundamental principles referred to by the EC; these were principles that should govern the relationship between WTO and MEAs. However, in terms of defining or applying those principles, as in the four sub-paragraphs of operative paragraph 2, Chile had concerns as to their scope. This would need further analysis. As well, there were other principles previously discussed in the CTESS which did not appear in the EC proposal, including "international cooperation"; Chile believed this was an important principle that should be reflected in any MEA-related decision or action to be taken by Ministers. Another element was "internal coordination"; the CTESS had already held long discussions on national experiences in terms of internal coordination, which impeded or favoured greater understanding or greater application or implementation of WTO rules and MEA rules.

17. The representative said operative paragraph 2 of the EC submission went beyond the Doha mandate because it talked about relations between MEAs and WTO rules, whereas Doha Paragraph 31(i) was a more restricted mandate. He speculated this might explain why there was no mention of the Doha mandate in the EC submission. The representative asked if the EC submission was based on the Doha mandate or whether it went much further, as seemed to be indicated in operative paragraph 2.

18. The representative described operative paragraph 3 as interesting and, in a context of Chile's own history with respect to WTO and MEA dispute settlement mechanisms, sought more information concerning the idea behind operative paragraph 3(c). The representative suggested this aspect would need to be looked at in more detail, including the scope of any opinion that might be given by an MEA to a WTO panel and how the idea related to Article 13 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The representative also recalled in this context a contribution from Switzerland relating to Article XX (g) of the GATT. In concluding, the representative said there were interesting elements in the EC submission and that his delegation shared the overall basis. However, further discussion would be required in terms of concrete application. Chile was of the view that any action to be taken by Ministers should be based on the Doha mandate. At first view, the EC submission did not contain this Doha context.

19. The representative of Norway noted that Paragraph 31(i) was an important element of the Doha mandate and welcomed the EC submission as a contribution that might energize the debate. In Norway's view, the CTESS had explored the Doha mandate in a constructive manner thus far. Interesting examples had been provided of how countries approached the interface between MEAs and trade rules at the national level. The exercise had shown that it was becoming regular practice that countries coordinate across ministries and sectors when negotiating new international agreements. It was clear also that cooperation among relevant organizations at the international level was improving. As well, it was becoming a common feature of international negotiations that trade aspects were discussed in environmental negotiations and vice versa. Norway therefore considered that the Doha mandate on this point had been explored extensively. A decision was however still needed on how to conclude on this part of the Doha mandate.

20. One option that seemed to have gained some traction was to reflect some core principles on the WTO/MEA relationship in a ministerial declaration, building on Paragraph 6 of the Doha mandate. With the growing importance of the WTO system and an increasing number of MEAs with almost universal membership, it was important that countries had a common understanding of the mutual supportiveness between trade rules and MEAs. Norway had always emphasised that "mutual supportiveness" and "no hierarchy" should constitute major principles when dealing with the relationship between WTO rules and MEAs and was pleased to see those principles strongly reflected in the EC submission. The EC submission contained many aspects Norway could generally support. If a ministerial declaration were to be the outcome, something which was still to be discussed and negotiated, Norway could foresee the development and incorporation of many of those elements.

21. Developments over past years had shown that Members' views on the issues were perhaps not so far apart when looking at what was actually happening in different fora. Most countries were both WTO Members and parties to several of the important MEAs. This could only be interpreted as a clear indication that countries felt both sets of rules were important for their overall development. In Norway's view, the EC contribution constituted an important element when furthering work under the agenda item.

22. The representative of Australia reiterated Australia's view expressed in previous meetings on the importance of staying tightly within the circumscribed mandate of Paragraph 31(i). Australia had also said previously that it believed the discussions on national experiences had been very useful and presented the best way to take forward the Paragraph 31(i) discussions in a concrete manner. Australia's paper on national experiences had described their coordination and consultative processes and had concluded that the relationship between trade and environment obligations was working well.[2] Australia had yet to hear any evidence in the CTESS to the contrary. Australia wondered, therefore, at the value of the EC paper which tried to formulate a solution to a problem which did not exist. In the process, it created, in Australia's view, many new problems. For these reasons, Australia

[2] TN/TE/W/45.

did not accept the value of establishing principles to govern the relationship between MEAs and WTO rules, as proposed by the EC.

23. Australia provided specific comments and questions on the EC paper. With respect to operative paragraph 2(a), Australia asked why the EC seemed to have paraphrased GATT Article XX but ignored the chapeau, and not referred to SPS Agreement provisions and a suite of other rights and obligations under the WTO. In Australia's view, this confused rather than clarified the rights and obligations of Members. The same paragraph also appeared to set down rules of interpretation which went beyond those which panels and the Appellate Body were to apply under Article 3.2 of the DSU.

24. With respect to operative paragraphs 3(b) and 3(c) of the EC submission, Australia found troubling the idea that committees and panels must defer to MEAs. In Australia's view, this proposal would make dispute settlement in this area more complicated and more uncertain. Panels would apparently have to disregard any other expert opinion they had sought under Article 13 of the DSU. Thus panels would have the right to seek expert opinion but, if this varied in any way from the advice of an MEA, it would have to be ignored. The representative posed further related questions, namely what if none (or only one) of the parties to a dispute were parties to the MEA? What if more than one MEA covered the subject area of the dispute and divergent advice was provided by the MEAs?

25. Australia agreed it was important that panels had the capacity to seek technical assistance from MEAs when they deemed this appropriate and necessary, in accordance with the DSU. However, in Australia's experience, MEA Secretariats did not necessarily reflect the views of all Members. There were frequently conflicting views about the interpretation of the MEA and there was the risk that the respective Secretariat may not adequately present this diversity of views to a WTO panel. A panel was more likely to make an informed decision on a technical issue if it was able to seek advice from a range of experts and hence receive a diversity of opinions.

26. While the EC noted in its submission that one of the principles of the WTO/MEA relationship was that neither should be subordinate to the other, the call for WTO panels and committees to defer to MEAs implied that the WTO should in fact be subordinate to the MEA in question. In Australia's view, this would seem to confuse rather than clarify the WTO/MEA relationship, in a manner that would not be acceptable to their delegation.

27. The representative of India complimented the EC for having presented its submission under Paragraph 31(i) and sought clarification as to its format as a decision of the Ministerial Conference; the representative thought it should be a "draft decision". The representative referred to some of the issues raised earlier by Chile. In particular, he noted that the EC paper contained no reference to the Paragraph 31(i) mandate under which it had been submitted. Consequently, the context was not brought out. Also, the representative recalled that Paragraph 31(i) dealt with specific trade obligations (STOs) set out in MEAs rather than MEAs as such; he sought clarification from the EC as to whether they intended STOs in MEAs or MEAs *per se*.

28. Concerning some of the key principles mentioned in the EC submission – "mutual supportiveness", "no subordination", "deference" and "transparency" – India appreciated those principles. In India's view, good international governance needed some of those principles to be observed. There was one set of MEAs developing rules and regulations towards achieving some objectives. The WTO also had certain objectives and there was linkage between the two. It could not be the case that the WTO worked in isolation. This was the objective that would have to be fulfilled. Some of the key principles mentioned in operative paragraph 2 of the EC submission could be a good beginning.

29. That said, the representative referred to operative paragraph 3(c) of the EC submission which talked about instances where a WTO panel might examine issues with an environmental content relating to a particular MEA. In such instances, it was proposed in the submission that the panel

should call for and defer to the expertise of the MEA in question. In this context, the representative drew attention to Articles 13.1 and 13.2 of the DSU (concerning "Right to Seek Information"); it was supposed that WTO does call for the opinion of the relevant bodies, depending on whether the parties agree. Therefore, the representative sought clarification from the EC concerning the inclusion of operative paragraph 3(c) when such a provision already existed.

30. The representative described his comments as preliminary and said the opinion of an expert panel in India would be sought before his delegation would give final views. He described the submission as a good working document and reiterated his appreciation of some of the principles mentioned therein.

31. The representative of Saudi Arabia thanked the EC for its submission and expressed appreciation also for the elaboration provided by the EC delegation. Saudi Arabia's preliminary view was that the scope of the document appeared to be broader than what was envisioned under the Paragraph 31(i) mandate. Saudi Arabia might not be able to support it as it stood. The submission would be reviewed thoroughly in capital and Saudi Arabia would come back with its views further at the next session.

32. The representative of Brazil welcomed the submission on Paragraph 31(i) from the EC and said his delegation was positively surprised to see the proposal as it showed the importance of looking at the Paragraph 31 mandate as a whole. Brazil believed all elements of Paragraph 31 were important and the CTESS should not concentrate its efforts exclusively on one part of the mandate at the expense of others. It was a positive sign, therefore, that the CTESS was resuming work in an area of the mandate which had been neglected for many sessions.

33. The representative presented preliminary comments on the submission and added that Brazil wished to understand some of its features before it could react properly. First and foremost, he asked why the EC had chosen the form of a draft ministerial decision, and what was the specific meaning of this in the light of expected result in other areas of the mandate. Second, Brazil was concerned about the possible systemic effects that such a decision could have with regard to Article XX of the GATT. It was supposed that the EC did not intend to change established rights and obligations of Members but confirmation was sought in this regard.

34. The representative's third point, related to the previous point, concerned the precise definition of "deference". Although there was an explanation of what "deference" could mean there was so far no detailed explanation of how "deference" should or would work in practice. Thus, once a WTO panel was established, he asked whether deference would work on the basis of information exchanges between the WTO Secretariat and relevant MEA Secretariat, or whether the WTO would defer instead to decisions from the Conference of Parties (COP) of the specific MEA. In the second situation, what if there were no decision from the COP? The representative of Brazil said those were some doubts his delegation had as to how deference could work in practice and he sought more in-depth explanation from the EC.

35. Brazil's fourth point related to some possible contradictions in the submission. It was mentioned in the submission that the respective responsibilities of the WTO and MEAs should be preserved; Brazil felt this was a valuable principle. But it was also mentioned that the WTO should defer to MEAs on relevant points of expertise. Since it was not yet known how "deference" would work, there was an unavoidable risk of invasion of competence. He asked how Members would work with that risk. In anticipating further information on the EC submission, the representative reiterated Brazil's support for each part of the mandate and their view, shared with the EC, that the WTO should live in peace with MEAs and the trade obligations contained therein.

36. The representative of Argentina thanked the EC for its submission and noted also the EC's introductory comments concerning why the submission had been put forward at that time. The

representative sought to put the document into the context of the negotiations: when work began in 2001, the CTESS discussed initially the scope and interpretation of the Paragraph 31(i) mandate. On that basis, the Committee had reached an understanding to analyze the relationship between STOs and the norms of WTO. Since then, the CTESS had been identifying STOs in respect of specific MEAs and attempting to establish the shortcomings and pros and cons of all this. Argentina was surprised, therefore, that the EC was still insisting the problem to be considered was the relationship between WTO and MEAs. The EC had referred to work done in Singapore in 1996. However, the present negotiations could not be a continuation of that work because what was done in Singapore had to do precisely with the relations between WTO and MEAs, while the mandate referred to STOs. The representative wondered if the CTESS should depart from the understanding of the last four years.

37. The representative argued that the EC submission, in establishing principles, would erode principles already established in the WTO. This was a source of great concern to Argentina and the representative offered two examples. First, operative paragraph 2(a) of the EC submission stated that efforts to safeguard the non-discriminatory multilateral trading system had to go hand-in-hand with the commitment to sustainable development. One of the most important values of the WTO was the principle of non-discrimination; therefore it would be surprising that Members would merely have to make an effort to preserve the principle of non-discrimination and would not be committed to the principle. Second, operative paragraphs 3(b) and (c) of the EC submission would oblige WTO committees and panels to "...call for and defer to, in the relevant points, the expertise of the MEA in question". This would once again be the subordination of WTO agreements to the environmental goals of MEAs. The representative said there were other examples of apparent contradictions or consequences of implementing a decision of the kind suggested.

38. The representative referred to the hypothetical example provided by the EC of a country adopting a trade measure to prevent over-fishing. The first question was whether a WTO panel or the Appellate Body, or the WTO secretariat would be competent to assess the state of the fisheries resource. On this, Argentina shared the view that it was not necessarily the Secretariat nor Appellate Body that would have to make that assessment or judgement; however, nobody would doubt that a panel or the Appellate Body could obtain information from scientific experts. This was foreseen under the DSU, for instance in Appendix 4.

39. Also, what was undeniable was the competence of the WTO to assess whether a trade measure was necessary for achieving a particular environmental goal, whether the measure was proportionate to the objective, and whether or not it would be discriminatory. This was within the competence of the WTO; specifically, Article XX of the GATT suggested such an examination could prevent a country adopting a trade measure under an environmental justification if such a measure was in practice or design discriminatory. The representative said the objective was to prevent a situation where a protectionist measure was presented as an environmental measure – this was a real value and it would be dangerous if this skill and competence of the WTO were eroded. The representative said there were examples in the WTO of specific instances where trade measures had been adopted under some sort of environmental justification and had been declared protectionist.

40. The representative said the main idea of the Doha Round was market access. The benefits of market access needed to be preserved and the situation needed to be avoided of enhancing the ability of Members to take protectionist measures behind an environmental screen, thereby negating any progress that might be achieved on market access.

41. The representative of China thanked the EC for its submission. The submission reminded the representative of discussions held almost two years ago when the CTESS had tried to select some competent MEAs and to identify STOs in the selected MEAs. Most importantly and practically, some Members had shared their national experiences concerning the coordination of trade and environmental agencies in the course of negotiation on certain MEAs. From that discussion, China

had seen no proof of the necessity for a legal paper such as that presented by the EC. China shared and fully supported the views expressed by Chile, Australia, India, Brazil and Argentina.

42. The representative of the United States (US) thanked the EC for its submission. Reacting to the example given by the EC as to why this kind of proposal was necessary, the representative said her delegation would welcome more concern from the EC to protect fish stocks in the Rules negotiations and to support some ambitious proposals there rather than to create general principles of "deference" between MEAs and the WTO. In the view of the US, this would be more efficient and effective and would directly support the safeguarding of the world's fish stocks.

43. The US shared the concern of other delegations with regard to where the context was for the EC proposal and what bearing or resemblance it had, or lacked, with respect to the mandate of Paragraph 31(i). The mandate was specific: it asked that Members considered the relationship between existing WTO rules and STOs set out in MEAs. In the view of the US, the EC proposal went well beyond the limited scope of the mandate and even more disturbing, it appeared to mischaracterize WTO rules and other concepts related to MEAs. The EC proposal also failed to reflect the factual, experience-based discussions the CTESS had had most recently under Paragraph 31(i).

44. In the view of the US, while the draft proposal purported to summarize WTO rules and reaffirm them, it actually mischaracterized them in several instances by omitting key concepts and terms. In this regard, the example had already been mentioned by other delegations of operative paragraph 2(a) of the EC submission where some critical conditions of the chapeau of Article XX of the GATT had been completely left out or ignored. The US wondered if the EC was seeking to re-write GATT Article XX through the back door of a ministerial declaration.

45. The representative added that the text of the EC submission also mischaracterized, or simply misstated, concepts related to MEAs. The example was given of preambular paragraph 5; the US disagreed that MEAs constituted "*the*" response of the international community to trans-boundary environmental problems. In the US view, many transboundary environmental problems could be addressed through cooperation or other arrangements apart from legal agreements.

46. The representative said perhaps the most troubling piece of the proposal came in operative paragraph 3 where the EC had crafted those mischaracterizations and inaccuracies into a draft decision that sought to commit the Membership and all dispute settlement panels examining "issues of environmental content" to defer to an "MEA". She said that putting aside for the moment obvious and critical questions, many of which had already been raised (questions such as "Which MEAs would this include?"; "What was an "MEA" exactly apart from its Membership and the Secretariat established to serve that Membership?"; "What exactly was meant by phrases such as, "defer to" and "issues of environmental content"?"; and "What would all this mean in practice in terms of how a panel would be expected to interpret and apply those pronouncements?"), the US would appreciate explanation from the EC as to how its proposal more fundamentally: (1) fulfilled the mandate given; (2) could be viewed as consistent with that mandate, in particular the part in DDA Paragraph 32 which stated that "…negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries"; and (3) took into account another critical piece of the mandate, namely the fact that "The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question"?

47. It appeared to the US that the draft decision was intended to have the effect of significantly altering Members' rights and obligations. In this regard, the US looked forward to the EC's explanation.

48. The representative said the US stood ready to work to advance the negotiations but the EC proposal did not form a basis upon which to move forward. Instead, it distracted from the task at hand and failed to build on constructive and practical discussions that had been held in the CTESS most recently. In the view of the US, Members needed to avoid abstract and misguided principles that could have broad and unknown impacts on WTO Members' rights and obligations, and instead reflect more carefully on the experience-based papers and exchanges that were held to date and build upon those. For example, several Members had underscored the importance of domestic coordination among trade and environment experts at the national level. The Committee should look for ways to recognize and promote domestic coordination and cooperation. Several Members had also noted the importance of ensuring that STOs set out in MEAs were science-based and transparent. The Committee might look for ways to recognize and promote science and transparency in both the negotiation and implementation of STOs.

49. In the view of the US, an outcome building on Members' experiences in negotiating and implementing STOs set out in MEAs was not only consistent with the mandate, and would not prejudice Members' rights and obligations in the WTO, but would also further enhance the mutual supportiveness of trade and environment. The representative observed that all of the experiences offered to date strongly suggested the relationship between WTO rules and STOs set out in MEAs was working quite well. The relationship was not in need of "reconciliation" as suggested by the EC in its paper; there was no evidence of that.

50. Better coordination among trade and environment officials at domestic and international levels, particularly those domestic officials with responsibility for implementing the relevant provisions, could further enhance the relationship. The representative of the US noted also that several delegations and previous reports from the Chairman had pointed to synergies between Paragraphs 31(i) and 31(ii), particularly related to cooperation and information sharing between MEA secretariats and the WTO. The US was interested to explore the synergies further in CTESS discussions in 2006. However, the work would need to be done in a manner consistent with the mandate and not at cross-purposes with it.

51. The representative said that if the CTESS wished to engage further on the EC proposal, the US would have even more detailed questions and comments for the EC, particularly with respect to some of the legal implications of this kind of proposal.

52. The representative of Chinese Taipei joined previous speakers in expressing appreciation to the EC for its submission. Chinese Taipei shared the view of some delegations that the proposal had complex legal implications; his delegation would continue reflecting on the proposal and revisit the discussion with the EC in due course. The representative offered preliminary comments.

53. In preambular paragraph 6 of the EC submission, the EC proposed that if a dispute arose between WTO Members which were parties to an MEA over trade measures, they should endeavour to resolve the matter through the dispute settlement mechanism available under the MEA. In Chinese Taipei's view, however, when there was a specific trade dispute between WTO Members, parties to the MEA in question, the complaining Member alone should have the right to bring the case to the dispute settlement mechanism under the WTO regime or the regime of the MEA in question, subject to the provision of Article 23 of the DSU. If the trade dispute was between a WTO Member party and a WTO Member non-party to the MEA in question, the case should only be settled according to WTO rules and procedures.

54. In preambular paragraph 7, the EC proposed that "…Members through their individual and collective actions were responsible for and committed to the protection of the environment and that MEAs played an instrumental role in reinforcing these actions." In Chinese Taipei's view, MEAs should be only one of the options. Chinese Taipei also shared the view of India and other delegations with respect to the scope of the Paragraph 31(i) mandate. This meant that the negotiations should be

limited to the scope of the relationship of WTO rules and STOs set out in MEAs. In addition, the outcome of the negotiations under Paragraph 31(i) should not add to or diminish the rights and obligations of Members under existing WTO agreements, as mandated by Paragraph 32 of the DDA.

55. In the operative section of the proposal, Chinese Taipei had similar concerns to the US with respect to the proposed principles to govern the relationship between MEAs and WTO, especially operative paragraphs 2(b), "no subordination", and 2(c), "deference". Chinese Taipei's main concern was how to ensure, after implementation of these principles, that the measures taken pursuant to MEA STOs should not be automatically presumed in conformity with WTO rules. Also, how would WTO ensure that WTO Members who were not MEA parties would only be governed by WTO rules and not MEA rules. The representative of Chinese Taipei added that in order to ensure the proper functioning of the trade regime, the WTO should be allowed to examine the legitimacy of the application of certain STOs if a dispute arose.

56. The representative of Switzerland observed that the CTESS had thus far had a good discussion on national experiences with respect to implementation of STOs in MEAs and existing WTO rules. CTESS had also had a thorough discussion on principles guiding the relationship. In Switzerland's view, while the experience-sharing had been helpful, it was not enough to fulfill the mandate which Ministers had given in Doha. Rather, there was a need to define in concrete terms the principles guiding the relationship. In this regard, Switzerland welcomed the EC's proposal as constituting an excellent basis for CTESS's future discussions on a concrete outcome under Paragraph 31(i).

57. The representative said it was clear some questions with respect to the form of the EC submission might deserve further analysis. For instance, there might be a need at some point in the future to reconsider what should be placed in the preambular and operative parts of the decision. Also, the relationship between WTO panels and relevant institutions of different MEAs, as set out in operative paragraph 3 of the EC submission, might require further clarification. That said, Switzerland supported the basic ideas contained in operative paragraph 3.

58. The representative observed that Switzerland had always supported and continued to support the four principles mentioned in operative paragraph 2 of the EC submission. Switzerland agreed the relationship between WTO rules and STOs in MEAs should be governed by the general principles of "no subordination", "mutual supportiveness", "deference" as well as "transparency".

59. The representative commented that the multilateral trading system and environmental regime were mutually supportive in focusing on their own tasks and competences. In order to maintain this mutual supportiveness, each should remain responsible and competent for the issues falling within their respective primary areas of competence. Switzerland observed that references to mutual supportiveness were incorporated in MEAs; the term "mutually supportive" appeared in the preambles of the Rotterdam and Stockholm Conventions, as well as the Cartagena Protocol. The concept of mutual supportiveness had come up also in various contexts and generally had related specifically to the trade and environment relationship. There were references to "mutual supportiveness" also to be found in the WTO context. The Doha mandate used the concept of mutual supportiveness as an ultimate goal of the negotiations relating to the relationship between WTO rules and MEAs. Although legally speaking the inclusion of the "mutual supportiveness" concept did not amount to a 'rule of conflict', it could in the view of Switzerland serve as a guiding principle in finding concrete solutions in cases of conflict.

60. The representative of Switzerland recalled the elaboration their delegation had provided in October 2005[3] to the effect that the principle of "no subordination" or "no-hierarchy" among treaties was incorporated in the terms of the Vienna Convention. In the context of the WTO-MEA

[3] TN/TE/W/61.

relationship, the principle of "no subordination" thus also applied. As a result, there was no ranking between WTO rules and MEAs. In order to avoid the conception that treaties were ranked unless otherwise specified, Switzerland believed the reference to "no subordination" within WTO was an important recognition of an existing principle of public international law.

61. Switzerland further believed "deference" was a key concept to guide the relationship between MEAs and the WTO, as it allowed institutions and norms to focus on their respective spheres of competence and legitimacy and also reduced the possibility of inconsistencies within the international legal system. With respect to "transparency", Switzerland believed this was a principle which helped to enhance the mutual supportiveness of trade and the environment by providing for regular information exchanges between the WTO and MEAs.

62. Switzerland had concluded that in the present EC submission, the four principles of "mutual supportiveness", "no subordination", "deference" and "transparency" had been reflected adequately. Switzerland welcomed the first concrete proposal of the EC and the work upon which it was based.

63. The representative of Korea expressed appreciation to the EC for its submission. Korea wondered if the CTESS had yet exhausted its efforts to discuss potential or actual cases of conflict and reached the point sufficient to deliberate a specific text or decision to be considered by Ministers. Expressing preliminary comments, the representative said Korea was of the view that WTO rules and MEAs were on an equal footing and mutually supportive; this was a view that also enjoyed broad support among Members. However, preambular paragraph 6 of the EC submission, pointing out the priority among the dispute settlement mechanisms, and operative paragraphs 2(a), 3(b) and 3(c), in particular, had a binding nature for Members and WTO bodies. These paragraphs would need more consideration towards keeping a balance between WTO rules and MEAs.

64. The representative of Mexico thanked the EC for its submission. Expressing preliminary comments, she said Mexico's position was well known and their delegation, like others, had asserted there was no need for a proposal such as the one being presented by the EC. In Mexico's view, the proposal contained many contradictions. First, the relevant mandates were as set out in the Ministerial declarations of Doha and Hong Kong and required the negotiations to focus on the relationship between existing WTO rules and STOs established by MEAs. While the representative of the EC had earlier spoken of the need to be faithful to the mandate and of ensuring an outcome under Paragraph 31(i), this was not reflected in the present submission. A second contradiction concerned the assertion by the EC that the objective of the proposal was to guarantee that there would be no conflict. Mexico believed this objective would be difficult to achieve with the elements contained in the EC proposal. For example, operative paragraph 2(a) on "mutual supportiveness" seemed to go against the chapeau of Article XX of the GATT, the purpose of which was to discipline the use of exceptions. This had been recognized by the Dispute Settlement Body on several occasions. This effort would seem to be reduced to a mere invitation which would go against, as other delegations had also said, the principle of non-discrimination.

65. A further contradiction related to the EC's explanation that it was not the purpose of their proposal to modify WTO rules nor increase or reduce Members' rights and obligations. In Mexico's view, some principles, for example "no subordination" and "deference", and also operative paragraph 3(b), seemed to run counter to the DSU, particularly Article 3.2 which said the dispute settlement system was a central element in providing security and predictability to the multilateral trading system. Also in Article 3.2 of the DSU, Members recognized that the system served to preserve the rights and obligations of Members under the covered agreements and to clarify the existing provisions of those agreements in accordance with the customary rules of interpretation of public international law. In Mexico's view, the proposals contained in operative paragraph 3(c) of the EC proposal would run counter to the integrity of the DSU.

66. The representative said that for all the above reasons, Mexico agreed with other delegations that (1) the EC proposal called into question the mandate the CTESS had for its work; (2) the proposal would have a negative impact on the integrity and predictability of the multilateral trading system; and, (3) it was not necessary to make changes to existing rules.

67. The representative of Pakistan extended appreciation to the EC for coming forward with its submission. The representative observed that the preamble of the draft decision portrayed goodwill sentiments for according due respect to MEAs and their legal status in terms of WTO obligations. At the same time, the representative wondered if the MEAs would also ever consider to extend such status to WTO. While Pakistan could go along with the general format of the preamble, consistent with its view that WTO Members did pursue shared objectives with MEAs to the extent of promotion of sustainable development, Pakistan also felt that the elaboration of basic principles as set out by the EC in operative paragraph 2 had only a loose relationship with the implementation provisions suggested in operative paragraph 3.

68. With respect to operative paragraph 2, Pakistan could agree to the formulation of sub-paragraph (d) relating to "transparency" and exchange of information between WTO and MEAs. However, Pakistan had concerns with the descriptions of the three principles of "mutual supportiveness", "no subordination", and "deference".

69. On "mutual supportiveness", Pakistan was especially concerned at the last sentence of sub-paragraph (a) which would make it binding for all WTO bodies to ensure that the interpretation and application of WTO rules took due account of and was mutually supportive with the provisions of MEAs. The representative asked the EC how 'due account' would be ensured and what would be the test and criteria to judge the accuracy of such interpretation. On "deference", Pakistan agreed that MEAs and WTO had distinct competences. However, Pakistan did not agree with the EC's view that both had a mutually supportive multilateral governance framework. Whereas the WTO's governance framework was very well ensured by the DSU, the representative doubted that similar kinds of arrangements existed in MEAs. Hence, "deference" would not really be justified in that context. On "no subordination", the representative noted Australia's comment that when issues were deferred to MEAs on the basis of their having environmental or sustainable development content, it meant that WTO was being subordinated to some MEA provisions. The representative posed the following questions to the EC: if there was a dispute at the WTO, would the WTO panel be required to refer the case in the first instance to all MEAs to get their respective points of view on any environmental content? Would they be required to ask the MEAs whether any of the parties had ever consulted them or approached them for recourse under any MEA provision? If this were the case, what would the WTO panel do?

70. The representative said he could not think of any dispute in international trade which could not be stretched so as to include any content of sustainable development or environmental concern to any level or degree. Hence, it would become virtually impossible for the DSU to function actively and effectively. Pakistan agreed with Australia and others suggesting that the WTO panel would have recourse to environmental experts coming either from the MEAs or from Member states in seeking technical advice. But the WTO panel should in no way be subjected to the whims of MEAs' experts as more than one expert may find it difficult to converge on the level of environmental impact in a particular case. Nor would Pakistan wished to see the WTO panel held hostage to such divergence of technical views by the MEAs and have proceedings deferred. Besides complicating the dispute, the obligation would also entail extra burdens of time and resources on the parties, especially when it concerned developing country Members and LDCs.

71. The representative said Pakistan stood ready to work with the EC and other delegates in reshaping such concepts for furthering the mandate.

72. The representative of the Philippines joined other delegations in thanking the EC for the submission embodying its expectations for an outcome under Paragraph 31(i). While the proposal was still being examined in capital, the representative had preliminary comments. First, like other delegations, the Philippines believed that the issuance of such a proposal may have been premature and some of the recommended decisions appeared to go beyond the scope of the mandate, which related to specific trade obligations in MEAs and the applicability of existing WTO rules as among parties to the MEAs. On the latter point, the Philippines observed, as other delegations had done previously, that there was no reference in the EC submission to the Doha mandate, except in the title. Second, in the view of the Philippines, thus far there were not enough indications of convergence in the CTESS on the content as well as the structure of an outcome on Paragraph 31(i). In this context the Philippines doubted there was yet sufficient basis for drawing up a proposed Ministerial Decision on the mandate.

73. The Philippines sought clarification on a number of specific points with respect to the EC submission. Concerning preambular paragraph 4, what sustainable development objective was being referred to that accorded Members the right to adopt measures for the protection of animal or plant life or health? In relation to operative paragraph 2(a), how did this right to protection figure into the principle of mutual supportiveness? The representative observed in this regard that some delegations had noted that international agreements contained the principle of mutual supportiveness. However, he asked from which of these agreements did the EC derive such a link between right to protection and mutual supportiveness. Was their determination of appropriate level of protection in accordance with Article XX (b) and (g) of the GATT 1994 as well as other relevant WTO agreements, such as the SPS and TBT Agreements?

74. Concerning preambular paragraph 5, the representative of the Philippines asked what was the basis for stating that multilateral approaches to global environmental problems were to be strongly preferred. With respect to operative paragraph 3(a), the drafting seemed to suggest MEA bodies automatically would be granted observer status in the relevant WTO committees upon request. Did the EC envisage to incorporate into its decision the proposed criteria and conditions for granting observer status to MEAs contained in its separate submission in document TN/TE/W/66.

75. With respect to operative paragraphs 3(b) and 3(c), the Philippines shared concerns raised by other delegations. While respecting the competence of WTO and MEA institutions, the Philippines was concerned at the proposal for WTO committees and panels to defer to MEAs by the mere characterisation of issues as having an environmental content. Also, this could run counter to the principle of no subordination and also precluded the thorough examination of the environmental measures, trade and development effects on which the WTO rules might be applicable.

76. The representative of South Africa thanked the EC for its submission. In her view, the draft language of the submission essentially dealt with both Paragraphs 31(i) and 31(ii); her delegation would revert to some issues when the CTESS resumed its consideration of 31(ii). On the present item, South Africa agreed with comments made by Australia, Brazil, Argentina, India, the Philippines and others and also had additional comments to make.

77. The representative observed that the EC submission had made extensive use of language and concepts already agreed in various fora. As a country with a particular interest in the Johannesburg Plan of Implementation, South Africa believed some of those concepts needed further refining. For example, with respect to the idea contained in the preamble of the EC submission that "trade and environment policies blended effectively to deliver sustainable development, South Africa was left wondering what happened to the third pillar of sustainable development, namely social development?

78. South Africa sought clarification on a number of points in the EC submission. For example, what was being said in operative paragraph 1? While inputs were awaited from capital, the representative observed that the language in this paragraph was an excerpt from the Preamble of the

Marrakesh Agreement Establishing the WTO. She sought clarification as to the implications of moving the language into the operational part of a Ministerial Declaration. Also, clarification was sought on the implications of changing the verb "recognising" to "the WTO shall reconcile". The representative noted also that questions had been raised with respect to how "deference" would be implemented. In this respect she observed that while WTO's competence in trade issues was recognised in operative paragraph 2(c), by operative paragraphs 3(b) and 3(c), WTO would defer to MEAs on issues with environmental content, even though the fact those issues were being addressed in a WTO committee or panel implied they were trade issues. At first glance, this seemed contradictory. In this connection, the representative wondered about the basis upon which MEA Secretariats would participate. In this regard she observed that while the EC submission gave an impression of MEAs as uncomplicated, unchanging, uncontroversial and universal bodies of law, this was not her impression.

79. The representative noted that while South Africa agreed with some of its elements, the EC submission failed to mention the mandate. Moreover, it was a struggle to see how the submission addressed the mandate. In this respect, the representative observed that while the mandate referred to STOs, the submission mentioned trade measures just once, in the preambular part. Also, the mandate referred to existing rules and the only existing WTO rules which seemed to be impacted in the EC submission were the DSU and perhaps Article XX of GATT. The representative concluded that South Africa's initial impression was that the EC submission went beyond the mandate and would be difficult as a contribution towards achieving the mandate, to which South Africa was committed.

80. The representative of Ecuador thanked the EC for its submission. She joined other speakers in expressing uncertainty with the format of the document as a proposal for a decision of the Ministerial Conference. She queried also the meaning of the format in relation to other aspects of the negotiating mandate. Ecuador observed that in certain areas the proposal had legal and systemic implications. Ecuador's preliminary response was to agree with other delegations that the proposal went beyond the mandate or remit of Paragraph 31(i). Ecuador further felt the proposal departed somewhat from the development dimension that was the focus of the Round. For Ecuador, the development dimension was to be realised through market access and anything that restricted or diminished such market access would be problematic for her delegation.

81. The representative of Ecuador referred to contradictions highlighted already by other speakers and mentioned specifically a contradiction between operative paragraph 2(a) of the submission and Article XX of the GATT. In this regard, she contrasted the reference to "efforts to safeguard the non-discriminatory multilateral trading system" contained in operative paragraph 2(a), which dealt with principles of non-subordination and deference, with the fact that non-discrimination was a governing principle of the WTO. Ecuador also shared the concern of others with respect to operative paragraphs 3(b) and 3(c).

82. The representative of Malaysia thanked the EC for its proposed text to give effect to Paragraph 31(i). Malaysia shared the concerns raised by many previous speakers including Australia, India, China, US, Brazil, Mexico and Ecuador, especially with respect to the fact that the submission went well beyond the mandate of Paragraph 31(i). Malaysia further shared the view of the US that the CTESS's current discussion on experience-sharing was an appropriate way to further progress the discussion under Paragraph 31(i).

83. The representative sought clarification with respect to operative paragraph 3(a) of the EC submission; the drafting of this paragraph seemed to suggest all MEA bodies should, upon request, automatically be granted observer status in the relevant WTO committees. In Malaysia's view, requests by MEAs for observer status in WTO committees should be considered in the relevant committees. Also, such requests should have consensus support of all Members and should not be granted automatically. The representative asked the EC for clarification on this aspect of "automaticity" of granting of requests for observer status.

84. The representative of New Zealand welcomed the EC contribution under Paragraph 31(i) and the opportunity it presented to engage substantively on the issues raised. New Zealand considered that part of the mandate important and noted also that the present exchanges in the CTESS would help intensify the negotiations as directed by Ministers at Hong Kong.

85. Before commenting directly on the EC submission, the representative noted that, like other Members, New Zealand had appreciated and found useful the reviews of national experiences which had been the focus of CTESS exchanges to date under Paragraph 31(i). Those exchanges had helped to inform thinking on the decision-making processes at the national level. The range of contributions and outline of experiences indicated the substantive nature of the dialogue CTESS had had thus far. That said, it was perhaps less clear how far that discussion could assist in clarifying the very specific issue which Ministers had asked Members to think about i.e., the relationship between STOs in MEAs and existing WTO rules – not least because issues of WTO consistency were more likely to arise at the level of domestic implementation and interpretation of specific MEA measures, even when MEA provisions and WTO rules were, on their face, mutually supportive.

86. New Zealand noted its view that an outcome from the Paragraph 31(i) negotiations was an important element. Like others, New Zealand believed Ministers in Doha clearly considered there was a specific issue to address; it was over to negotiators to find a way forward. For its part, New Zealand was considering its own contribution to the discussion which would likely build upon an earlier proposal New Zealand had made before the Doha Round was launched regarding a voluntary consultative mechanism. This mechanism would facilitate consideration of 'first-best' policy outcomes on the environment through the optional consideration of a tool box of policy approaches, including technology transfer, development assistance, technical and information exchanges – all of which, in New Zealand's view, might be more efficient and effective than a trade measure applied through an MEA as a means of addressing an environmental issue.

87. Turning to the EC's contribution, the representative raised a number of points. First, New Zealand sought information on the reasoning behind the approach of addressing the Paragraph 31(i) mandate through a Ministerial Decision. In particular, New Zealand was puzzled by the absence of a reference in the text to the Paragraph 31(i) mandate and had doubts as to whether a Ministerial Decision framed in the way proposed by the EC was necessarily the best approach to fulfil the mandate. New Zealand further wondered if the way the draft decision was caste did not stray outside the mandate.

88. Second, New Zealand highlighted a need for vigilance to ensure that what was contained in any such Ministerial Decision was within the competence of the Ministerial Conference as set out in Article IV of the WTO Agreement and did not over-reach that authority. Third, New Zealand observed that the main thrust of the EC's draft decision seemed to be to enunciate a set of principles to reflect the relationship between MEAs and WTO rules, as contained in operative paragraph 2. The representative recalled that New Zealand had also raised questions earlier about the extent to which WTO could elaborate such a list of principles in the absence of any input from the MEAs themselves. This was especially the case if some of the principles such as operative paragraph 2(d) of the EC submission – suggested the imposition of new responsibilities on the MEAs. New Zealand's view was that the negotiations needed to bear in mind the need for appropriate consideration of the perspective of MEAs.

89. The representative referred to the introductory remarks of the EC and said New Zealand shared the perspectives of Argentina, Chile and the US in terms of the reference to fishing. The representative commented that New Zealand would appreciate seeing the same level of ambition that was clearly reflected in the present EC submission also reflected in the rules negotiations on fisheries subsidies.

90. New Zealand noted that many of the operative paragraphs appeared to be cast in terms of hard obligations when they were more in the nature of principles and objectives which could be drawn on for guidance by WTO bodies when issues arose relating to the relationship between WTO rules and provisions of MEAs. In New Zealand's view it would be better to focus attention on elaborating effective principles to reflect this relationship than to attempt to set out hard obligations which could stray beyond the WTO's mandate and which could be difficult to give meaning to in practice.

91. The representative observed that operative paragraph 1, for example, stated that "The WTO shall reconcile expanding production of and trade in goods and services with the optimal use of the world's resources...". From New Zealand's perspective, the obligation to "reconcile" trade outcomes and environmental outcomes was difficult to quantify. Further, specific questions which arose for New Zealand were how would the WTO seek to reconcile trade and environmental outcomes and to which parts of the WTO would this apply, e.g. the Secretariat, Members or panels.

92. The representative observed that operative paragraph 2 attempted to set out a list of principles to apply to the relationship between MEAs and the WTO. Operative paragraph 2(a), for instance, appeared to summarise Articles XX (b) and (g) of the GATT. New Zealand was concerned, however, that in doing so, operative paragraph 2(a) appeared to go beyond the existing parameters of the WTO agreements in that a new subjective element of "ensuring the level of protection it considers appropriate" was added. Also, the Agreement's chapeau proviso, that measures were not to constitute arbitrary or unjustifiable discrimination, was diminished by being relegated to the preamble of the EC submission. New Zealand's sense was that that aspect needed to be adjusted and brought into line with the WTO agreements. New Zealand was also hesitant about the final sentence of operative paragraph 2(a). In New Zealand's view, this went beyond the applicable framework of the customary rules of interpretation of public international law (in accordance with Article 3.2 of the DSU), as other delegations had pointed out.

93. In terms of operative paragraph 2(b), New Zealand noted the suggestion that "Both MEAs and the WTO Agreement constitute legitimate bodies of international law of equal standing. Due respect must be accorded to each." Apart from the general consideration of whether this was necessarily within the competence of the Ministerial Conference, New Zealand had concerns about ambiguities in the provision. For instance, New Zealand wondered about the purpose of equal standing, as well as the relevant fora. Due respect must be accorded to each by whom? In what contexts? The reference to "legitimate bodies of international law" was similarly confusing for New Zealand: did this refer to the substantive law of each or was "bodies" a reference to the organizations, i.e., the WTO as an organization and the various organizations that were established by MEAs?

94. Operative paragraph 2(c) attempted to recognise that the WTO and MEAs had expertise in their own areas and stated that their respective expertise in environment and trade matters "shall be valued and utilised". New Zealand believed this had the air of an objectives provision since it was difficult to quantify an obligation to "value" expertise; nor did the provision elaborate on how their respective expertise should be "utilised" and by what institutions. New Zealand was hesitant also about some elements of operative paragraph 3, not least the vague and potentially too sweeping reference to "issues with an environmental content".

95. Reflecting on the present discussion in the CTESS, the representative expressed the view that it had been one of the richest exchanges Members had had on Paragraph 31(i); this was timely given all the hopes and expectations of Members to move forward in the wider process as well as in that particular negotiation. Observing that a large number of delegations had taken the floor, the representative said this was a positive situation. New Zealand had registered its views which reflected many of the hesitations other Members had expressed. But at the same time, New Zealand felt the EC's submission provided considerable food for thought and would provide a basis for stimulating further discussion and debate. In expressing continued support for an outcome under Paragraph 31(i),

the representative said New Zealand's view was that the EC's submission was not the answer to the question of how Members would address that part of the mandate.

96. The representative of Thailand thanked the EC for its interesting new paper on Paragraph 31(i), and restated his delegation's view that the relationship between WTO and MEAs continued to work well. The experience-sharing exercise the CTESS had been undertaking had been very useful. Thailand's early reaction to the EC submission was to share the view of others that it went well beyond the specific scope of the mandate of Paragraph 31(i), especially with respect to the broad principles elaborated in operative paragraph 2 as well as the concepts contained in operative paragraph 3 concerning deference to MEAs by WTO committees and panels. The proposals seemed inherently to extend the mandate under which the CTESS operated. Thailand was further concerned as to how the EC submission might have legal implications with respect to Article XX of the GATT. Also, Thailand supported Malaysia's comment on operative paragraph 3(a) and sought clarification on the issue of "automaticity" of observer status to MEAs. Thailand also wondered about the linkage of this aspect of the EC submission with CTESS's separate mandate under Paragraph 31(ii) of the Doha Declaration.

97. The representative of Bolivia joined other delegations in thanking the EC for its submission. Bolivia regarded it as important that there should be a concrete result under the Paragraph 31(i) mandate. Nevertheless, Bolivia was not sure the EC submission was the best way to move forward in the discussions. The representative said there was a need for some detailed analysis of the legal implications of the EC's proposal, especially in terms of possible implications for the procedures and rules under the DSU. Similarly, there would be a need for detailed discussion of the principles contained in operative paragraph 2 of the EC submission towards trying to determine a common consensus or understanding on the terms therein and their bearing to established principles of the WTO such as non-discrimination. The representative said the CTESS needed to be mindful of proposals already submitted in the Committee, for example with respect to best practises in terms of coordination between respective authorities responsible at the national level for implementation of undertakings under MEAs and WTO.

98. The representative of Cuba thanked the EC for its submission and agreed it had re-energized discussions. Cuba agreed with other delegations including Ecuador, South Africa and Philippines who had raised problems with the scope of the EC proposal and the principles contained therein. Cuba similarly shared concerns expressed by other delegations with respect to the notion of "automaticity" of MEA observership requests; Cuba had often insisted that the matter of observership must be resolved by the General Council. Cuba asked the EC if, among the principles it was trying to take into account in the submission, it should also include special and differential treatment. Cuba also raised a question relating to a possible contradiction that needed to be addressed with respect to the core WTO principle of non-discrimination and the Doha mandate in Paragraph 31(i) which qualified that the negotiations should not prejudice the rights of any Member that was not party to the MEA in question.

99. The representative of Indonesia thanked the EC for its proposal. Indonesia associated itself with statements of previous speakers that the EC's proposal seemed to be premature at that stage of the negotiations. Indonesia viewed it as important first to build on a common understanding of the definition of the relationship between MEAs and STOs. Indonesia was also of the position that the objective of the relationship between WTO and MEAs was to establish a multilateral trading system that took into account the development of the global environment for achieving sustainable development objectives. The relationship between existing WTO rules and STOs set out in MEAs should also be based on the principles which existed in each multilateral system. An important principle that Indonesia wished to highlight for example was the principle of common but differentiated responsibilities which were found in various MEAs. Indonesia supported the granting of observer status to MEA bodies; however, like Malaysia and Thailand, Indonesia sought clarification on operative paragraph 3(a) of the submission.

100. Responding to the discussion, the representative of the EC agreed with a comment by New Zealand that the present debate had been one of the richest exchanges CTESS had had on Paragraph 31(i). He thanked colleagues for their substantial contributions, notwithstanding the fact they had received the EC submission only a few days prior to the meeting. He acknowledged also the preliminary nature of most of the interventions made. The representative repeated that the EC was not expecting definitive positions to be taken at the present meeting and he welcomed the indication from colleagues that they would refer all the considerations back to experts in capitals so as to prepare for a continuation of the debate. The representative thanked those delegations that had expressed support for the general principles mentioned in the EC submission and thanked also those delegations that had expressed interest in going further into the question of how effectively to operationalize those principles in WTO. From the support shown, the EC felt reinforced in its efforts to come forward with effective solutions.

101. The representative stressed that the EC's submission was a work in progress and he added that the useful suggestions made in the present debate would be examined in Brussels with a view to enriching the paper. For example, the EC would be interested to reiterate the fact that the draft decision fitted well within the context and objectives of the Doha Declaration; also, the EC was open to include reference to other principles such as "international cooperation" and "internal coordination", as had been mentioned by delegations. The representative addressed a number of general points raised in the present debate and said the EC would revert back on the more specific points, following substantial and in-depth examination.

102. Concerning the format of the submission as a draft Ministerial Decision, the representative said the reason for involving Ministers in the process was first and foremost to send a strong political message with respect to the governance principles that the EC believed were adhered to by all WTO Members. Different options had been considered including ambitious approaches such as proposing an authoritative interpretation under Article IX.2 of the WTO Agreement or an amendment to existing rules under Article X. However, the EC submission was an attempt to marry two objectives: on the one hand to be ambitious and send a strong political signal, hence the involvement of Ministers; and on the other hand to be realistic and not to propose changes to existing WTO rules. This was why the EC did not opt for a formal proposal to amend the rules nor to authoritatively interpret the rules; instead, the EC had gone for a modest instrument, namely Article IX.1 of the WTO Agreement in order not to alter or change the balance of rights and obligations in WTO.

103. With respect to comments concerning the mandate of Paragraph 31(i), the representative said that following years of discussion, there were different interpretations of this mandate. For the EC, it was clear the mandate did not instruct CTESS simply to identify problems that might have occurred in the past in the relationship between MEAs and WTO. Thus, if some would interpret the mandate as meaning Members might go through a national experience-sharing exercise, conclude there was no problem and then agree no outcome was needed under the Paragraph 31(i) mandate, that was not the interpretation of the EC. The EC would argue that if there had been no problem so far, this was to be welcomed but there remained a need to ensure that peaceful relations between the two bodies of law continued into the future. The representative added that while there existed different interpretations of the mandate, the EC was still waiting for concrete proposals from others that would ensure and guarantee that peaceful relations would continue into the future; for the EC this was very much at the heart of the Paragraph 31(i) mandate. The representative agreed with Brazil that it was important to look at the mandate as a whole and not spend time contesting each other's interpretation of Paragraph 31(i).

104. Referring to comments and questions raised by delegations concerning the general principles in the EC submission, notably with respect to why those principles were mentioned and what was the basis of their inclusion, the representative offered examples to show that what the EC had done was simply to reaffirm principles that were already recognized in the WTO. With respect to preambular paragraph 5 - contending that MEAs "constitute the response of the international community to

transboundary environmental problems..." and noting that "multilateral approaches to global environmental problems are to be strongly preferred" - the representative referred the Committee to paragraph 171 of the CTE's Singapore Report[4] which expressly mentioned the principle of preference for multilateral solutions and also quoted Principle 12 of the Rio Declaration; he noted that the Rio Declaration was also referenced in the Decision on Trade and Environment adopted by Ministers in Marrakesh in 1994. Thus, no new principle was being created; this was simply a reiteration of a principle that was well-known to all and which had already been endorsed by Ministers.

105. With respect to the principle of "mutual supportiveness" contained in operative paragraph 2(a), the representative referred the Committee to the 1994 Ministerial Decision on Trade and Environment and the reference therein to the "aim of making international trade and environmental policies mutually supportive...". Once again, operative paragraph 2(a) reiterated a well-known principle. Concerning references in the EC submission to dispute settlement, including preambular paragraph 6 (proposing *inter alia* that "if a dispute arises between WTO members which are Parties to an MEA over trade measures they are applying pursuant to that MEA, they shall endeavour to resolve it through the dispute settlement mechanism available under the MEA"), the representative said this was a 'cut and paste' from Paragraph 178 of the Singapore Report[5]; also the representative noted the phrase "shall endeavour to" was not an absolute obligation. Concerning references in the EC submission to "sustainable development", which had been questioned by some Members, the representative noted this aspect was referenced in Paragraph 6 of the Doha Ministerial Declaration. Concerning other principles, the representative reiterated EC's interest to include references to principles mentioned by some Members on "international cooperation" and "internal coordination".

106. Referring to the operational part of their submission, the representative observed that many questions had been raised with respect to operative paragraphs 3(b) and 3(c) and that these mainly had to do with the concept of "deference". In response to the question regarding what was meant by having WTO committees and panels call for and defer to the expertise of MEAs, the representative said the EC's assessment was that these were not revolutionary principles in the context of existing WTO rules. For example, Article XII of the GATT dealt with restrictions to safeguard balance of payments and the Agreement contained a mechanism[6] whereby the Balance-of-Payments Committee, before deciding on a balance of payment issue, needed to consult the International Monetary Fund. Thus, international governance/concrete procedures had been established for some time under the GATT and had not been contested. Similarly with respect to WTO panels, the representative referred to Paragraph 4 of the Annex on Financial Services of the GATS which provided that "Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute." In the view of the EC, this showed that even within WTO panel dispute settlement proceedings there was reference and an obligation to revert to specific expertise. The representative said he would be interested to hear why the proceedings which were available and had been agreed upon by the whole membership in the context of BOP and financial services would not be applicable to the present discussion and to trade and environment.

107. Also with respect to "deference", the representative observed that it was already practiced in WTO. For instance, the Appellate Body already consulted, referred to and even deferred to the advice and expertise of MEAs. Therefore, the EC simply sought to make this fact more visible through ministerial endorsement. The representative concluded on this aspect by noting that some legitimate questions had been raised as to how deference would work in practice; the EC would come back to those questions in due course.

108. The representative referred to questions concerning how the EC submission, notably operative paragraph 2(a), fitted with Article XX of the GATT, including questions as to whether the

[4] WT/CTE/1, Report (1996) of the Committee on Trade and Environment.
[5] WT/CTE/1, Report (1996) of the Committee on Trade and Environment.
[6] See also Article XV of the GATT.

EC was looking to revise Article XX and whether, by omitting any reference to the chapeau of Article XX, the EC was seeking to modify the Article "through the back door". The representative said there was no such intention on the part of the EC. The language of operative paragraph 2(a) reflected a 'cut and paste' of Paragraph 6 of the Doha Ministerial Declaration. In Paragraph 6, Ministers had said "We recognise that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate." The representative said this language was repeated in operative paragraph 2(a); there was no attempt by the EC to dilute the WTO's non-discrimination rule and the operative paragraph was a simple reassertion of Ministerial wording.

109. The representative repeated that the principle of "deference" was key. For the EC, this meant that the expertise of MEAs as well as the expertise of the WTO should be valued and utilized. There was no question in the submission of giving MEAs the competence to decide on issues more appropriately within the competence of WTO. Referring to the earlier illustrative example of trade measures to prevent over-fishing, the representative said a clear distinction was needed between substantive issues of interpretation (e.g., was the measure justified under the objective of combating fish-depletion?), on which the relevant MEA could provide an answer, and issues relating to the manner by which the measure was applied, on which it was clearly for the WTO to decide.

110. Concluding, the representative said the EC submission was a modest proposal reiterating well known and accepted principles. The EC was grateful to Members for having energized and enriched the debate under Paragraph 31(i). The EC would be seeking to continue the debate and would come forward with more specific answers in due course.

111. The representative of UNEP updated the CTESS on UNEP's activities related to Paragraph 31(i). Recalling that the UNEP Economics and Trade Branch had commissioned a paper (with funding from the Swiss government), examining trade-related measures in several MEAs, the representative said the first draft of this paper had been forwarded to Geneva-based government missions for review and comment. The overall aim of the paper was to promote understanding and disseminate information about trade-related measures in MEAs and to inform ongoing discussions on Paragraph 31(i) taking place in the CTESS.

112. The representative explained that the paper first reviewed the role, importance and approach of MEAs in responding to global environmental problems. Although each MEA contained a framework designed to respond to a unique set of environmental problems, a number of common principles and characteristics could generally be found within MEAs. For instance, the principle of common but differentiated responsibilities, first elaborated in Principle 7 of the Rio Declaration, was found in many MEAs and required that international environmental challenges be addressed in a balanced and equitable manner. Other common characteristics found in MEAs included that: they were negotiated in response to best available science; they were carefully tailored to address a particular set of environmental issues; and finally, they had widespread international support. In the latter regard, the representative noted that CITES, the Montreal Protocol and the Basel Convention all had over 160 Parties.

113. After the introductory discourse, the paper analyzed the objectives and main provisions found in six MEAs - namely, the Basel Convention, CBD's Cartagena Protocol on Biosafety, CITES, the Montreal Protocol, the Rotterdam Convention, and the Stockholm Convention - with a particular focus on how the trade-related measures in these MEAs supported the overall objectives and structure of the MEAs. The wide variety of trade-related measures included in MEAs reflected the diverse environmental concerns they were designed to address. Given this, the paper found that classifying trade-related measures on the basis of criteria developed outside of the context of the MEA could be difficult.

114. The representative highlighted other elements. The paper noted that in order for negotiations to identify concrete ways to enhance the mutual supportiveness of WTO trade rules and MEAs, the trade-related measures in MEAs needed to be analysed and understood in the overall context of the MEA. The paper also noted that considering trade-related measures in the context of each MEA might be useful to further build the synergies that already existed between the WTO and MEAs. Further observations in the paper included that MEAs had widespread international support and fulfilled the international community's preference for multilateral action over unilateral action to address environmental concerns; and, that MEAs were based on science, thus mirroring one of the WTO's fundamental approaches towards objective, rather than arbitrary, rules.

115. Given the common objective of both the WTO and MEAs to support sustainable development, the paper concluded by noting that Paragraph 31(i) presented WTO Members with a unique opportunity to make the objective of sustainable development operative by explicitly recognizing the significance and legitimacy of trade-related measures in MEAs.

116. The representative announced that UNEP planned to convene an international workshop on the relationship between MEAs and WTO to be held back-to-back with the Fall 2006 meeting of the CTESS. UNEP would be inviting government officials from capitals, Geneva-based government missions, MEA Secretariats, international organizations and NGOs involved in trade and environment work. The symposium would address key issues related to all three sub-paragraphs of Paragraph 31 and the MEA/WTO relationship. It would provide opportunity to review current efforts and proposals under the negotiating items and explore possible options to advance work in this area. The representative said an updated draft of the MEA trade-related measures paper and a paper on MEAs and environmental goods and services would be discussed at the symposium.

117. The representative of UNEP, delivering a statement on behalf of the Executive Secretary to the Convention on Biological Diversity (CBD), provided an overview of recent developments in the Convention on Biological Diversity and its Cartagena Protocol on Biosafety with relevance to the work of the CTESS.[7] He referred to the eighth meeting of the Conference of the Parties to the Convention (COP8) held in Curitiba, Brazil, from 20 to 31 March 2006; he referred also to the third meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP/3) which took place from 13 to 17 March 2006, also in Curitiba.

118. The representative said COP-8 had been a landmark event in the life of the Convention. The Ministerial segment of the meeting for the first time brought together over 120 Ministers and Heads of delegations in an interactive dialogue which had facilitated the adoption of thirty-four decisions. The video message by the Director-General of the WTO, Mr. Pascal Lamy, to the Ministerial segment, as well the active participation of Deputy Director-General, Mr. Harsha V. Singh, had contributed substantially to the success by sending a strong message to Ministers that international environmental and trade law had to be mutually supportive in order to achieve the common goal of sustainable development.

119. One of the most significant achievements of COP-8 with relevance to the CTESS had been the adoption of a structured framework and time-frame for the further elaboration and negotiation of an international regime on access to genetic resources and benefit-sharing. In this regard, it was recalled that following a call by governments at the World Summit on Sustainable Development, negotiations had been launched in February 2004 at COP-7 on the establishment of an international regime on access to genetic resources and benefit-sharing. The Ad-hoc Open-ended Working Group on Access and Benefit-sharing, mandated to negotiate the international regime, had since that time considered the nature, scope and possible elements for inclusion in the international regime. COP-8 had welcomed the progress made by the Working Group and instructed the Working Group to

[7] A more complete description of these developments, prepared by the CBD Secretariat, was circulated as a room document.

complete its work at the earliest possible time before the tenth meeting of the Conference of the Parties (COP-10) to be held in 2010.

120. The CBD COP decision on invasive alien species was also relevant to the work of the CTESS. In its recent work, the COP had identified and analyzed gaps and inconsistencies in the international regulatory framework for invasive alien species. COP-8 had requested the Executive Secretary to consult with relevant international bodies and instruments, including the WTO, regarding whether and how to address the lack of international standards covering invasive alien species. The Secretariat to the Convention had been consulting with the WTO Secretariat on this matter.

121. With respect to the Cartagena Protocol on Biosafety, the representative noted that as at 20 June 2006, there were 133 Parties to the Protocol; the Protocol aimed to ensure an adequate level of protection in the field of safe transfer, handling and use of living modified organisms (LMOs). The third meeting of the Conference of the Parties, serving as the meeting of the Parties to the Protocol (COP-MOP/3), had achieved a breakthrough regarding the issue of detailed requirements for documentation accompanying shipments of LMOs intended for direct use as food or feed, or for processing. The documentation requirements for this specific category of LMOs had not been fully resolved during the negotiations of the Protocol and agreement had eluded governments on this issue ever since. Under the agreement reached at COP-MOP/3, Parties to the Protocol were requested, and other Governments urged, to take measures to ensure that documentation accompanying LMOs for direct use as food or feed, or for processing was in compliance with the requirements of the country of import. Transboundary shipments also had to be accompanied with documentation which among other things clearly stated that the shipment (i) contained LMOs, where the identity of the LMOs was known through means such as identity preservation systems, (ii) may contain LMOs, where the identity of the LMOs was not known through means such as identity preservation systems.

122. The Parties to the Protocol took first steps concerning the consideration of the need for and modalities of developing standards with regard to identification, handling, packaging and transport of LMOs. On this issue, Parties, other Governments and relevant international organizations were invited to submit to the Executive Secretary views and information on the adequacy of existing rules and standards, and the existing gaps that could justify a need to develop new rules and standards, or to call upon relevant international bodies to modify or expand existing ones.

123. The representative of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) recalled that in 2000, the Conference of the Parties to CITES had unanimously adopted a Strategic Vision, which had as one of its objectives "to ensure continuing recognition and acceptance of CITES measures by WTO and to ensure the mutual supportiveness of the decision-making processes between these bodies." In this regard, the representative welcomed the EC submission in document TN/TE/W/68, which contained similar language in operative paragraph 2(a). Also, operative paragraphs 2(b) and 2(c) were comparable to a CITES Memorandum of Understanding that would shortly be concluded with FAO on fisheries issues.

124. With respect to operative paragraph 2(d) on transparency, the representative noted that the CITES Secretariat was willing to participate in any mechanism for information exchange, be it in the Committee or through any other means. For example, the representative felt it would be possible for the WTO and CITES Secretariats to create links on their respective websites; for its part, CITES was considering improvements to the section of their website related to trade issues – so that information on trade measures in CITES, either through standing committee decisions or decisions of the Conference of Parties, could be readily available to everybody including WTO Members and committee members.

125. Regarding the issue of observer status, the CITES Secretariat welcomed the reference in the EC submission to the issue of observer status and referred also to the separate EC submission in TN/TE/W/66, which mentioned about such status being granted upon condition of full reciprocity.

Noting that WTO could participate in Standing Committee meetings of CITES and also in meetings of the Conference of Parties, the representative thought reciprocity should be applied and MEA secretariats and MEAs should have access as observers to WTO committees and be granted observer status in all WTO bodies including decision-making bodies. Concerning market access, he noted that CITES allowed countries to adopt stricter measures, which was an aspect that was also mentioned in the EC proposal. It was important, however, that such measures be adopted in consultation with countries that could be affected by these measures.

126. On a point of procedure, the representative of Argentina said his delegation had been open to inviting the MEA secretariats on an ad hoc basis and considered such participation useful. However, he recalled that there were some procedural parameters to extending invitations to MEAs. Specifically, observers were present to give information and factual accounts of their activities, as well as to answer specific questions raised by any delegation. The representative expressed concern that an MEA secretariat would give its appreciation of a proposal currently before the CTESS. Argentina wished to underline the importance of respecting some fundamental parameters in this regard, and noted that this could be a consideration when the CTESS next considered extending invitations.

127. The representative of the Basel Convention Secretariat said unsound practices in hazardous waste management could have drastic consequences on human health and the environment. Also, he noted that it was difficult to separate the environment, health, trade, social or economic dimensions from an operational point of view. This was why the Basel Convention had promoted international cooperation and multi-stakeholders partnerships to address problems and improve the situation on the ground. WTO was a critical partner and the Conference of Parties had taken the decision to promote cooperation with WTO. The Basel Convention Secretariat also appreciated being able to participate in WTO regional seminars on trade and environment; he noted that they had benefited from the information-sharing and would be happy to continue the cooperation. Whether the CTESS wished to engage the Secretariat of the Basel Convention in a more formal dialogue to progress on trade and environment issues, or to exclude the Basel Convention from such formal arrangement, was a choice and decision for the Committee.

II. PARAGRAPH 31(II): INFORMATION EXCHANGE AND CRITERIA FOR GRANTING OBSERVER STATUS

128. The Chairman noted that one new submission had been tabled under this agenda item by the EC in document TN/TE/W/66.

129. The representative of the European Communities said that its submission was the continuation of the previous EC submissions on paragraph 31(ii). The EC acknowledged that the debate had been very slow to unfold since the Cancun Ministerial meeting. Its submission was not an effort to kick-start the negotiations, but actually to conclude the negotiations, since paragraph 31(ii) was a straightforward issue. He noted that with a little effort and imagination, wrapping up on paragraph 31(ii) should be relatively unproblematic. The submission demonstrated the EC's commitment to reaching substantive outcomes on all parts of the paragraph 31 negotiations.

130. He recalled that Paragraph 31(ii) had two very distinct elements, one of which dealt with information exchange. In its previous submission, the EC had examined at length the way in which information exchange could work. The Swiss and US submissions under paragraph 31(ii) also considered and examined ways in which information exchange could work. The EC had reached the conclusion in its submission that it was not necessary to finalize all the administrative provisions that would underpin the workings of the information exchange. The EC proposed instead to agree that the *ad hoc* information exchange which had taken place over the previous years be formalized and institutionalized as part of the normal operating procedures of the regular sessions. The EC therefore had a very clear operational objective.

131. The second part of the Paragraph 31(ii) mandate dealt with observer status of MEA secretariats in WTO committees. The EC had set out in paragraph 8 of its submission four conditions which it believed should underpin the way in which observer status of MEA secretariats could function and to some extent vice versa. First, questions regarding MEA observership in WTO committees should be decided by the relevant WTO committee. This was set out very clearly in paragraph 3 of Annex 3 of the *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council* in document WT/L/161. Second, decision-making should be without prejudice to the procedures set out in Annex 3 of WT/L/161. Third, as regards paragraph 4 of Annex 3 of WT/L/161, there should be a strong presumption that MEA secretariats were associated to the work of the contracting parties to GATT 1947. This implied a strong presumption in favour of MEA observer status in WTO committees. Fourth, observer status should be granted on condition of full reciprocity.

132. The EC drew several conclusions from the above as set forth in paragraph 11 of its paper: Firstly, information exchange sessions between MEA secretariats and relevant WTO committees should be formalized and institutionalized. Administrative provisions could be dealt with at a later date, but the mechanism should be institutionalised forthwith. Secondly, residual core MEAs should be granted observer status in the CTE. These residual core MEAs should be considered to fulfil the conditions set out in paragraph 8 of the EC submission. Other requests for observer status in the CTE from non-core MEAs should be considered in accordance with the conditions of paragraph 8 and again under the presumption that their work was associated with the work of those WTO committees. There should be a strong presumption that observer status be granted. Thirdly, UNEP and all core MEAs should be granted observer status in the CTESS forthwith. If this were not possible, they should be granted *ad hoc* observer status for a renewable period of one year. Fourthly, requests for observer status in any other WTO committee, whether from UNEP, core MEAs or any other MEA, should be considered in accordance with the conditions set out in paragraph 8 and there should be a strong presumption that their work was associated with the contracting parties of the GATT and that observer status be granted.

133. The EC then turned to the relationship between sections of its paper on Paragraph 31(i) addressing comments made by Thailand, Malaysia and Indonesia on paragraph 3(a), specifically whether observer status should operate on the basis of automaticity. He noted that automaticity would only operate for residual core MEAs in the CTE. The paragraph 8 conditions would apply for all other MEAs, but there would be a strong presumption that MEA secretariats were "associated with the work of the contracting parties of the GATT 1947". A strong presumption did not equal automaticity. The EC acknowledged that paragraph 3(a) of its paragraph 31(i) submission may need a small amount of tweaking to reflect that point more clearly.

134. The fact that the EC's objectives under paragraph 31(ii) were reflected in its 31(i) paper did not mean that the EC was looking to collapse these two elements of the mandate. These elements were distinct and independent elements of the mandate. Transparency in MEA observership in WTO committees was a very necessary condition to fulfil the mandate. However, it was not sufficient and more was needed. This was why the EC had made its proposal for a Ministerial Decision. Paragraphs 31(i) and 31(ii) could not be collapsed – they were separate mandates, separate issues, and the EC wanted separate substantive outcomes.

135. The representative of the United States welcomed the EC paper and the opportunity for renewed discussion under paragraph 31(ii). The US recalled that it had been some time since there had been a substantive discussion of paragraph 31(ii) and that the US had put in a paper in June of 2002 (TN/TE/W/5). The US thought it might be useful to reiterate some of the proposals that it had put on the table and perhaps add some meat to the bones of those proposals.

136. The US noted that although its proposals and its approach was, in some respects, different to that of the EC, the US shared the EC's desire for a substantive outcome to the negotiations in this area.

The US concurred with the EC that information sessions involving MEA secretariats should become formal institutionalized aspects of CTE meetings. The US also agreed that procedures for these sessions did not need to be overly detailed, but that there had to be an agreement on the general structure for conducting future information sessions. In 2002, the US had proposed that information sessions within the CTE take place on a regular basis, preferably at least annually; that they be frequent enough so that all relevant MEA secretariats would have an opportunity to participate; and that these sessions be coordinated with MEA secretariats in order to facilitate active participation by relevant MEAs. The US stressed the importance of sessions being well organised, on topics of broad current interest to Members, with useful background papers prepared by the WTO and MEA secretariats, as appropriate, for advanced distribution. The EC and Switzerland had proposed holding such sessions twice per year. The United States was not necessarily opposed to such a schedule, but was of the opinion that it would be best to avoid rigidly fixing any specific number of sessions until there was more experience in conducting such sessions.

137. The US also recommended a mix of topics or themes that would be on cross-cutting issues. For example, in 2001 the session theme was compliance and dispute settlement which was of interest to several MEAs. The target audience for such presentations would be national government officials from trade and environment, MEA secretariats, and WTO representatives (not limited to CTE representatives). As pointed out by the EC in its initial paper, these information sessions should involve a two-way flow of information with WTO Members and the Secretariat learning about trade-related MEA activities as well as MEA Secretariats becoming better apprised of WTO issues and perspectives. Members should take stock of this programme after an initial period of 3-5 years to see whether they were reaping the expected benefits from more formalized information exchanges.

138. On document exchange, which is another piece of the paragraph 31(ii) mandate, the US had stressed that document exchange between trade and environment officials should occur in the first instance at the national level. The best way for national environment officials and experts to learn of relevant WTO documents was directly from their trade counterparts and vice versa through internal trade and environmental coordination procedures at the national level. It was up to each Member to foster the internal communication links necessary to enable such coordination.

139. While improved information exchange between WTO committees and MEA secretariats was also important, the US believed it would be inefficient to rely exclusively on the MEA or the WTO secretariats as a primary source for such material. The US agreed with the EC and Switzerland that the area of document exchange remained ripe for improved cooperation, and noted that the internet afforded efficient mechanisms to enhance information exchange between the WTO and MEAs. Thus Members should look for ways to utilise the internet so as to improve information exchange.

140. The US reminded participants that the issue of observer status was the primary concern of the EC paper. The US had previously noted that the mandate of paragraph 31(ii), with respect to the granting of observer status was limited to the question of observer status for relevant MEA secretariats. The mandate did not extend to the more general issue of the status of international organizations in the WTO, which was the responsibility of the WTO General Council.

141. The US representative recalled that the mandate of paragraph 31(ii) was being negotiated in the context of the existing Rules of Procedure of the Ministerial Council and Meetings of the General Council. This specifically included Annex 3 of the *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council* (WT/L/161) which addressed observer status for international intergovernmental organizations in the WTO. Annex 3 set the framework for this discussion. It provided for consideration of requests for observer status from organizations that had competence and a direct interest in trade policy matters. It also called for requests to be made in writing to each WTO body from which observer status was sought. Requests were to be considered on a case-by-case basis by each WTO body. Annex 3 provided an illustrative list of factors that could be taken into account: the nature of the work of the organizations requesting observer status; the

nature of the organization's membership; the number of WTO Members in the organization; reciprocity with respect to access to proceedings, documents and other aspects of observer status; and finally, whether the organization had been associated in the past with the work of the Contracting Parties to GATT 1947.

142. Within these parameters of Annex 3, the US reminded participants that WTO Members had been tasked with considering specific criteria that could constitute a basis for inviting MEAs to participate as observers in WTO committees. The EC had proposed in 2002, as well as in its most recent submission, that certain core MEAs be granted observer status in the CTE without prejudice to the procedures set out in Annex 3, provided that the MEA had participated in a previous informal information exchange session. The EC had also proposed that there be a strong presumption of eligibility for observer status in two other situations, namely for other MEAs seeking observer status in the CTE, and for core and other MEAs seeking observer status in other WTO committees.

143. In the US' view, this approach did not conform to the mandate. At least with respect to other MEAs, the mandate specifically identified the need to agree on criteria for the grant of observer status. For those identified as core MEAs, the EC had not proposed criteria for the granting of observer status in the CTE, but had suggested instead that MEAs be automatically granted such status. Although the EC maintained that a strong presumption did not guarantee automaticity, the EC text suggested otherwise. Moreover, for the remaining MEAs, and for observer status of core MEAs in other WTO committees, the US was of the view that the EC proposal did not appear to rely on any criteria, but instead reduced the decision essentially to a strong presumption in favour of granting observer status to any MEA identified on a list. The broad conditions referred to by the EC were in fact very broad, and in most cases were already reflected in Annex 3.

144. The first EC condition was not so much a condition but a self-evident statement which was already reflected, as had been observed earlier, in Annex 3 of the *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*. The second condition merely appeared to be an incorporation of Annex 3, as well as guidelines that already existed, and which did not serve to further the mandate under paragraph 31(ii). The third condition asserted that there should be a strong presumption that an MEA was associated with the work of the Contracting Parties of GATT 1947. The US delegation noted that instead of providing a criterion by which a requesting MEA might be evaluated, the EC appeared to take an existing criterion from Annex 3, stating that this criterion was essentially satisfied without further inquiry into the requesting MEA. The fourth condition required full reciprocity and observer status, applying conditions that appeared to be referenced in Annex 3.

145. The United States expressed some concern with this approach, namely that it did not appear to help in the assessment of whether an MEA should be granted observer status. The EC did not propose criteria in addition to those that already existed as instructed by the mandate. The EC appeared to have chosen to restate certain existing criteria, and asked the Committee to presume that the criteria would be met by the MEA without closer scrutiny, or simply request that it bypass the establishment of criteria for the core MEAs and deem them to be observers *per se*.

146. The US recognized that Members could share many of the EC's views on the suitability of certain MEAs for observership in the various relevant WTO committees. The US's view, however, was that decisions should be based on clearly established criteria as required by paragraph 31(ii) so as to guide members in the relevant WTO committees in whose hands the ultimate decision properly rested.

147. The US proposed, instead, that the CTE developed a flexible list of indicative questions or criteria to aid WTO committees to make reasoned decisions on MEA observership on a case-by-case basis, MEA by MEA and WTO committee by WTO committee. These factors would be in addition to the non-exhaustive list of factors identified as potentially relevant in Annex 3 of the *Rules of*

Procedure for Sessions of the Ministerial Conference and Meetings of the General Council. This approach was viewed by the US as being in line with the mandate, and as flexible enough to deal with new MEAs that could apply for observer status in future. These criteria could include the following indicative questions: Does the MEA contain specific trade obligations or other trade-related obligations? If so, are they relevant to the WTO committees scope of work? Is the MEA currently an observer to other WTO committees? Does the WTO Secretariat attend as an observer the MEA meetings? If so, does the participation relate to issues addressed by the relevant WTO committee? Have the WTO committee and the MEA secretariat worked together on reports, workshops or seminars? The US felt that these indicative questions, while by no means exhaustive, could help form a basis for WTO committees to determine if a particular MEA had a direct interest in matters before the committee. MEAs could be invited to participate as observers for a period to be determined by that WTO committee, subject to extensions.

148. Finally the US noted that the lists of MEAs put forward in various submissions were not consistent. The US did not believe it was necessary to agree on a definitive list of MEAs, rather Members should be looking at criteria for granting observer status. This was in line with the paragraph 31(ii) mandate and created a structure by which relevant WTO committees could consider observer requests. If any presumption, strong or otherwise were to be utilised, WTO Members would have to determine the entity to which the presumption applied.

149. The US explained that the proposals regarding information exchange and observer status had the potential to enhance mutually supportive relations between the WTO and MEAs, and in so doing, could further the achievement of sustainable development goals. While this kind of enhanced international coordination was undoubtedly useful and important, the US noted that it did not take the place of much more direct and efficient means of intra-governmental coordination which should occur on an ongoing basis at the national level between trade and environment officials.

150. The US strongly endorsed and itself strived for effective domestic coordination and information exchange among trade and environment officials, as well as improved procedures for information exchange at the international level between MEA secretariats and relevant WTO committees. The US believed that establishing criteria for granting observer status would help MEA secretariats keep up-to-date on WTO rules and WTO work, and would help to enhance the mutual supportiveness of trade and environment. In that context, the United States reaffirmed its desire for a productive outcome to the paragraph 31(ii) negotiations and expressed its appreciation for the recent EC paper, which it hoped would revitalise the Committee's discussions in this area of the mandate. The US looked forward to exploring some of the synergies between the paragraph 31(ii) and paragraph 31(i) mandates, but probably not in the manner set forth in the EC paper, with which the US had some concerns.

151. The representative from Chinese Taipei thanked the EC for tabling its proposal which was aimed at delivering a rapid and substantive outcome to the paragraph 31(ii) negotiations. Chinese Taipei was pleased to offer its support for the EC proposal, more specifically for the suggestion that information exchange sessions become a formal institutionalized feature of the WTO's work, and that core MEAs be granted observer status in the CTE. Chinese Taipei agreed with the EC that these proposals should help to ensure that relations between the multilateral trading system and MEAs become mutually supportive. The representative asked, however, for the EC to clarify what it meant in paragraph 8(d) of its paper where the EC proposed that observer status should be granted upon conditions of full reciprocity.

152. The representative believed that during its examination of whether an MEA had satisfied the requirements of full reciprocity, WTO committees should consider how Members of the WTO and parties to the MEAs could address their respective and substantial interests and concerns. By so doing, Members could deepen and further the meaning of the full reciprocity requirement. In Chinese Taipei's view, there should be certain conditions and requirements attached to the WTO's granting of

observer status to MEAs. The representative asked the EC to comment on the following practical criteria. First, MEAs should be required to provide reports regarding adopted or initiated STOs to the WTO upon request. The commitment of an MEA to do so should be positively taken into consideration when granting observer status. Second, MEAs should notify the WTO of any workshops, seminars or training courses they were hosting on the subject of trade and environment or trade and sustainable development, and allow all WTO Members to participate in these events. Third, MEAs should provide reports to the WTO of relevant background documents and minutes of meetings to facilitate access to these documents.

153. The representative of Chile viewed paragraph 31(ii) as a means to facilitate the participation of MEAs as observers. He noted that there were already a series of prerequisites and conditions for the recognition of observers, and that to add criteria and conditions to Annex 3, as the US delegation had proposed, would be going against the Committee's mandate. Chile noted that the Committee's mandate was to favour the participation of MEAs. Committee members were grateful for the participation of MEAs in information sessions, and they had always welcomed the participation of MEAs in Committee meetings. Chile saw some difficulty with trying to impede their participation, particularly given that the Committee had discussed the principle of no subordination at the current meeting. It would be going beyond the mandate if MEAs were asked to comply with more criteria in order to participate. Instead, Chile thought that the Committee should make the lives of MEAs easier and facilitate MEA participation as observers when appropriate. In this regard, Chile welcomed the EC proposal in paragraph 8(c) of its submission, which would favour MEAs participating as observers in the work of the CTESS, as well as in other relevant committees.

154. The representative asked the EC to clarify whether, when it spoke of a strong presumption that observership be granted under paragraphs 11(b) and 11(d), this was different from the strong presumption in paragraph 8(c). In this respect, Chile sought to associate itself with comments from Indonesia, Malaysia and Thailand on the EC's paragraph 31(i) submission. Paragraph 11 envisioned automaticity and that could be different from the treatment accorded in paragraph 8(c) which presumed that MEAs should be associated with the Committee's work.

155. The representative then asked a clarifying question on information exchange. Chile agreed with the United States that the Committee should not formalise or institutionalise information exchange. His delegation agreed that the Committee should undertake information exchanges on a regular basis and should also facilitate participation in a very general sense. Chile compared paragraph 4 of the EC proposal, which dealt with institutionalisation of participation in information exchange in the CTE, with paragraph 11(a), which referred to formalization of information exchange in relevant WTO committees. Chile thought that the EC was seeking to broaden the scope of information exchange in its conclusion in paragraph 11(a). Nevertheless, Chile supported the thrust of the EC proposal. Chile was looking for a simple and speedy procedure to continue information exchanges on a regular basis and to grant observer status to relevant MEAs in WTO Committee meetings.

156. The representative from Switzerland noted that the paragraph 31(ii) negotiations had long been neglected and that not a lot had been achieved. Switzerland thanked the EC for its submission on paragraph 31(ii) which it found timely and concrete. Switzerland was among those delegations which had proposed some practical steps under this part of the mandate. Switzerland agreed with the EC that a separate substantive outcome was needed on each item of paragraph 31, and further welcomed the detailed proposal of the EC which examined both information exchange and the criteria for observer status.

157. On information exchange, Switzerland believed that the mode of information exchange developed by the WTO, UNEP and MEAs in the past few years had proven to be very useful and worked well and should be pursued on a permanent and structured basis. Switzerland agreed with the US that a certain degree of flexibility should be maintained with respect to information exchange in

order to avoid additional burden on the secretariats, the Members of the WTO, as well as the Parties to MEAs. Switzerland concurred with the EC that it was not necessary to agree on detailed operational and administrative functions related to the running of information exchange sessions in order to satisfactorily fulfil the mandate. On criteria for observer status, Switzerland supported the Chilean position that the CTE had received a specific mandate in paragraph 31(ii) to establish criteria for observer status. The CTESS had therefore to work towards a concrete outcome, namely criteria for granting observer status. Switzerland fully supported the EC proposal on this item.

158. The representative from Argentina thanked the EC for its submission. Paragraph 31(ii) was an area where the CTESS could do substantive work without many drawbacks. Argentina had a broad vision on information exchange and believed that a mechanism for information exchange would be productive and useful.

159. With respect to observer status, Argentina shared some of the ideas expressed by the US. Argentina noted that the mandate of paragraph 31(ii) was clear; it dealt with criteria for granting observer status. In no part of the mandate did paragraph 31(ii) say that the negotiations should facilitate or impede the granting of observer status to any MEA secretariat. The mandate stated that the Members had to establish criteria and this was the way the Committee had to take up this mandate. In other words, the Committee should establish criteria, i.e. clear parameters that should be applied in the decision of whether or not to grant observer status. The criteria that the Committee had to negotiate would be in addition to those of Annex 3 of the *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*.

160. Argentina inquired what were the prerequisites for such criteria. Argentina argued that they should be parameters of the type listed by the United States. Argentina did not agree with the EC proposal to have temporary criteria, e.g. if an MEA participated once in a Committee meeting that would be sufficient to obtain observer status. Instead, the criteria should be general and not related to MEA participation. Argentina emphasised that the CTESS should not read things into its mandate that were not there and which would lead the CTESS to results that would run counter to its mandate.

161. The representative from Norway joined other delegations in thanking the EC for its effort not only to kick-start the negotiations on paragraph 31(ii), but also to begin finalising the Committee's efforts to solve this issue. Norway agreed with the EC that with respect to paragraph 31(ii) there was a solution within reach. Norway submitted that the Committee had benefited on a number of occasions from the in-depth knowledge, expertise and practical experiences of the MEAs, most notably UNEP. Allowing for MEA and UNEP participation in the CTE and relevant committees would also help to build transparency in multilateral cooperation, and ultimately also build mutual supportiveness between trade and the environment. Norway expressed its general support for the granting of observer status to the MEAs as presented in the EC paper. Norway agreed with the EC that information exchange between MEA secretariats and the CTE should be a formalised and institutionalised aspect of CTE meetings in formal session, and that MEAs and UNEP should be granted observer status for the duration of the negotiations in the CTESS. Norway generally agreed with the EC proposal, but sought to obtain more facts and details with regard to the practical implications of the proposal.

162. The representative from Malaysia thanked the EC for its new submission on paragraph 31(ii). With regard to the second part of the proposal on criteria for granting observer status, Malaysia's understanding from the EC's explanation in response to questions by Malaysia, Thailand and Indonesia was that all residual core MEAs would automatically be granted observer status in the CTE forthwith, while requests for observer status from other MEAs would be subject to conditions under paragraph 8 of the EC proposal. The EC had proposed that there should be a strong presumption that observer status be granted. In Malaysia's view, this would create a tendency towards the automatic granting of observer status. Malaysia expressed concern, finding it difficult to accept the proposal that all residual core MEAs be given automatic observer status based on their participation in previous

informal information exchanges. Malaysia echoed the statement by the United States that all requests for observer status in the CTE or CTESS should be examined on a case-by-case basis.

163. The representative from Chile said that while he agreed with Argentina's comment that the Doha mandate did not refer to facilitating the granting of observer status to MEAs, the mandate did not call upon Members to establish criteria that went beyond Annex 3 of the *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*. If observer status could not be granted to MEAs pursuant to Annex 3 or for other reasons, the CTESS should seek an alternative wording to achieve MEA participation in the Committee on Trade and Environment relevant WTO committees. If the idea was to add stumbling blocks to Annex 3, this would work even less and there would be no observer status granted to MEAs.

164. The representative of Venezuela said that the trade and MEA regimes were two different legal frameworks that had been built for different aims, and therefore should not be merged. If there was a difference between the MEA parties, it should be resolved within the MEA and not at the WTO. In Venezuela's view, it was not necessary to put the standard-setting process at the MEA before the dispute settlement body. As far as MEA observership was concerned, her delegation agreed with the point by Argentina that the mandate was not about granting observer status, but was rather focused on criteria for granting observer status.

165. The representative from the European Communities welcomed the constructive engagement of other delegations and the support expressed for the EC proposal. The EC also noted that there were some concerns, and said it would try to address either at this meeting or at a later date.

166. With respect to the question by Chile with regard to paragraph 11(a), the EC recalled that the mandate referred to regular information exchange between MEA secretariats and relevant WTO committees, rather than the CTE *per se*, so in this regard, the EC proposal was in line with the mandate. Chile's second question dealt with the relationship between paragraphs 11(b), 11(d) and paragraph 8(c), and whether there was a contradiction between a strong presumption and automaticity. The EC did not see a contradiction between paragraphs 8(c) and 11(b) and 11(d), but it acknowledged that some tweaking to the language in paragraph 3(a) in TN/TE/W/68 could be necessary to reflect the fact that the EC was only talking about automaticity for residual core MEAs in the CTE. The EC would return to that question which it had duly noted.

167. The EC also thanked the United States for its constructive engagement and comments, particularly on information exchange, where the US set out once again its views on the administration of institutionalised information exchange. The US was right to set out these views, as the EC and Switzerland had done before. The EC believed, broadly speaking, that the Committee could reach agreement on many of the administrative decisions in advance, but if the Committee wanted to take a decision on the totality of paragraph 31(ii), it should not be held back by the discussion on administrative arrangements.

168. Turning to the status of Annex 3 to the *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*, the EC noted that the Committee's mandate was to negotiate criteria for granting observer status to MEAs. The EC did not accept the view that because Annex 3 was an annex to a document of the Ministerial Conference, any conditions derived from Annex 3 could not apply in a different context. The EC had drawn the conclusion under paragraph 8(a) that it was for relevant WTO committees to take a view on MEA membership, and not the General Council. In the EC's view, such a conclusion was perfectly consistent with the mandate.

169. The representative of UNEP, on behalf of the Convention on Biological Diversity, noted that the Eighth COP meeting of the CBD had reached a decision on cooperation with other conventions and international organizations, which was relevant for the CTESS' work under paragraph 31(ii). The decision requested the CBD's Executive Secretary to liaise with the WTO secretariat on relevant

issues, including trade-related intellectual property rights, sanitary and phytosanitary measures, and environmental goods and services, with a view to identifying options for closer collaboration, including developing a memorandum of cooperation to promote the three objectives of the CBD. A meeting between the Executive Secretary of the CBD and the WTO Director-General had already taken place with a view to advancing the good working relationship between the two secretariats and exploring further opportunities for cooperation.

170. The Parties at the Third Meeting of the Parties to the Cartagena Protocol on Biosafety had requested the Executive Secretary to intensify efforts to gain observer status in the Sanitary and Phytosanitary (SPS) and the Technical Barriers to Trade (TBT) Committees. As a result, the Secretariat of the CBD had recently renewed its request for observer status in several relevant WTO committees, in particular the TRIPS Council and the SPS and TBT Committees. Positive consideration of these requests would contribute to strengthening cooperation and understanding between the two organizations, thus providing a better basis for further enhancing the mutual supportiveness between trade and environment agreements.

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

171. The Chairman said that the following documents had been circulated under this agenda item: a submission by the delegations of Canada, the EC, New Zealand, Norway, Singapore, Switzerland and the United States entitled "Market Access for Environmental Goods" (TN/TE/W/65); a paper by Uruguay entitled "Negotiations on Environmental Goods" (Job(06)/144); a non-paper by Colombia entitled "Paragraph 31(iii) of the Doha Declaration - Environmental goods: Technical discussion meeting in CTE - Priority Categories" (Job(06)/149); a submission by India entitled "Environmental Project Approach: Compatibility and Criteria" (TN/TE/W/67); a submission by Cuba entitled "The dimension of development as an integral part of the negotiations on environmental goods: the principle of special and differential treatment" (TN/TE/W/69); submissions by New Zealand (TN/TE/W/49/Rev.2) and Canada (TN/TE/W/50/Rev.1), which both presented a revision of their environmental goods list; and a non-paper by Japan entitled "Refinement of Japan's environmental goods list" circulated as a room document.

172. The Chairman noted that Colombia's non-paper, which had been presented at the technical discussion held in June, would not be reintroduced at the meeting. The Chairman suggested to take up first the papers by Uruguay and India, then move to the consideration of the submissions by New Zealand, Canada and Japan, as they all focused on the revision of the lists, and finally, to take up the two papers on modalities starting with document TN/TE/W/65, followed by Cuba's submission. The Chairman also announced that he would make a statement on the technical discussions under Paragraph 31(iii) at the end of the discussion.

173. The representative of the United States said that her delegation preferred to follow the sequence of the annotated agenda[8], which reflected the order in which the papers had been submitted, or at least to give priority to the papers that had been tabled as formal submissions, as this was a formal meeting of the Committee. The US wished to start by introducing the submission in document TN/TE/W/65.

174. The Chairman said that he had suggested to group the submissions according to their substantive focus in order to facilitate the discussion. However, it was up to Members to decide how they wished to proceed.

175. The representative of the United States introduced the submission in TN/TE/W/65, also on behalf of the delegations of Canada, EC, New Zealand, Norway, Singapore and Switzerland. The paper had also been submitted to the negotiating group on market access for non-agricultural

[8] Job(06)/219.

products (NAMA) and had already been discussed there. While the CTESS had been busy attempting to identify environmental goods, the task of developing modalities for tariff reduction or elimination fell upon the NAMA Group, for which the environmental goods mandate presented particularly compelling policy incentives. Researchers had found that countries which traded more environmental goods had less pollution and consumed energy more efficiently. High tariffs and other barriers to environmental goods impeded access to these important technologies; by reducing the prices of environmental goods through substantial reduction or elimination of import tariffs and specific non-tariff barriers (NTBs), WTO Members could take concrete and effective action to improve access to products needed to prevent pollution and meet their sustainable development goals.

176. The objective in putting forward the paper was two-fold, namely to advance the negotiations on environmental goods in both the NAMA Group and CTESS, and to inform CTESS' work by offering a clear outline proposal for modality, including options for S&D treatment. Several Members had noted that the task of identifying environmental goods was made more difficult without an indication of what the eventual modalities would be for liberalisation. The paper proposed that Members eliminate tariffs on environmental goods by 2008, recognizing the need for flexibility in the case of developing countries.

177. In this regard, the paper set out some options providing flexibility for developing countries, such as longer implementation periods for all or certain products, as well as exclusions for a limited number of products. However, the US delegation welcomed other ideas for operationalizing S&D treatment for developing countries. The paper took on board the concept of limited product exclusion building on previous proposals made in the CTESS. The US recalled that it had tabled a proposal for a complementary list where Members would not have to liberalise all of the products[9]; New Zealand had also made a similar proposal. Moreover, China had made a proposal for a development list, which would contain products selected by developing and LDCs for exemption or lower level tariff commitment.[10]

178. The submission in TN/TE/W/65 also addressed the issue of NTBs, suggesting that any specifically identified NTB would be considered and reduced to the maximum extent possible so as to facilitate trade in environmental goods. The US welcomed other delegations' efforts to identify specific barriers to trade in environmental goods. One area that had not been addressed in detail in the proposal was that of product coverage, in order to avoid pre-empting discussions on this issue in CTESS. However, the paper favoured a product coverage that was as comprehensive as possible, and based upon the work undertaken in the CTESS. While the co-sponsors of the paper had been careful not to pre-empt CTESS work on this matter, it was important to recognise that if the Committee was unable to provide any definitive guidance on product coverage, this should not prevent the NAMA Group from moving ahead in its discussion of a modality for liberalizing environmental goods. The US believed that the CTESS had a real opportunity to contribute substantively to the Doha Development Agenda through this mandate, and to sustainable development more broadly, by delivering a concrete result under Paragraph 31(iii). Her delegation hoped that the proposal would inform the work in both the NAMA Group and CTESS and would enable discussions to move forward expeditiously.

179. The representative of Cuba said that by submitting its paper in document TN/TE/W/69, his delegation wished to emphasize the need to discuss S&D treatment modalities in order to make progress in the negotiations, since developing country Members wanted to be clear as to what they could expect from the negotiations. The paper did not prejudge whether Cuba was willing to proceed on the basis of a list or project approach, although his delegation favoured the latter. Cuba had tried to specify and suggest modalities irrespective of the form that the final outcome would take. Cuba believed that in order to achieve a balanced result under Paragraph 31(iii), it was essential for

[9] TN/TE/W/38.
[10] TN/TE/W/42.

developing country Members to have the option of reducing tariffs according to their economic development, social and environmental needs.

180. The representative of South Africa, speaking also on behalf of Argentina, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, Tunisia and Venezuela ("NAMA 11" Group) thanked the co-sponsors of the document in TN/TE/W/65. South Africa agreed with the observation in paragraph 2.2 of the paper that all Members were looking for a "win-win-win" outcome for trade, development and the environment. She also believed that an important objective of the negotiations was the dissemination of environmental technologies and know-how, as most developing country Members were still developing their environmental sector. She noted that the outcome of the mandate would have to be supportive of that objective in order for Members to reap environmental and developmental gains. South Africa agreed that environmental goods was a growing sector. However, the references in paragraph 4.1 of the paper to global trade in environmental goods based on the OECD and APEC lists did not provide the full picture. According to an analysis of these lists, in 2000, developing countries as a group were net exporters for only 26 of the 182 goods on both lists.

181. With respect to product coverage, she noted that the CTESS had been working hard at identifying indicative parameters with a view to reviewing the products that had been proposed mostly by developed country Members. This process was aimed at ascertaining which of these products could constitute environmental goods. The work indicated that the vast majority of the products had dual or multiple uses beyond that of directly benefitting the environment. This meant that unless the practical issues relating to these products were addressed, there was little to no guarantee that liberalizing these goods would in fact benefit the environment, or that the solution could be meaningfully implemented. These issues were not new; they had also characterized negotiations for the liberalization of environmental goods in other fora. In South Africa's view, it would not be easy for the Committee to succeed where others had failed. Nevertheless, her delegation remained committed to serious engagement on these issues. It was hard to envisage any agreement on modalities without a better appreciation of the implications of the negotiations, which meant more clarity with respect to product coverage; this was why the work undertaken in CTESS was so fundamental.

182. South Africa looked forward to the efforts by some of the co-sponsors of TN/TE/W/65 to respond to the comments and questions raised by developing country Members in the course of the technical discussions. She welcomed the fact that these discussions had already resulted in the tabling of two revised lists of products. Her delegation believed that the alternative proposals to the lists reflected more faithfully the mandate under Paragraph 31(iii), as they not only referred to environmental goods but also to services. These proposals would ensure that the environment would benefit from trade liberalization and that the development imperative of the Doha Round would be fulfilled. It was therefore clear that for there to be a "win-win-win" outcome, the NAMA Group would have to defer to the CTESS as the competent body on this issue.

183. South Africa agreed with the co-sponsors that this was a ground-breaking mandate. The chapeau of paragraph 31 stated that negotiations were to be undertaken "with a view to enhancing the mutual supportiveness of trade and environment" and provided the overriding guidance for the conduct of the negotiations. Her delegation believed that this objective would be jeopardized if the CTESS failed to complete its work on product coverage before the NAMA Group considered the need for additional modalities with regard to non-agricultural environmental goods.

184. With respect to the paper by Cuba, South Africa believed that it addressed the fundamental issue that was lacking in TN/TE/W/65, namely S&D treatment. While the paper invited further inputs and ideas with respect to S&D treatment, it also acknowledged that more needed to be done in this regard. Based on the discussion in the NAMA Group, there had been some questions as to what would be appropriate S&D treatment. Paragraph 50 of the Doha Declaration clearly stated that S&D treatment applied to all aspects of the negotiations. The modalities proposed in TN/TE/W/65 were

not a faithful reflection of S&D treatment since the same tariff concessions would apply for essentially all Members except for LDCs. For the negotiations to deliver sustainable development outcomes, developing country Members had to be allowed to develop their environmental sector. In this regard, the environmental project approach (EPA) and the integrated approach offered a more realistic solution.

185. The representative of India, commenting on the proposal in TN/TE/W/65, noted that the CTESS had not yet reached any consensus or agreement on the issue of approach to address the mandate, even with respect to the identification of environmental goods. It had become clear in the course of the technical discussions that most of the products tabled did not pass the test of what may constitute an environmental good. Therefore, in this context, it was premature to have a discussion of modalities. India noted that the paper could provide a basis for future work but did not seem appropriate at the time.

186. With respect to the Cuban paper, India appreciated the submission and the issues it addressed, including the fact that S&D treatment was of great consequence in the Doha Round. The paper focused on the concept of common but differentiated responsibility, which in India's view needed to be taken more carefully into account in the discussions.

187. The representative of Argentina said that the submission by Cuba had set out the parameters that Members would need to take up in the negotiations, namely how to take into account the development dimension in the trade and environment negotiations. The substantive concern of his delegation was captured in paragraph 15 of the paper, which defined the policies and objectives of sustainable development and how they should be determined by each developing country Member. Argentina found this perspective extremely useful. The second bullet in paragraph 15 dealt with mutual recognition and financial and technological support for addressing NTBs, and the third bullet introduced the concept of technology transfer. Argentina believed that these elements could guide the discussion on this aspect of the negotiations.

188. The representative of Israel said that his delegation recognised the importance of addressing modalities for the treatment of environmental goods at that point in the discussions. This was also relevant to the discussions in the NAMA Group. Israel shared the objective set out in TN/TE/W/65 to discuss modalities for the treatment of environmental goods while remaining supportive of efforts in CTESS to identify those goods. His delegation believed that this endeavour of identifying environmental goods should carry on in the CTESS and feed into the results of the discussion on modalities.

189. The representative of Australia welcomed the modalities paper presented by the United States and other Members as a good basis for furthering the discussions under paragraph 31(iii). The paper provided some clarification in terms of what Members were aiming to achieve. Australia had supported the development of a credible list of environmental goods and considered that the technical discussions had provided the basis for developing such a list. Australia noted that it would welcome modalities for environmental goods that went beyond those agreed in the context of the NAMA negotiations.

190. Australia believed that a number of products on the list did not qualify as environmentally beneficial. These products needed to be removed in order to get to a credible outcome that would be more broadly acceptable to the membership. In her delegation's view, the proposal in TN/TE/W/65 provided a good basis to advance the mandate in paragraph 31(iii). Australia supported the view that developing country Members should be provided with additional flexibility in implementing their obligations, specifically in terms of longer time frames. Her delegation was also prepared to examine further flexibilities for developing country Members based on their specific needs and priorities. Flexibilities for LDCs were also of particular importance given the vulnerable nature of their

economies and their sustainable development needs. With regard to NTBs, Australia welcomed advice from any Member on specific barriers faced in the exportation of environmental goods.

191. The representative of Norway said that as a co-sponsor of the paper in TN/TE/W/65, her delegation attached great importance to finding a way of reaching a credible environmental result in the negotiations. She recalled that the mandate in paragraph 31(iii) entailed the reduction or, as appropriate, the elimination of tariff and non-tariff barriers on environmental goods. The process in CTESS needed to be supported by discussions of environmental goods in NAMA, since modalities would be established in the NAMA Group. However, Norway did not regard environmental goods as a traditional NAMA sectoral. Product coverage for environmental goods would need to be determined in CTESS. Norway hoped that the Committee would be able to deliver a revised and credible result on defining environment goods in a timely fashion and that in this process, due account would be given to environmental goods of export interest to developing countries. In this regard, S&D treatment was of utmost importance, as Cuba had emphasized in its paper. This question would need to be discussed in detail when modalities would be agreed. Finally, Norway stressed the need for information exchange between the CTESS and NAMA Group in future work to fulfil the mandate in paragraph 31(iii).

192. The representative of Brazil said that the submission in TN/TE/W/65 made clear that its co-sponsors viewed negotiations under paragraph 31(iii) as a NAMA exercise. Brazil noted the view expressed in the paper that the difficulties of the CTESS in defining product coverage should not prevent the NAMA Group from advancing in its work. In his delegation's view, it was not clear that there was a mandate for discussing specific modalities for environmental goods. This was a question that needed to be addressed by Members before engaging in any exercise of the type suggested in the submission. For this reason, Brazil believed that the paper went beyond the mandate and did not provide an appropriate basis for future work. He noted that the report submitted by the Chair of the NAMA Group in Job(06)/200/Rev.1 had recognised that it was premature to discuss specific modalities for environmental goods since there was no consensus among delegations on this matter. Brazil noted that even if there were a clear mandate to discuss this issue, the definition of modalities would be contingent upon the definition of product coverage.

193. With regard to the Cuban paper, Brazil welcomed it as a positive contribution and agreed with Argentina that important parameters to the work were set out in the submission, especially in paragraph 15. His delegation hoped to come back to this discussion at a later stage.

194. The representative of China said that a discussion of modalities was premature, given that the CTESS was still debating the issue of approach in the negotiations. China welcomed the Cuban submission, which was the first submission addressing the issue of S&D treatment in a systematic fashion. More specifically, China shared the view expressed in paragraph 13 of the paper that S&D treatment was naturally built into the project approach, which was not the case for the list approach.

195. The representative of the European Communities said that his delegation supported many of the constructive comments made by South Africa on behalf of the NAMA 11. The EC agreed that clarifying product coverage was important and that this exercise had to be completed expeditiously. However, his delegation did not agree with the views expressed by the NAMA 11 regarding the timing for addressing the issue of modalities. As stated in TN/TE/W/65, the slow progress on product coverage in CTESS should not prevent the NAMA Group from taking forward the question of modalities for environmental goods. The EC noted that the paper had been submitted in response to calls from a number of delegations, including Members from the NAMA 11 for more clarity with respect to modalities in order to assist the discussion of product coverage.

196. The EC welcomed the submission by Cuba, which in its view was a credible attempt to address the question of modalities. He noted that some delegations had welcomed the submission by

Cuba, while qualifying the paper in TN/TE/W/65 as premature. In the EC's view, both papers put forward elements aimed at solving the issue of modalities.

197. The representative of the Philippines said that as a member of the NAMA 11, his delegation fully supported the intervention by South Africa and other members of that group. The Philippines believed that the results of the trade and environment negotiations should not be prejudged by viewing the mandate as merely a market access or tariff elimination initiative. The environment mandate was more of an attempt to make the interface between trade, development and environmental policies coherent and effective. With regard to Cuba's contribution, he noted that the paper emphasized an important element of the negotiation, which was the effective implementation of S&D treatment and the achievement of the development goals of the negotiations.

198. The representative of Nigeria said that his delegation fully associated itself with the statement by South Africa and shared some of the concerns expressed therein. Nigeria supported the view that trade and environment policies should be mutually supportive and guided by a developmental approach. He welcomed the submission by Cuba as a good basis to incorporate a development dimension to the discussion and called upon Members to achieve a win-win-win outcome in the negotiations.

199. The representative of Mexico thanked Cuba for its paper, which focused on the importance of S&D treatment and non-reciprocity in favour of all developing country Members. Regarding the paper in TN/TE/W/65, Mexico subscribed to the views expressed by other delegations that there was an underlying problem with the way the co-sponsors interpreted the mandate. The mandate in paragraph 31(iii) called for negotiations without prejudging the outcome, including with respect to the reduction and elimination of tariffs on environmental goods, an aspect that the paper in TN/TE/W/65 had focused on. Mexico had a systemic concern with the proposal in paragraph 5.1 of the paper that tariff elimination be undertaken by "developing countries declaring themselves in a position to do so". She noted that similar language had been used in the Hong Kong Ministerial Declaration concerning LDCs. Her delegation could not accept that such language be used in the context of the negotiations under paragraph 31(iii), which did not have the same objectives.

200. Mexico noted that there was still no understanding on the issue of product coverage. In fact, the CTESS was far from achieving such an understanding, as it had not yet been able to agree on a single product. The Chairman of the NAMA Group had noted this lack of consensus in his recent report (Job(06)/200/Rev.1). Mexico believed that the CTESS needed to continue its discussion on the issue of product coverage since much work still remained to be done.

201. The representative of Ecuador said that her delegation wished to associate itself with the statement by South Africa on behalf of the NAMA 11. From the technical discussions, it was clear that the outstanding work in the CTESS concerned product coverage. Without an understanding on product coverage, any discussion on the establishment of modalities would be premature. Moreover, parameters and criteria would be necessary in order to define or limit the number of products. Ecuador agreed with Australia that it was necessary to reduce the number of products on the list in order to achieve a credible outcome to this process. However, her delegation was not clear as to what would guarantee a balanced result.

202. Ecuador welcomed the submission by Cuba, which in its view contained some innovative ideas. Her delegation believed that it was not premature to discuss S&D treatment, which was a cross-cutting issue in all negotiations of the Doha Round. However, the submission in TN/TE/W/65 was considered premature because it seemed to anticipate a very broad product coverage. Furthermore, the fact that the paper discussed flexibilities, exceptions as well as a deadline for tariff reduction seemed to prejudge the outcome of the negotiations. The sense of urgency in the paragraph 31(iii) negotiations could only be considered in the framework of the single undertaking.

According to Ecuador, this involved that priority be given to reaching agreement in other areas, including on modalities in agriculture.

203. The representative of Egypt said with regard to the submission in TN/TE/W/65 that it was premature to discuss modalities since Members had not yet agreed on the issue of approach to identify environmental goods. He recalled that the Doha Declaration had not specified any timeframe for the mandate, or for the work of the CTESS. Even with an agreement on the list approach, there would still be many outstanding problems to resolve. Egypt further noted that the paper seemed to focus on the elimination of tariffs, while the text of the Doha Declaration referred to the reduction *or* elimination.

204. The representative of Singapore said that his delegation was encouraged by the statement made by South Africa on behalf of NAMA 11. As was evident at the last TNC meeting, there was a strong commitment from Members to conclude the Round before the end of 2006. His delegation therefore welcomed the intensification of the work in CTESS under paragraph 31(iii). Singapore encouraged other Members to work towards an outcome on both environmental goods and services that was true to the mandate in paragraph 31(iii). A positive outcome in both areas would help deliver development benefits and facilitate environmental protection.

205. Singapore had agreed to co-sponsor the paper in TN/TE/W/65 because it recognised the mutually supportive role that trade and environment played with respect to sustainable development. This proposal set out an ambitious goal for developed countries to eliminate tariffs on environmental goods by 2008. Developing country Members could have a longer period of time to eliminate tariffs on environmental goods, as well as further flexibilities. The proposal provided a good framework and a catalyst for deliberations within the NAMA Group. There was no need for a sequential process where the work of one negotiating group had to wait for an outcome in the other group. The work of the CTESS and NAMA Group should proceed in parallel in accordance with the July 2004 Framework. The proposal would also help inject needed impetus into the work of the CTESS. At a minimum, the paper gave Members a sense of what could be achieved for the environmental goods identified in the CTESS. Finally, Singapore thanked Cuba for its submission, which it was still in the process of examining.

206. The representative of Uruguay thanked the delegation of Cuba for its proposal, which contributed to the discussion on the development dimension of the negotiations. As Ecuador had stated, the Cuban proposal was not an attempt to prematurely discuss modalities but a reminder of developing countries' needs with regard to important issues such as transfer of technology and the opening of markets for products of interest to these Members.

207. As regards the proposal in TN/TE/W/65, Uruguay shared the view of other delegations that the document was premature and did not provide an appropriate basis for future discussions. Her delegation shared many of the ideas expressed by Brazil regarding how the situation in NAMA should be taken into account in the CTESS discussions. Uruguay regretted that some of the proponents were not showing a similar level of ambition in other areas of the negotiations which her delegation considered as fundamental.

208. With regard to the question of sequencing between the work of the CTESS and NAMA Group, Uruguay emphasized that there could be no discussion of treatment for environmental goods without clarity on product coverage. She noted that the mandate did not differentiate between the work of CTESS and the NAMA Group with respect to environmental goods. The mandate referred to the reduction of tariffs on environmental goods; however, for progress to be made in this area, Members would need to have an idea of the level of reduction that would apply in the NAMA context. Uruguay did not consider that the paper provided a sound basis for further work, neither in CTESS nor in NAMA, and reserved the right to make further comments on the paper at a later stage.

209. The representative of New Zealand said that in paragraph 31(iii) of the Doha Declaration, Ministers had singled out environmental goods as a distinct group of products because they believed improving access to these goods could assist countries in tackling many of the sustainable development challenges they were facing. As one of the co-sponsors of TN/TE/W/65, New Zealand emphasized that the paper had been prepared in response to the request by many Members for greater clarity on what could be the modality for environmental goods. New Zealand believed that given the environmental benefits of this trade, the standard NAMA modality would not be sufficient. The modality on environmental goods had to provide for a more rapid and complete elimination of tariffs than would be the case for other non-agricultural products. New Zealand was ready to make its contribution to this process and to eliminate tariffs on environmental goods by 2008; the paper further encouraged developing country Members that were in a position to do so to also make their contribution towards this objective.

210. Moreover, New Zealand noted that the paper offered some thoughts on S&D treatment in response to the specific interest expressed by several Members. The submission stated that tariffs applied by developing countries should be eliminated by "x" years after 2008. New Zealand believed that given the possible environmental benefits of this negotiation, tariff elimination should be as soon as possible; however, this was a matter to be clarified in the NAMA negotiations. The proposal also suggested flexibilities for developing country Members, including possible exclusions for a limited number of products. One option was the idea of a "dual list" proposed by New Zealand. In this regard, his delegation had provided a specific numerical target for the second list, which was 85 per cent self-selected.

211. He noted that the environmental goods sector was continually developing in new and often unexpected directions. The OECD, for instance, had estimated that half of the environmental goods likely to be in use within the coming decade did not currently exist. In this context, New Zealand strongly believed that given the dynamic nature of that trade, it would be important to review and update the product coverage. New Zealand expected to table a paper in the near future that would operationalize the process of review.

212. New Zealand had listened with interest to the statements by the NAMA 11 group and a number of other delegations, and had also listened to comments by several Members under paragraph 31(i) on the importance of market access. His delegation was surprised that some delegations were not following the same approach in the context of paragraph 31(iii). New Zealand welcomed the fact that Members of the NAMA 11 had expressed their commitment to engage substantially on the issue of product coverage. New Zealand welcomed this kind of engagement also in the technical discussions, which had resulted in a significant movement on the part of his delegation to reduce its environmental goods list.

213. New Zealand shared the view expressed by the NAMA 11 regarding the importance of S&D treatment. However, some further precision was needed on what Members had in mind specifically. The paper by Cuba, for instance, did not mention any numerical target. In response to the comment expressed by certain delegations on prejudging the outcome of other processes, New Zealand pointed out that the paper in TN/TE/W/65 had been circulated precisely in response to the comments by some delegations that they found it difficult to engage in the discussion of product coverage without having an idea of the modality that would apply. His delegation believed that there was a certain urgency to the process, especially since all Members seemed to agree that the negotiations needed to be completed by the end of 2006. This meant that the time frame for considering modalities and the scope of product coverage was rather limited. In concluding, he noted that the purpose of the negotiations was to demonstrate that the WTO could make a meaningful contribution to global sustainable development. With regard to modalities, all contributions by Members would help make substantive progress towards this shared objective.

214. The representative of Qatar said that his delegation remained committed to the mandate in paragraph 31(iii). He noted that Qatar's position had been set out in document TN/TE/W/19 and Corr.1. His delegation believed that neglecting cleaner energy and products in environmental goods negotiations would undermine the spirit of the Doha Declaration. The linkage between energy, environment and sustainable development was obvious. He noted that there were almost 2.4 billion people world wide who still relied on traditional biomass for their basic energy needs, and that more than 1.6 billion people in developing countries had no access to electricity. The energy divide entrenched poverty by limiting access to information, access to education, economic opportunities and healthier livelihood, in particular for women and children. Furthermore, it affected negatively the environment at the local, national and global level.

215. The environmental goods proposed by Qatar had been chosen on the basis of their environmental and developmental benefits, also taking into account issues such as climate change mitigation; air pollution and toxic waste generation; effects on human health; energy efficiency; as well as wider issues related to sustainable development. Qatar believed that these technologies and products offered sustainable development benefits and that maintaining barriers to their trade would be incompatible with the goals of sustainable development. In Qatar's view, discussions in the CTESS and other relevant WTO bodies should result in the liberalization of trade in efficient low pollution emitting technologies and products. In addition, issues such as S&D treatment and NTBs should also be addressed as part of the negotiations.

216. The representative of Canada said that his delegation had agreed to co-sponsor the paper in TN/TE/W/65 to provide a direct response to the questions and concerns raised regarding possible modalities. Canada had commented on previous occasions that it considered negotiations under paragraph 31(iii) as a "NAMA plus" exercise. Ministers would not have agreed on this mandate to simply identify a list of goods that would be subject to a NAMA formula or modality. Canada did not consider environmental goods as a NAMA sectoral, but rather as a unique opportunity presented to the Committee to identify environmental goods with a view to liberalizing their trade. With respect to the submission by Cuba, Canada did not have specific comments at this time but welcomed the views expressed therein.

217. The representative of South Africa said that the point made on behalf of the NAMA 11 was not that the paper in TN/TE/W/65 was premature, but rather that it was inappropriate to suggest tariff elimination in a context where product coverage had not been agreed. In South Africa's view, there was nothing in the mandate that stated that the tariff treatment for environmental goods should be "NAMA plus". Environmental goods would be subject to the modalities agreed by the NAMA group and, if necessary, by the Committee on Agriculture. Looking at the level of ambition in the NAMA discussions, it would be going too far to accept even a proposal on tariff elimination without further discussion of S&D treatment, especially since Members wanted the environment to benefit in a sustainable, long term manner. This meant that Members should be permitted to develop their environmental sector. In WTO, it was accepted that tariffs remained a legitimate way of protecting infant industries, and this was the point that NAMA 11 Members had tried to emphasize. These delegations were hoping to see the same level of ambition exhibited in other areas of the negotiations, particularly because the mandate in Paragraph 31(iii) was not about the inherent benefits that environmental goods and services liberalization would bring.

218. The representative of Pakistan thanked the co-sponsors of TN/TE/W/65, as well as Cuba for their submissions. Pakistan was not clear if what other delegations wanted to achieve as an outcome to the mandate under paragraph 31 was additional market access, or sustaining and upgrading environmental health for developing country Members. In Pakistan's view, Members' priorities had to be straightened in this regard. He noted that paragraph 31(iii) could not be interpreted in isolation and had to be addressed in a holistic manner. The co-sponsors of TN/TE/W/65 considered that liberalization of trade in environmental goods would facilitate access to and encourage the use of environmental technologies, which could in turn stimulate innovation and technology transfer.

Pakistan was not convinced that such a proposal would lead to a triple win situation; instead, it could result in a dependence vis-à-vis developed countries, a deprivation of revenue, and an added debt burden on developing countries; the damage control would have both political and technical consequences.

219. As far as product coverage was concerned, Pakistan supported the statement by South Africa on behalf of NAMA 11. Regarding S&D flexibilities for developing countries, and more particularly with respect to paragraph 5 of TN/TE/W/65, Pakistan was not satisfied with the proposal for a longer implementation period since the value of "x" could not be constant and universal for all developing countries all the time. Furthermore, this could lead to rising prices for environmental technologies, as the major producers and manufacturers could form cartels and monopolize supply chains to exploit developing countries. If such an approach were adopted, there was a likelihood that the major suppliers of these goods and services would refrain from expanding capacity in order to make profits at a later stage. The second option mentioned in TN/TE/W/65 was the exclusion of a limited number of products. Pakistan believed that this option also contradicted the basic principle of taking due account of the environmental and sustainable needs of developing countries.

220. With regard to the Cuban paper, Pakistan noted the technological gap caused by impaired access to technologies and know-how. Before proposing any quantitative S&D treatment measures, Members had to consider on the basis of certain parameters the constraints on human, financial and resources of developing countries. In this regard, his delegation agreed with Cuba's view that the concept of common but differentiated responsibilities endorsed by the World Summit on Sustainable Development needed to be taken into account.

221. Going beyond the US and Cuban proposals with respect to S&D treatment for developing country Members, Pakistan believed that market access for environmental goods and services should be made conditional upon the following: first, the international prices of all environmental goods and services should be kept to some level at some stage to check any trend of undue monopolization by major players; and second, the governments of the countries supplying such goods and services should take up a substantial part of the cost of supply when destined to developing country markets. This would be in line with the principle of common but differentiated responsibilities and would support global environmental health objectives instead of enhancing environmental imbalances.

222. The representative of Switzerland said that as one of the co-sponsors of the paper in TN/TE/W/65, her delegation fully supported the statement by the United States. Switzerland noted that the paper had been tabled especially in response to the request by some delegations for more clarity regarding possible modalities for environmental goods. Moreover, she recalled that the Hong Kong Ministerial Declaration had given clear instructions to the CTESS to advance the work on paragraph 31 (iii) in an expeditious manner. In addition, Switzerland agreed with the view expressed by Norway and Canada that the environmental goods negotiations should not be seen as a traditional NAMA sectoral.

223. With regard to the Cuban submission, Switzerland agreed that S&D treatment was important, especially for LCDs; however, her delegation was not convinced by the reasoning in paragraph 15 of the paper. In Switzerland's view, the purpose of the mandate was precisely to provide increased market access for environmental goods, which would in turn result in greater access to environmental technologies and products at lower costs. The wide use of environmental goods would reduce the negative externalities in the form of detrimental effects on the environment that would probably have to be addressed at a later stage at even greater economic cost. With respect to the argument regarding the promotion of emerging industries, Switzerland referred to Article XVIII of GATT 1994. Finally, Switzerland asked Cuba to develop further on the criteria by which exemptions should be defined.

224. The representative of Venezuela recalled that there was no agreed definition of environmental goods in CTESS to guide the membership in the negotiations. Members continued to work without an

overall sketch to follow. In this context, Venezuela asked how Members could discuss modalities for market access for environmental goods when such goods could not be identified. Venezuela shared the view expressed by Argentina, Brazil, China and India that the Cuban paper could provide a good basis for further work in the CTESS.

225. The representative of the United States thanked delegations for their comments on TN/TE/W/65. In response to a question by Pakistan, she pointed out that the mandate in paragraph 31(iii) was aimed at achieving the objective of promoting sustainable development through the liberalisation of environmental goods and services. In response to the view expressed by some delegations that the paper was premature, she noted that the proponents were concerned the paper actually came too late. The deadline given by Ministers was close, and like other co-sponsors of the proposal, the United States believed that the work had to be carried out in tandem in all WTO committees, as quickly as possible. This was why her delegation had tabled the paper in both the NAMA Group and CTESS, which were the two groups that had competence over the issue of environmental goods.

226. Some delegations had questioned whether or not the NAMA Group had a mandate with regard to environmental goods. In her delegation's view, it was clear that the NAMA Group did have a mandate, as it had been recognized by the Chairman of the NAMA Group in his recent report (Job(06)/200/Rev.1). Delegations would not have made proposals to the Chairman for his text if they did not consider that environmental goods were covered by the work of the NAMA group. At the same time, the CTESS had an important role to play in identifying environmental goods and in trying to clarify the concept.

227. Some delegations had commented that they were not supportive of the modality set out in the paper, particularly the tariff elimination aspect, and that they were not satisfied with the S&D treatment options. The US welcomed those comments, as well as delegations' views on any other S&D treatment option that should be considered. She noted that several delegations had made the point about the need to protect certain industries. A longer implementation period for a phase out of tariffs would give developing country Members an opportunity to retain tariffs for some period of time. In the US' view, the mandate given by ministers required more ambitious treatment for environmental goods from a liberalisation perspective. Therefore, reductions would need to be considered in the context of a phase out, and there would need to be some date by which tariffs would be eliminated. The paper suggested in this regard that developed country Members would proceed immediately with the liberalization, while developing country Members would benefit from a longer implementation period.

228. In response to comments made concerning the fact that the list of goods put forward was too long, she noted that some delegations had revised their list by taking off items that had been criticized in the course of the discussions. There was therefore movement in the direction of reducing the number of products proposed. Moreover, none of the proponents had implied that their list was a "take it or leave it" list. As this was a negotiation, Members had to work together to find the products that could garner widespread support among the membership. In parallel, delegations needed to agree on a modality for liberalising those products to help further the market access objectives of all Members, including developing countries. Statistics showed that environmental goods was a sector that was growing more rapidly than any other industrial manufactured sector. Her delegation was ready to work further on the issue of modality, which would be decided in the NAMA Group, but also on identifying in CTESS a set of environmental goods that could have widespread support among Members. However, work would have to progress in tandem in CTESS and in NAMA so as not to create any hierarchy among the negotiating groups.

229. The representative of Cuba thanked delegations for the comments on their submission, in which Cuba had tried to clarify its understanding of the term "S&D treatment". In his delegation's view, S&D treatment was a fundamental principle that should govern the negotiations. With regard to

TN/TE/W/65, and in particular paragraph 5.1 of the paper regarding the rates of liberalization, Cuba said that it was not convinced that liberalisation per se would guarantee sustainable development, unless there was a recognition of the economic, social and environmental differences that existed between Members. Cuba observed that a good considered as environmental in a developed country might not be considered as such in countries with different levels of development. The paper addressed S&D treatment only in terms of deadlines for implementation. However, the loss of revenue resulting from a phase out of the tariffs for developing country Members also had to be taken into consideration in view of its sustainable development implications.

230. In response to the question raised by New Zealand, Cuba pointed out that in paragraph 15 of its paper, his delegation had set out a clear modality for S&D treatment. The objective was to reduce tariffs for products that were genuinely environmental, which were also of interest to developing country Members from the perspective of their economic and social development. Cuba asked developed country Members if they could accept such a modality. Regarding the question raised by Switzerland, Cuba noted that it would reflect on it further, but that this did not change the fact that developing country Members would have to decide which goods they wished to liberalize in view of their own interests.

231. The representative of New Zealand introduced his delegation's revised list of environmental goods, which he hoped would contribute to the further intensification of the negotiations under Paragraph 31(iii). New Zealand recalled that Members had had numerous opportunities to comment on New Zealand's initial list tabled in May 2005. There had been three formal sessions and five informal meetings since then where specific environmental goods had been considered, including all the products proposed by New Zealand. The formal meetings of the CTESS were held on 7-8 July 2005, 15-16 September 2005 and 21-22 February 2006. The informal meetings included two information exchange sessions on 12 October and 1 November 2005 and three technical discussions on environmental goods that were held in the post-Hong Kong Ministerial phase, namely on 4-5 April, 10-12 May and 12-13 June 2006. Each of the technical discussions had considered specific categories of environmental goods. New Zealand had participated actively in all meetings and had sought to respond substantively to all questions raised by Members about the items it had proposed. New Zealand further recalled that it had introduced a new "Environmental Benefits" column to its list of products contained in TN/TE/W/49/Rev.l. The idea was to assist Members in the more technical discussions by providing specific information about the environmental benefits of particular goods. Like many Members, New Zealand also believed that there was a third "win" for development in these negotiations, which supplemented the "wins" for environment and trade. He recalled in this regard that New Zealand had formally outlined in some detail in its submission in TN/TE/W/49/Suppl.1 the numerous developmental benefits that it considered could be secured as a consequence of the liberalization of trade in environmental goods.

232. Cross-cutting issues had been addressed at the various meetings held on environmental goods, including for instance on the linkages between environmental goods and environmental services. New Zealand had reported in some detail in the information exchanges on the linkages it considered existed between the delivery of environmental services related to the environmental goods it had proposed. New Zealand noted that it was a co-sponsor of a plurilateral request on environmental services, which was being pursued as part of the complementary approaches to the services market access negotiations, as mandated by the Hong Kong Ministerial Declaration.

233. New Zealand had also commented on the question of technology transfer, noting that some of the items on its list were currently being provided through technology transfer from New Zealand to developing countries, particularly in the South Pacific region. This was being implemented through the New Zealand Aid Programme. With regard to NTBs, New Zealand had proposed on numerous occasions that the discussions needed to move from the abstract to the specific. Therefore, New Zealand looked forward to the identification of specific NTBs and reiterated its commitment to

engage in those discussions. With regard to S&D treatment, New Zealand had co-sponsored the paper in TN/TE/W/65 to clarify its thinking on this issue.

234. New Zealand had not confined its participation to verbal comments at the various meetings. For instance, New Zealand was one of the co-sponsors of a paper in Job(06)/140 of 8 May 2006 which focused on products proposed under the categories of Waste Water Management and Solid and Hazardous Waste Management. The paper had been prepared in response to the Chairman's request to provide "detailed explanations on the environmental and developmental aspects of products that have been identified under the two new categories". More recently, New Zealand had presented Job(06)/170 of 6 June 2006 on the category of Remediation and Clean-Up of Soil and Water. This responded to the Chairman's request that Members who had proposed products for the negotiation provide as far as possible a description of the environmental, trade and developmental benefits of the products/systems in question.

235. Throughout the negotiations, New Zealand had sought to do what it could to contribute to the discussion of dual and multiple-use items. New Zealand considered that a practical approach on this matter should be adopted. This needed to take into account the broader commitment of Members contained in the Doha Declaration to "maintain the process of reform and liberalization of trade policies, thus ensuring that the system plays its full part in promoting recovery, growth and development". It was clear that in most of the categories proposed for the current negotiations, there were generally less than a handful of products which could be defined according to the narrower criteria of what some Members described as "single environmental end-use" items. Discussions held since the Hong Kong Ministerial Conference had also revealed that there were a range of views on how this particular criteria could be applied. New Zealand did not believe that it would be possible to secure a consensus on which items could readily be identified by the term "single environmental end-use." In this regard, New Zealand shared the view of many Members that products with dual or multiple uses that could deliver environmental benefits were an intrinsic part of the negotiations. They had a critical role to play in measuring, preventing, limiting, minimizing or correcting environmental damage to water, air and soil, as well as problems related to waste, noise and eco-systems. In fact, many environment-related activities, including those on the New Zealand list, could not be undertaken without access to dual or multiple use products.

236. Against the background of the constructive exchanges held before and after Hong Kong, New Zealand had considered it appropriate in the spirit of the work of the CTESS to take into consideration the comments made on some of the items proposed by New Zealand. His delegation had promised at the June 2006 meeting to try to develop a revised list so as to help move the process forward in July. New Zealand had delivered on this commitment by circulating its revised list in TN/TE/W/49/Rev.2. He noted that the review process had not been easy, having to deal with stakeholders both from the private and non-governmental sectors. However, as a result of this process, his delegation had managed to reduce the list by a quarter. Products had been eliminated from a range of categories including Air Pollution Control; Potable Water Treatment; Wastewater Management; and Cleaner or more resource efficient technologies. In addition, two entire categories had been removed completely from the New Zealand list, namely Scrap and Waste Utilization and Natural Risk Management.

237. New Zealand had also reflected further on its Harmonized System (HS) descriptions and had used the opportunity with the revised list to clarify further the ex-out that had been suggested for some of the products. Among the items removed from New Zealand's list were chemicals falling in the categories of Air Pollution Control, Potable Water and Wastewater treatment and Cleaner or More Resource Efficient Technologies. New Zealand believed that these products were central to addressing environmental problems effectively, and were critical to ensuring water quality and the effective management of wastewater treatment processes. Moreover, the role these goods played in such processes indicated that they had significant and positive development-related impacts in terms of a range of international goals related to water and sanitation. These development-related objectives

were outlined in detail in Job(06)/140. It was New Zealand's view that these should be considered as environmental goods subject to negotiations under paragraph 31(iii). However, these items had been removed from New Zealand's list as they did not appear as likely to secure a consensus.

238. The other large category that had been eliminated from New Zealand's list was the scrap and waste recycling items. New Zealand believed that encouraging the recycling of waste and scrap items had intrinsic environmental benefits. New Zealand believed that the elimination of these goods from the list could limit the environmental benefits that would arise from the negotiations. However, New Zealand understood as a result of the information exchange sessions and technical discussions that those items would not necessarily secure a consensus. In light of its commitment to facilitating progress in the negotiations, New Zealand had therefore removed all of these entries from its current list of environmental goods.

239. In sum, through the revision of its list, New Zealand had reduced substantively and significantly the number of environmental goods it was proposing in the negotiations. The changes and consequent reduction of its list had been made with the expectation that more rapid progress would be possible.

240. The representative of Canada said that the CTESS had devoted a significant amount of time and energy to discussing environmental goods under paragraph 31(iii) of the mandate. In Canada's view, considerable progress had been achieved, despite the difficulties that remained. In that spirit and in order to help maintain the momentum and further the negotiations, Canada had circulated a revised list of environmental goods. His delegation continued to believe that substantially improving market access for environmental goods through the reduction or, as appropriate, the elimination of tariffs and NTBs would achieve what had been referred to as a "triple win" outcome for all WTO Members. Canada continued to see this as an important contribution to sustainable development. In his delegation's view, this would be achieved through reduced cost to importing countries for products and technologies used to improve domestic environmental conditions and manage natural resources. Canada was particularly interested in ensuring that developing country Members' participation was meaningful and would be reflected in the outcome of the negotiations through an agreed set of environmental goods. Canada had taken these various considerations and objectives into account when revising its environmental goods list.

241. In its covering note, Canada had identified a number of issues that had been taken into account in the revision of its list. With regard to the issue of single versus dual use, Canada had taken careful note of the discussions related to parameters to help identify environmental goods. Canada did not believe that the single use parameter would be helpful to identify environmental goods. It was clear that many environmental goods had non-environmental uses. The main question was therefore the relative importance of the good in addressing the environmental issue, namely whether the non environmental use of the good was benign.

242. Canada agreed with the point made by some Members that a more balanced and holistic view of environmental goods was required, and considered that excluding dual use items by applying the criterion of single environmental end use would not be in keeping with this balanced approach to the negotiations. Canada considered environmental goods as the tool to achieve multiple environmental objectives such as pollution remediation and energy and resource conservation, as well as domestic and internationally agreed environmental goals. Environmental goods could be used to improve local environmental conditions, which in turn could lead to improved living conditions and the conservation of scarce natural resources. Contrary to what some Members had argued, many of the environmental goods put forward were in fact low tech, affordable products; or if they were high tech products, they presented readily accessible and affordable solutions to environmental problems.

243. With these issues in mind, Canada had taken a number of comments on board in revising its list. He recalled that Canada had included in its initial list a number of chemicals and recyclable

materials. These items had been put forward because they had the potential to contribute to a better environment. Recyclable material, for instance, could be used to produce new goods or to divert waste from landfills. Furthermore, they required less energy and released less greenhouse gas emissions than primary inputs. Canada had also put forward certain chemicals on the basis that they were key components in environmental processes, including waste water treatment. At the same time, Canada had outlined that the environmental benefits could be achieved only when such items were managed in an environmentally sound manner throughout their life cycle.

244. In the course of the discussions, Canada had taken careful note of the comments and concerns that had been raised. As a result, Canada had removed all recyclable materials and chemicals from its list of environmental goods, as it was clear that these goods did not have the requisite consensus at that stage of the negotiations to be included on a list of environmental goods. Canada looked forward to the further intensification of the negotiations under paragraph 31(iii).

245. The representative of Japan said that at the last formal CTESS meeting on 21-22 February2006, Members had agreed to launch the technical discussions under paragraph 31(iii) by applying indicative parameters to products, categories of products, or projects aimed at particular environmental objectives. Since then, the CTESS had held three technical discussions covering various categories, namely Renewable Energy and Air Pollution Control on 4-5 April, Waste Water Management and Solid and Hazardous Waste Management on 10-12 May, and the rest of the categories, including Monitoring Analysis and Assessment Equipment, Remediation and Clean-up of Soil and Water, and Cleaner Technology and Products on 12-13 June. In order to facilitate the technical discussions, Japan had submitted a non-paper (Job(06)/74) on the categories of Air Pollution Control and Renewable Energy, and had also co-sponsored another non-paper (Job(06)/140) on Waste Water Management and Solid and Hazardous Waste Management Products.

246. In the course of the technical discussion, Japan had tried to explain how those products benefited the environment. For example, filtering or purifying machinery and apparatus for gases (HS 842139) could be used solely for air pollution control; hydraulic turbines and water wheels (HS 841011, 12 and 13), as well as solar electric generators, solar panel, and solar cells (HS 854140 with ex-outs) could be used solely for renewable energy; ozone production system (HS 854389 with ex-outs) could be used solely as disinfecting equipment for purifying water; refuse disposal vehicle (HS 870590 with ex-outs) could be used solely for the transport of solid waste; and inflatable oil spill recovery barges (HS 890710 with ex-outs) could be used solely for remediation and clean-up of water. Japan had also tried to explain how low emission vehicles such as hybrid vehicles and electric vehicles could benefit the environment, specifically air pollution control, without sacrificing development objectives. Although these products had not received broad support, the technical discussions on these items had been useful and Japan hoped that these could provide a basis to explore points of convergence.

247. The technical discussions had provided useful inputs that facilitated the review process of Japan's list, which was still underway. Japan wished to share with other delegations what it had decided to remove from its initial list; the list of goods circulated by Japan as a room document was only tentative and did not constitute a formal revision of Japan's list.

248. The representative of India said that his delegation was not convinced by the arguments presented in the revised lists tabled. New Zealand had stated that one quarter of the items on its initial list had been withdrawn, including the entire scrap and waste category. India asked what the rationale was for putting these products forward in the first place. He noted that both the papers by New Zealand and Canada seemed to have abandoned the concept of "single environmental end use". Many of the items put forward were multiple and dual use items. While many of the proposed items could be used in a system or to remedy an environmental problem, they were not environmental goods *per se* that would justify large tariff cuts.

249. Moreover, there was an important developmental aspect related to this issue. Many of the items discussed were being produced by small scale industries and SMEs in developing countries such as India, and the reduction or elimination of tariffs on these goods would expose them to undue pressure. Therefore, India was not convinced that the proposals tabled would help meet the development angle of the negotiations.

250. Regarding the issue of ex outs, which had been addressed to some extent in the technical discussions, India noted that a group of developing country Members had examined the issue and had set out their views on the subject in a room document. This paper highlighted, for instance, that the HS code as such was not specific enough to capture environmental goods, and that using ex outs to identify environmental goods was not an option for these delegations. India noted that there was no harmonization of the ex outs at country level. The identification of goods at 8-, 9- or 10-digit level for the purpose of domestic implementation would be cumbersome and costly for developing country Members. The liberalization of entire tariff lines was more than developing country Members could bear, and ex outs did not seem to address the real problems that Members were facing. In India's view, the submission of environmental goods lists was not taking the work in the right direction.

251. The representative of Korea said that to facilitate the identification of environmental goods, his delegation considered it necessary that the proponents submit revised lists of goods which reflected the comments made during the technical discussions. Korea noted that the submissions by New Zealand, Canada and Japan were encouraging, and that it was also considering submitting a revised list for the next round of discussions. In Korea's view, the problems linked to the list approach were not insurmountable and were in any case less important than with the project approach. In addition, the list approach was faithful to the Doha mandate and to the essence of the WTO Agreements. Korea was convinced that the issue of dual or multiple uses could be addressed through the appropriate ex-outs under the HS 6-digit code. He noted that it would be more efficient to focus on finding solutions to the multiple use issue on the basis of a list of environmental goods.

252. The representative of Egypt said that discussions gave the impression of a pure market access exercise, which was not the purpose of the work in the CTESS. For his delegation, discussions were moving around in circles without consideration of the views put forward by many developing country Members. The aim of the work in CTESS was to find an approach that was acceptable to the membership as a whole. For Egypt, there was no support for continuing the work on the basis of lists alone. At that stage of the discussions, there was still no common understanding of the mandate, and more attention had to be given to other approaches put forward in the negotiations.

253. The modalities paper in TN/TE/W/65, which had also been presented in the NAMA Group, was not helpful in terms of clarifying how Members would conclude their work in the CTESS. It was true that some developing country Members had indicated in the past that it would be useful to understand what the proponents were aiming for with their lists. However, since then, this point had become clear and the work had not gone in the direction that his delegation wanted to follow. Discussions on environmental goods in CTESS had focused on the highest level of ambition possible, while negotiations were staled in many other areas.

254. With regard to the revised lists tabled by New Zealand and Canada and the room document circulated by Japan, he noted that several revisions of the lists might be necessary before his delegation would be in a position to consider them. The revised lists still contained many items that did not fulfil any specific criteria. Egypt encouraged the proponents to continue revising their lists, but said it was not in a position to consider them as they currently stood. The room document introduced by India reflected much of Egypt's thinking about the shortcomings of the HS system and the problems related to dual and multiple use items. Egypt continued to believe that this was not enough to get out of the stalemate in the CTESS. Members needed to consider other approaches in the negotiations, since the discussions of the lists had not been conclusive so far.

255. The representative of Brazil said that his delegation was one of those that had called for the revision of the lists in previous meetings, but that it was disappointed by the results presented. Many proponents in the past had explicitly stated that end use was a useful concept. However, the proponents were now saying that there were only a handful of products that had an environmental end use. Some delegations had also expressed the view that the end use criterion was not a helpful one and that Members should focus instead on the environmental benefits of a product. Brazil had never denied that dual use products could produce a benefit for the environment. However, the technical discussions had shown that dual use products could be used in ways that were detrimental to the environment. The question of the environmental impact of dual or multiple use goods during their life cycle had not been answered, nor did it seem to have been taken into account in the revision of the lists.

256. Although the proponents had stated that the views and concerns expressed by developing country Members had been taken into consideration, this had been done only in a selective and fragmented way. Only a handful of products had been excluded from the revised lists tabled, including the most obvious ones such as chemicals, which were known to be toxic. Despite this, the delegations that had circulated revised lists had stated that they still considered these products to be environmental goods and that their exclusion had been difficult for them. While Brazil was grateful for the submission of revised lists, it continued to be of the view that the list approach was not appropriate for the purpose of the work in CTESS. The lists showed an excessive level of ambition that could not be justified in light of the mandate. The list approach could also lead to further complications in terms of feasibility and costs for customs officials, as noted in the room document introduced by India. Finally, Brazil noted that the mandate in paragraph 31 did not call for specific modalities for environmental goods.

257. The representative of China said that his delegation agreed with the comments expressed by India, Egypt and Brazil with regard to the revised lists. He noted that both the Canadian and New Zealand papers used environmental benefits as the parameter or criteria for identifying environmental goods. However, with such a criteria, most products could qualify as environmental goods in a comparable way. In China's view, this kind of exercise had not proven to be workable so far.

258. The representative of Chinese Taipei thanked Canada and New Zealand for their revised lists, which his delegation had found very encouraging. He noted that goods had been eliminated from the lists based on an emerging consensus for their exclusion. In his delegation's view, Members should build upon this emerging consensus and take relevant decisions in due course.

259. The question had been raised as to whether ex outs provided a feasible tool to tackle the issue of dual and multiple uses. His delegation had noted from the comments made in the course of the technical discussions that the use of ex outs was not new. Although there was no harmonization of ex outs at 8- or 10-digit level, Members could aim at reaching consensus on product description based on ex outs at 6-digit level; this seemed to be an appropriate and feasible way of tackling the dual and multiple use issue. Delegations could seek the assistance of the World Customs Organization (WCO) in this regard. Like Korea, Chinese Taipei was also considering the revision of its list. His delegation looked forward to moving to a constructive and expeditious stage of the negotiations as soon as possible.

260. The representative of Australia said that her delegation welcomed the efforts by New Zealand, Canada and Japan to narrow down the scope of their lists. This was a meaningful contribution to the discussion towards fulfilling the mandate in this area. It was particularly important that in narrowing down their lists, the proponents had listened carefully to the general and more specific comments provided. Australia understood that this was indeed the basis on which New Zealand and Canada had proceeded. Her delegation agreed with Korea's comment that other proponents also needed to work on their lists. Australia looked forward to continuing the discussions on the basis of the revised lists tabled, as well as on future revisions.

261. Concerning the definition of environmental goods, she noted that there would always be an element of subjectivity in developing a list of environmental goods. Some delegations had discussed parameters such as "direct and clear environmental benefit", which her delegation found useful and instructive. However, Members needed to reach agreement on a credible list in order to progress in the work. Australia believed that the single use parameter was too limited. Therefore, her delegation welcomed the fact that some further work had been done on revising ex outs. This was an important issue in terms of coming up with an agreed list. Finally, Australia noted its interest in finding out more about how ex outs were being used nationally.

262. The representative of the European Communities said that the new submissions tabled demonstrated that the information exchange sessions and technical discussions had been successful. The revised lists also demonstrated that the proponents were serious about creating a list of environmental goods that would garner widespread support among the membership. At one of the technical discussions, Egypt had submitted a room document that raised some concerns regarding hazardous waste, and the revised lists by New Zealand and Canada had provided a direct response to these concerns. His delegation wished to see more of this constructive engagement in future, not only for products that did not generate widespread support, but also for products on which Members could agree. In this vein, the EC would continue to reflect on its own submission and would work hard to generate a list of products that could garner more support.

263. Regarding the suggestion that Members should work on the basis of the parameter of single environmental end use, he noted that while some of the discussions had been structured around this parameter, it was certainly not the only parameter. Many of the non-papers tabled by the proponents had focused on dual or multiple use products which had clear environmental benefits. The EC continued to believe that dual and multiple use products that had a clear and direct environmental benefit should be included on a list of environmental goods. His delegation recognized that not all the goods proposed would make it to the final list, and it was for Members to determine which dual and multiple use products deserved to be considered as environmental goods. Furthermore, he noted that the single environmental end use parameter had never been proposed as a parameter in the context of the project approach.

264. On the question of ex outs and whether they provided a workable solution, the EC agreed with Chinese Taipei that WCO's contribution to the technical discussions had been extremely valuable. The discussions had made clear that ex outs were indeed a workable solution for dual and multiple use products. His delegation would continue to reflect on the issue with respect to the products it had put forward.

265. The EC disagreed with the comments made with respect to the impact of further trade liberalization of environmental goods and services on SMEs. In the EC's view, such comments were not constructive to the debate. This negotiation was not simply a market access negotiation. The EC wanted to focus on increased access to environmental goods and technologies based on what had been agreed in Rio and Johannesburg, as well as more broadly in the Millennium Development Goals.

266. The representative of Mexico thanked Canada, New Zealand and Japan for their presentations. Although her delegation appreciated the efforts to revise the lists, Mexico noted that the content of the lists continued to be problematic. One important question that remained with respect to the majority of the products put forward was why an industrial good should benefit from better tariff treatment as a result of negotiations in the CTESS. In Mexico's view, the revised lists did not provide a satisfactory answer to this question.

267. With regard to the criteria of single environmental end use, Mexico noted that there would not be a balanced result in the negotiations unless the environmental use of the products was clear. In this regard, criteria and parameters could help Members find a compromise. The delegation of Canada had referred to the benign non environmental use of an industrial good; however, her delegation did

not see how such a criteria could justify the inclusion of a good on a list of environmental goods for the purpose of the negotiations. Mexico noted that there remained several dual and multiple use products in the revised lists that were subject to NAMA negotiations. Her delegation appealed to the proponents to further revise their lists, while Members would continue seeking a practical approach to the mandate.

268. The representative of the United States said that in the interest of transparency in the negotiations and particularly in the context of formal meetings where summary reports would be made available to the public, delegations should table formal submissions instead of circulating room documents.

269. The US thanked New Zealand and Canada for putting forward revised lists of environmental goods. Her delegation appreciated the work and the internal consultations that had gone into such an exercise. The US further appreciated that these delegations had responded to the comments made on their initial list of goods. Her delegation hoped that these efforts to remove the most controversial items from the lists, including chemicals and scrap materials, would help to move the negotiations forward and to bring Members one step closer to a set of products that had widespread acceptance in the WTO.

270. However, as a delegation that had submitted a list and was considering revising it, the US had not found the reactions particularly encouraging. This raised the question of the desirability of undertaking an extensive consultation process with stakeholders to come up with a revised list that may not be considered as good enough by other Members. The US welcomed additional comments on the products it had proposed, in particular with respect to the products that could be considered as legitimate.

271. With regard to dual use, the US noted that the issue was a legitimate one, given the nature of environmental goods and the industrial processes they often involved. Discussions so far had focused on ex-outs and on the overall benefits of liberalizing trade, which was the overarching objective of the negotiations. Another important aspect mentioned was how to obtain a balanced result that reflected developing country export interests in the negotiations. According to trade data, developing countries had export interests mainly in the dual or multiple use products, and not in the single environmental end use items. Members would need to be cognizant of the balance of export interests of all Members when handling dual use products. The US hoped that other delegations would further engage in the discussions and that the revised lists would bring Members closer to an agreement on a set of environmental goods.

272. The representative of Norway said that her delegation welcomed the revised lists of environmental goods submitted by New Zealand, Canada and Japan as a constructive step forward in the negotiations. These lists demonstrated that the technical discussions had been fruitful. Various proposals had been made by delegations on how to deal with the mandate under paragraph 31(iii). Norway was still of the opinion that the list approach was the most suitable way to achieve an environmentally sound outcome with a multilaterally agreed set of environmental goods.

273. Norway agreed with Australia on the need for the negotiations to result in a list of goods that would deliver clear environmental benefits and that would be broadly recognized across the membership. Norway was not convinced that the revised lists that had been tabled fully met these objectives, as they still contained goods used mainly for other purposes than environmental ones. The technical discussions had contributed to identify product categories that had limited support among Members, but further work was required to narrow down the product coverage. Norway urged the proponents of the lists to substantially reduce the number of items on their lists. Her delegation looked forward to engage with other delegations in developing a list of environmental goods that would help reach a credible environmental result while ensuring trade and development gains for all Members, especially developing countries.

274. The representative of Cuba thanked the delegations that had submitted revised lists. Cuba welcomed the fact that waste and chemicals had been eliminated from the initial lists. However, his delegation agreed with India, Brazil and Mexico that the situation was still inadequate. Members needed to be more precise about the definition of environmental goods based on the criteria of single environmental end use. Some of the items proposed were still problematic for Cuba, including entries number 361 and 362 in the New Zealand list (HS codes 870322 and 870390, motor cars and other motor vehicles). Any good classified under these tariff lines could be considered as environmental an good, including racing cars. Members needed to work on the list bearing in mind the objective of sustainable development. Finally, Cuba fully supported the views expressed in the room document presented by India, Brazil, South Africa and China.

275. The representative of South Africa recalled that there was still no agreement to follow a list approach. In fact, her delegation was concerned that a list may not lead to a result that would adequately represent the interests of all Members. She thanked New Zealand and Canada for their revised lists. Her delegation welcomed the fact that some of the comments made on specific products had been taken into account resulting in the removal of these products. However, as other delegations had pointed out, this did not solve all of the problems. In South Africa's view, the environmental use of the vast majority of the products put forward was not clear. A wide range of products on the lists were dual or multiple uses items and it was difficult, if not impossible, to quantify the extent to which these products could be used for environmental purposes. Until this problem was solved, she noted that it would be difficult for her delegation to accept the list approach.

276. South Africa believed that the single environmental end-use parameter ensured that the goods identified would have a verifiable benefit for the environment. New Zealand had pointed out that consensus on single environmental end use would be hard to achieve, but according to South Africa, it would not be any easier to reach consensus on the issue of dual and multiple use. While her delegation wished to be constructive, it continued to have fundamental issues with the underlying approach; specific criteria beyond that of environmental benefit would be needed if the list approach was ultimately followed.

277. The representative of Ecuador thanked the delegations of Japan, Canada and New Zealand for their efforts to revise their lists, which her delegation considered was a proper step forward. However, as noted by other delegations, much work remained to be done with respect to revising the lists. For Ecuador, this was not merely a question of agreeing on a number of products but rather of developing a vision on the meaning of sustainable development in the context of the Doha Development Round. For Ecuador, the notion of sustainable development had to take into account the primary source of environmental deterioration, which was poverty. Members had a particular mandate to fulfil under Paragraph 31(iii) and for Ecuador, this mandate did not mean business as usual. There had to be an added value to these negotiations so as to differentiate them from NAMA negotiations. In this context, Ecuador believed that the criterion of final environmental use ought to guide the paragraph 31(iii) negotiations.

278. Ecuador noted that the issue of multiple uses raised many problems for which no solution had been proposed. In this regard, the project approach addressed the mandate more holistically and provided a pragmatic way of dealing with the problem of multiple uses. Moreover, Ecuador shared many of the concerns expressed in the room document presented by India regarding the use of ex outs. In particular, Ecuador agreed with the view that the costs implications for developing countries of implementing ex outs could run counter to the objective of the negotiations in the area of trade facilitation. For her delegation, ex outs had to remain the exception rather than the rule.

279. The representative of Switzerland thanked New Zealand and Canada for their revised lists, as well as Japan for its non-paper which indicated the items that Japan was willing to remove from its list. This was a constructive approach after the technical discussions and consultations that Members had held. These delegations had been attentive to other delegations' comments and had removed

controversial items from their lists. Switzerland supported the point made by Chinese Taipei, the European Communities and other delegations regarding the use of ex outs. Switzerland was also in the process of revising its list based on the views expressed in the technical discussions. Her delegation had proposed goods of interest to developing countries and it was difficult in the revision process to take off items that could be key for developing country Members. Switzerland hoped that these delegations would indicate clearly their interests in order to achieve a credible and balanced outcome both for developing and developed country Members.

280. The representative of Nigeria said that his delegation was encouraged by the spirit of constructive engagement. With regard to the paper by New Zealand, he noted the suggestion regarding the concept of a living list and its application to developing country Members. His delegation wished to see products of export interest to developing countries given prominence in the final list that would emerge from the negotiations. Nigeria hoped that major players would recognise the need for flexibility to promote the common good and welfare of all Members.

281. The representative of Malaysia, also on behalf of Indonesia and Thailand said that in the absence of an understanding on the scope or criteria for identifying environmental goods, agreeing on a single list of environmental goods could prove difficult. Malaysia noted that the environmental goods lists that had been submitted varied greatly. Some Members had submitted a limited and clearly defined environmental goods list, while others had presented extended lists which included many dual use goods, as well as others that did not bear much significance from the point of view of environmental protection or clean up.

282. Malaysia thanked New Zealand and Canada for their efforts in revising their lists. His delegation believed these efforts would assist Members in the negotiations under paragraph 31(iii). Some of the products that had been removed or would be removed from the lists were products that had raised concerns for several Members. However, the revised lists still contained dual and multiple use products. Malaysia had concerns with respect to these products since it was not possible to precisely and effectively capture the concrete developmental and environmental benefits of these products. His delegation supported further discussions on the revision of the list bearing in mind the single use criteria. Malaysia looked forward to working with other delegations in achieving meaningful and beneficial results from paragraph 31(iii) negotiations, which would take into account the development and environmental dimensions, in addition to trade interests. This was the only way to achieve a result that would promote the objective of sustainable development.

283. The representative of New Zealand welcomed the comments by other delegations on their revised list. New Zealand had tried to be specific in its response to the comments that had been previously made by eliminating 25 per cent of the goods from its original list. The membership had spent considerable time, both before and after Hong Kong in the information exchange sessions and technical discussions, where his delegation felt good progress had been made. While it was disappointing from New Zealand's perspective to realize that it would be unsustainable to retain some of the goods on their list, the discussions had led to a positive outcome. New Zealand did not agree with the comment that the negotiations were borderless. In fact, with some 143 items left on its list, New Zealand believed the border was tightly defined. In New Zealand's view, the discussions had brought Members one step forward in the direction of getting more clarity as to what may constitute "environmental goods".

284. New Zealand had gathered detailed technical information about the specific environmental benefits of every item on its list. However, his delegation understood that this was a negotiation and that not everything New Zealand believed had an environmental benefit would necessarily get consensus among Members. For instance, New Zealand believed that there was an environmental benefit to scrap waste. However, in order to help move forward the process of negotiations, New Zealand understood that it had to take off some items from its list. As for the chemicals that had been included initially on the list, New Zealand noted that these were essential for instance in

wastewater treatment. His delegation had taken off chemicals from its list after hearing other delegations' concerns with respect to these products.

285. Like most developing country Members, New Zealand did not have a commercial interest in any of the goods that could potentially fall into the single environmental end use category. If environmental goods were to be identified on the basis of this criteria alone, only a handful of Members would actually benefit from the negotiations. Focusing strictly on single use items would not only limit the environmental benefits of the negotiations; it would also leave out a significant portion of the trade to the detriment of the wider developmental dimension of the mandate.

286. In response to a question by Cuba regarding entry numbers 361 and 362, he noted that New Zealand had proposed some ex outs for hybrid and electric vehicles, and that it did not have in mind racing cars.

287. New Zealand invited other delegations to continue to engage with an open mind, recognize that the process was a negotiation and work together with a view to fulfilling the mandate. His delegation hoped that by submitting a revised list, it had made a contribution towards this objective.

288. The representative of Canada said that the comments on his delegation's revised list reflected a constructive engagement. As Canada had indicated in its cover note, the products removed from the list had initially been put forward because Canada believed they had the potential to contribute to a better environment. For instance, he recalled that recyclable materials could be used to produce new goods and divert waste from landfills, and required less energy and released less greenhouse gas emissions than primary inputs. With regard to the chemicals, these were considered as key components in a number of environmental processes. Canada had taken these products off the list in the spirit of compromise required of a negotiation.

289. Canada believed that a number of different criteria could be used in the process of identifying a set of environmental goods acceptable to all Members. Such criteria could take into account arguments related to market sensitivities or emerging industries. However, in Canada's view, the suggestion that single environmental end-use should be the only criterion in the negotiations was not acceptable.

290. As for the process of narrowing down the list, Canada viewed this as a peer review process whereby Members looked at the various products and discussed them with the objective of agreeing on those that should be included on a list. In this process, each Member had to take other delegations' comments into consideration and adjust their position accordingly. Canada hoped that the tabling of its revised list would be considered by other delegations as a positive step forward. Canada also hoped that Members could start agreeing on products, rather than continually focusing on products on which they could not agree. To this end, it was important to consider the various parameters and criteria in a flexible manner and to continue sharing information on the products put forward. Canada stressed that it was giving due consideration to all approaches. However, regardless of the approach that Members would choose to follow, there was a need to start agreeing on a set of environmental goods.

291. The representative of Japan recalled that the list of products circulated as a room document was not Japan's formal revised list. With regard to the use of ex-outs, Japan noted that it provided one way of dealing with environmental goods that could not be identified at 6-digit level. In addition, Japan noted that their customs authorities were also reviewing the list so that the ex outs would be workable from their perspective. His delegation was open to further discussions on whether the use of ex-outs would be a workable option to identify environmental goods under Paragraph 31(iii). Japan felt that any difficulty associated with ex out should not prevent Members from identifying environmental goods. If the goods had a clear environmental benefit, Members should accept to liberalize them.

292. The representative of Egypt said that since there had already been three sessions dedicated to looking at all the items on the proponents' lists, there was no need to look at these items again, as Canada had suggested. Instead, Members should focus on finding a way forward that was acceptable to all Members.

293. The representative of Argentina said that his delegation agreed with the comments made by Egypt. Although Argentina was committed to these negotiations, it believed that the list approach did not meet the needs and flexibilities of many developing country Members. Some flexibility would therefore be needed in order to reach a compromise.

294. The representative of India said that his delegation also supported the statement by Egypt. He recalled that the room document presented by India, Brazil, China and South Africa focused on the difficulties of implementing a list of environmental goods under the HS system. This did not mean that India and others accepted the list approach. With this document, these delegations wished to highlight some technical issues that were likely to arise under the list approach.

295. The first point related to the fact that any changes to the classification system to implement ex outs at 8- or 10-digit levels for Members currently operating at HS 6-digit level would involve significant costs. This put several delegations in the difficult position of having to choose between liberalising the entire HS tariff line at 6-digit level, which would entail unintended liberalisation for many non environmental goods, or facing significant additional costs. The room document highlighted other similar difficulties that Members had faced in the context of the Information Technology Agreement (ITA).

296. The second point raised in the room document was that even where an ex out was created in the cases where the product had some characteristics that made it suitable for environmental uses, the customs authorities would still need to determine at the border whether the product satisfied those characteristics. This process could involve additional complications, particularly since most Members were moving towards a more simplified HS classification system.

297. Finally, India noted that some delegations had referred to the clarifications provided in the technical discussions regarding the use of ex outs, suggesting that this was not a real problem. India considered that the issue had not been resolved. For instance, his delegation had raised a question regarding specifically products that were classified under the HS on the basis of their end use.

298. The representative of Egypt expressed his delegation's support for the room document submitted by Brazil, China, India and South Africa and noted that his delegation had also participated in the elaboration of the ideas and the conclusions presented therein.

299. The representative of the United States made a comment regarding the circulation of room documents, noting that if delegations wanted their ideas to be reflected in the record of the meeting, they would have to submit them in a formal paper. In the US' view, the formal submissions that were listed on the annotated agenda for the meeting should be taken up first in the discussions.

300. The representative of China said that the three technical discussions in the CTESS had been helpful in terms of understanding better the list approach. These discussions had raised a number of difficulties, including questions of a cross-cutting nature, such as the issue of multiple uses. The room document circulated by China, India, Brazil and South Africa only addressed one of these technical difficulties, namely those that related to the HS system. China believed that there were other concerns related to the identification of environmental goods, such as the problems linked to the concept of environmental benefit and environmentally preferable products. He emphasized that there were inherent difficulties in drawing a clear cut environmental line between one product and another, and this had naturally led to the divergence of views over the issues of dual or multiple uses. Moreover, the list approach did not appropriately deal with services, transfer of technologies and NTBs.

301. The representative of India said that Members should be free to express their opinions on any particular subject in the Committee, and that it was important that such opinions could be spelt out in a document so that Members could debate and understand the issues. India offered to read out the content of the room document for the benefit of the discussion at the meeting. The authors could submit it later on as a formal document should there be a procedural problem with it being circulated as a room document.

302. The representative of Argentina thanked India for circulating the room document and said that his delegation endorsed the conclusions presented therein, namely that based on the technical discussions that were held between April and June it appeared that multiple use had emerged as a problem in the discussions on product coverage; for the majority of environmental goods, multiple use was a function of their ubiquitous nature for uses other than environmental; ex-outs could not be used to effectively "design in" single environmental use into the HS; ex-outs would in most cases lead to additional costs and other problems related to implementation; and finally, without an adequate solution to the problem of multiple use, a large loophole would be created, which would undermine the credibility of the negotiations.

303. The representative of Egypt said with regard to the procedural questions raised by the US that the room document circulated at the meeting set out the views of a number of delegations on a set of issues addressed in the debate. His delegation did not see a difference between these views being presented in a paper or in a statement delivered at the meeting. It was not unheard of within the WTO that documents be circulated at the last moment, and in any case after the circulation of the convening notice announcing the meeting.

304. The representative of Mexico thanked the delegations of Brazil, China, India and South Africa for introducing their document. Mexico shared the concerns of a technical nature highlighted in the room document, namely, those related to multiple use products. Mexico wished to associate itself with the appeal formulated in the room document to find a solution to the issue of multiple uses, which could have a negative impact on progress in the negotiations. With regard to the issue of procedures, Mexico had an open mind, especially since it shared most of the concerns raised in the room document.

305. The representative of Ecuador expressed her delegation's support for the statement presented by China, India and South Africa, as well as the comments made by the delegations of Egypt, Argentina and Mexico on the various problems highlighted in the technical discussions with respect to the list of environmental goods.

306. The Chairman suggested that the text of the room document be incorporated into the record of the meeting.

307. The representative of the United States said that her delegation could not agree to the Chair's suggestion that the room document be reflected in the record of the meeting.

308. The representative of India, also on behalf of Brazil, China and South Africa proceeded to read out the room document circulated at the meeting. He first recalled that this document was based on the informal technical discussions of the CTESS that had been held between April and June 2006. These discussions were intended to focus on goods with single environmental use. He noted that of the 443 entries appearing in the Secretariat's compilation[11] for which HS codes had been provided, very few items met the criterion of single environmental end-use. This also confirmed the findings of the OECD/Eurostat Informal Working Group that the industrial product classification codes were not a particularly usable system for attempting to specifically or uniquely classify environmental goods.

[11] TN/TE/W/63.

309. The issue of multiple uses arose because the HS was not specific enough to capture environmental goods. Using ex-outs to "drill down" to single use from multiple use was not an option. Extensive recourse to ex-outs could actually give rise to further problems, especially at the implementation stage where the individual WTO Members would need to do further work to apply the WTO commitments at the border. In India's view, it was up to each Member to determine the most suitable way to implement the concessions based on its experience, practice, legal constraints and the organization of its customs service.

310. The use of 8-, 9-, and 10-digit HS codes for domestic implementation could be quite straightforward and transparent when a Member had such definition in its national nomenclature. However, for many developing country Members whose tariff structure was simple, i.e. at the HS 6-digit level, codes at the 8-, 9-, or 10-digit level were non-existent or were beyond their capabilities to create. Thus, these countries faced a choice either to make the necessary changes in their national tariff nomenclature and follow through with adequate implementation measures and procedures, or to liberalize the corresponding HS 6-digit tariff line in its entirety. Taking such a decision required comparing the costs of complex implementation to the costs of foregone tariff revenue in the case of "wholesale" liberalization.

311. The relevant questions, therefore, were as follows: how much of the HS 6-digit tariff line was accounted for by the underlying (environmental) good, and what was the value of trade in this good. While the latter question could be answered relatively easily, the former required in-depth analysis based on information that may not be readily available. In other words, extensive recourse to ex-outs actually meant that many developing country Members could end up liberalizing more than what was required by the agreement that they would have negotiated. Being cognizant of this risk, some Members could put in place special provisions, e.g. in the form of licensing or end-use certificates, which were often described as NTBs.

312. Concern about the difficulties stemming from implementing ex-outs domestically was the main reason for keeping those to an absolute minimum in the WTO negotiations. The ITA was an important reference in this regard. India noted that while one list in the ITA was relatively straightforward and contained few ex-outs, there had been extensive on-going technical work to correct some of the problems created by a second list, which contained essentially only ex-outs. Experience with the ITA had revealed the difficulties of ensuring consistent interpretation of customs classification, leading to disagreements among trade negotiators as well as between customs authorities and traders. If there was an overall lesson to be drawn from this and other relevant experiences, it was that ex-outs had been and should remain the exception rather than the rule.

313. Based on the above, India inferred that: (1) Multiple use had emerged as a main problem in the discussions on product coverage; (2) For the majority of "environmental goods", multiple use was a function of their ubiquitous nature for uses other than environmental; (3) Ex-outs could not be used to effectively "design in" single environmental use into the HS; (4) Ex-outs would in most cases lead to additional costs and other problems related to implementation; (5) Without an adequate solution to the problem of multiple use, a large loophole would be created, which would undermine the credibility of these negotiations.

314. The delegations of Egypt and Cuba asked that the name of their delegation be added to the list of co-sponsors of the room document.

315. The representative of Chile said that his delegation did not understand from the rules of procedure that a room document had to be read out in order for it to be included in the minutes of a meeting. Chile therefore wished to reserve its position with respect to the procedural points raised by the US.

316. The representative of the United States asked whether the document that had been read out could be filed as a formal document in order to be more easily retrieved.

317. The representative of Bolivia said that her delegation supported the statement by the delegation of India.

318. The representative of Thailand, also on behalf of Malaysia and Indonesia, thanked the delegation of India for its room document which outlined the lessons learned from attempts to capture environmental goods through national HS codes. He agreed that the technical discussions had shed light on the usefulness of using ex outs as a tool for defining environmental goods under Paragraph 31(iii). In his view, this was further complicated by the fact that the majority of goods proposed were multiple use items. This raised further concerns in that for some of these multiple use items, there was no reliable data separating the environmental use from other industrial or commercial uses. Thailand also agreed that the use of ex outs should remain the exception rather than the rule.

319. Thailand was concerned that the issue of multiple use presented a potentially large loophole which could not be adequately dealt with. It was only when his delegation would be fully convinced that the ex-out approach could solve this problem that it would consider the goods identified on the basis of this approach. In Thailand's view, the ex-out option did not seem to provide a solution that would lead to a win-win outcome in the negotiations. Nevertheless, his delegation was committed to engage further with other delegations with a view to achieving an acceptable outcome on this matter.

320. The representative of the EC asked India about the conclusion presented in the room document that ex outs could not be used to effectively design in single environmental use into the HS. The EC sought the views of the WCO on whether there was a practical problem to effectively identify single environmental use with an ex out under the HS. With regard to the suggestion that ex outs would in most cases lead to additional costs and other problems related to implementation, he agreed that ex outs could be an additional burden for customs officials. However, in the EC's view, this would be less significant than the burden of implementing the project approach, since the national authority clearance required under the EPA would be more costly, more administratively cumbersome and could run counter to the negotiations in the area of trade facilitation.

321. The representative of Uruguay introduced her delegation's non-paper in document JOB(06)/144 entitled "Negotiations on Environmental Goods: Proposal by Uruguay". This document recognized that despite much effort, the discussions in the CTESS on a possible definition of environmental goods had not led to any conclusion. Uruguay wanted to contribute to the debate by presenting its perspective as a developing country that gave great importance to the environment both in its national policies and at the international level.

322. Uruguay believed that the lists put forward to date had not led to any progress in the negotiations, in particular due to their size and the diversity of definitions used by the proponents in identifying environmental goods. These lists had not brought any balanced progress in the negotiations since the products they contained were for the most part industrial goods of export interest to developed country Members.

323. The CTESS had been entrusted with the difficult task of establishing criteria that would be comprehensive enough to encompass the various concepts of environmental goods and services, as well as the aspirations of all Members. In Uruguay's view, the Committee should aim at selecting a limited number of environmental goods with the objective of drawing up a reduced list on the basis of agreed criteria in order to ensure transparency to this process. The discussions should not be limited to goods whose liberalization could contribute to improving the environment; it should also extend to goods that could contribute to the social development of developing country Members. As the Doha Round had been named the "Development Round", the development aspect could not be left out of the discussions in the CTESS.

324. According to her delegation, there was a very important road already travelled at the international level in terms of environmental agreements and understandings, which should be taken into account in the negotiations under Paragraph 31(iii). Moreover, the determination of the environmental or non-environmental nature of a good or service required mutual support by the WTO and other international organizations competent in the area of environment, and in particular MEAs. Uruguay hoped that the WTO and MEAs could cooperate and interact in order to establish how to define environmental goods and services for the purpose of the negotiations.

325. To this end, Uruguay had proposed that the CTESS first identified environmental goods and services on the basis of the concept of "environmental activities", consisting in the activities of an MEA, or recognized as such through certain methodologies or approval of projects. Uruguay also suggested that the exportable goods and services derived from such environmental activities be listed by the CTESS as environmental goods that would be subject to reduction or elimination of tariff and non-tariff barriers established in compliance with the Doha mandate. Furthermore, these environmental projects or activities would require international certification, as the mere declaration by a national authority would not be sufficient.

326. According to Uruguay, this proposal presented several advantages: first, the liberalisation of environmental goods and services under paragraph 31(iii) would reflect the commitments and understandings already agreed upon in the context of MEAs; second, the MEA system would provide a guarantee to the multilateral trading system in respect of this specific matter thereby strengthening cooperation and synergy between the two regimes; third, Members would have an opportunity to export selected environmental goods and services derived from their own projects or plans in accordance with their national interests and needs, which would be beneficial to developing country Members; finally, this would open the door to a negotiation based on the offensive interests of all Members.

327. The representative of India said that its submission in TN/TE/W/67 was aimed at responding to some of the questions that had already been raised with respect to the EPA. According to this approach, Members would give reduction or concessions with regard to tariff and non-tariff barriers on environmental goods and services included in national projects. These projects would be for any environmental objective that would be decided in the CTESS. The EPA was aimed at addressing both the environmental and developmental goals of the Doha Development Agenda and Agenda 21 through trade liberalization.

328. India had already provided at a previous CTESS meeting a country-specific example of this approach. His delegation had also explained that the EPA would help achieve the objectives of the mandate in a more effective and comprehensive manner than the list approach. In pursuance of its continued engagement and with a view to convince other delegations, India had submitted this fourth contribution on the subject to demonstrate that the EPA was in line with the overall goal and workings of the WTO, that it would help achieve sustainable development objectives and that it would bring synergy between trade and the environment.

329. India further emphasized that a project-based or sector-specific approach was not new to the WTO. The Uruguay Round negotiations, for instance, had addressed sector-specific issues, namely in the field of chemicals and pharmaceutical products, medical equipments, and information technology. Another example was the Doha Declaration on the TRIPS Agreement and Public Health, which focused on finding solutions to public health issues relating to diseases, such as HIV/AIDS, tuberculosis, malaria and other epidemics. The WTO thus provided a regulatory framework to find common solutions, such as the elimination of tariffs, or to create necessary policy space for Member countries to address problems unilaterally, such as by recourse to compulsory licensing of patented drugs. These were not limited to exemptions only by means of specific sector-related waivers adopted on the basis of Articles IX.3 and IX.4 of the WTO Agreement. Rather, they predominantly consisted of rules defining policy space and limitations that Members needed to observe. India

thought that these decisions showed that Members were able to address sector-specific objectives within the general WTO regulatory framework and that the EPA was therefore not an exception. The EPA was in line with the general structure of the multilateral trading system and provided an appropriate answer to addressing the specific environmental problems of Members.

330. In response to the argument that the EPA did not provide predictability or transparency by failing to bring about binding commitments, India noted that the underlying philosophy of the EPA actually addressed these objectives. According to India, the EPA multilaterally defined policy space for Members to tackle and address their environmental problems in a manner that was efficient and commensurate with their needs and levels of development. Moreover, the EPA defined the WTO framework within which Members would undertake and implement specific projects. It sought to define the boundaries and parameters by which privileged market access could be granted for the products required in the environmental projects. The EPA also included parameters within which such projects could be undertaken, as well as criteria that would be applied by any Designated National Authority (DNA) to determine whether a proposed environmental project qualified for tariff concessions on environmental goods and services. India thought that these criteria could be laid out by the CTESS or negotiated ex ante and enshrined in an appropriate instrument, and that this framework, whatever its appropriate form, would be binding upon national authorities.

331. Concerning the arguments related to the lack of novelty offered by the EPA, given that Members would unilaterally undertake and implement the environmental projects, India noted that unilateral action by Members did not ensure privileged tariff access to other Members. Furthermore, the importance and value of creating an appropriate legal framework in the WTO needed to be recognized in this context. Any agreement in CTESS on definitions and criteria for environmental projects would create predictability and legal security to this arrangement. In addition, it would not only address global environmental objectives but also individual national environmental goals. In this regard, the EPA was both needs-based and objective-oriented. Finally, since the adopted global projects would be as per agreement in the CTESS, the domestic implementation of the framework would be subject to dispute settlement, as in other areas of WTO law. Administrative decisions could be reviewed as was the case for determinations of anti-dumping and countervailing measures under the relevant WTO Agreements by panels and the Appellate Body. This would enable traders to assess conditions for participation and market access. These legal commitments enhanced legal security of the EPA.

332. On the question as to whether the EPA provided transparency, it was clear from India's submission that the DNA would "perform the function of a nodal information point for all aspects of trade in environmental goods and services involved in environmental projects". Suppliers of products would therefore be able to address queries and obtain information from DNA as an enquiry point, comparable to the ones established under Article 10 of the TBT Agreement. According to India, these facilities would be beneficial to all traders and investors alike.

333. The operation of enquiry points did not present any disadvantages for SMEs. All interested parties would be in a position to make offers relating to products and technology on sale. In addition, it could be suggested that the adopted projects be formally notified to the WTO, providing information on scope and duration. This, in turn, would further enable traders to assess conditions for participation and market access, and would also render the support of governments more feasible in disseminating information relating to the EPA taking place abroad. All these elements amounted to legal commitments which Members could take within the EPA, thereby enhancing legal security and predictability. In India's view, it would be wrong to reduce the concept of commitments to formal tariff reductions and bindings.

334. With respect to the comment that the EPA operated within bound commitments and did not offer additional bound tariff concessions, India pointed out that environmental goods were in any case included in the product coverage of the ongoing tariff negotiations in both NAMA and Agriculture,

and that the EPA offered additional binding tariff concessions. The CTESS would agree on the appropriate criteria, definition, and types of environmental projects, and the goods imported for the projects would be eligible for appropriate tariff concessions. This would provide predictability to the exporting countries, and Member countries implementing such environmental projects would therefore guarantee additional market access on agreed terms for the duration of the project. This binding would also be available for spare parts for the equipment or goods used in the project. Regarding scheduling of Members' commitments under this approach, the format could be finalized by taking into consideration the different kinds of schedules used in the WTO under different types of agreements, such as the GATT or GATS.

335. According to India, the EPA was fully compatible with the Most Favoured Nation (MFN) principle under GATT. In fact, specific products were often given privileged market access, but the origin of these product was not relevant. Preferential access was not granted because the product originated in a particular Member country, as it was the case under a FTA; it was granted because it complied with the conditions and requirements of the project. Therefore, products from all Members were equally qualified to compete and the privilege only applied to the products chosen for the project. India noted that the EPA adhered to the MFN principle better than several practices presently followed by Members, such as country specific tariff rate quotas, where the same product received different tariff treatment depending on its origin and on the quantity of imports. In any case, Members were entitled to rely upon the criteria relating to the end-uses of products in a given market, and to that extent, a product used for a specific environmental purpose could be distinguished from the same products used for a different purpose. India referred in this regard to the Border Tax Adjustment Report adopted on 2 December 1970.

336. In summary, the EPA was in line with the overall goal and workings of the WTO. This approach was best suited to achieve the objectives enshrined in the preamble to the Marrakesh Agreement Establishing the WTO. The role of the Designated National Authority could be defined in a manner that provided transparency and access to project-related information. Moreover, any other legal concerns could always be taken into account while negotiating an appropriate framework and agreement on the subject. India invited Members to be forward looking and to recognize the need to address the mandate in a holistic manner. By adopting a pragmatic and innovative approach such as the EPA, Members could reap both environmental and developmental benefits from the negotiations under Paragraph 31(iii). India looked forward to the further engagement of other delegations on the subject.

337. The representative of Korea thanked Uruguay and India for presenting their documents. With regard to the proposal by Uruguay, Korea noted that defining "environmental activities" could be just as difficult as defining environmental goods. In addition, issues relating to the definition or scope of MEAs could also arise. With respect to Uruguay's focus in its proposal on exportable goods, Korea noted that win-win-win results under the mandate could also be generated by imported environmental goods. Moreover, Korea noted that the requirement regarding the international certification of national projects or plans called for a new international mechanism that could be cumbersome and superfluous.

338. With regard to the submission by India on the EPA, Korea noted that establishing criteria, definition, or types of environmental projects would not be an easy task for the CTESS. Even if Members could agree on criteria for identifying environmental projects, the decision regarding the application of such criteria as well as the selection of relevant projects would still be taken by the designated national authorities. This could create problems of arbitrariness and lack of reliability. Moreover, the temporary nature of the concessions under the EPA would create unpredictability for the producers of environmental goods.

339. The representative of Cuba said that his delegation considered India's EPA to be the most effective way of fulfilling the mandate under paragraph 31(iii). With regard to Uruguay's paper, Cuba

noted that Members should consider more carefully the proposal that MEAs could assist in the process of defining environmental goods. However, Cuba noted that the MEAs dealt with global environmental problems and that national environmental considerations would also need to be taken into account in order to fulfil the mandate.

340. The representative of the US thanked the delegation of Uruguay and India for their papers. With regard to the EPA, the US delegation noted that it considered it as a modality proposal. The US continued to believe that a bottom-up, list-based approach was best suited to help achieve real, long-term results under the paragraph 31(iii) mandate. The US acknowledged that the list approach was not perfect; however it was the most pragmatic, WTO-consistent approach on the table and one that would allow Members to advance trade and environment objectives simultaneously. The US also believed that the discussions to date had underscored for many delegations the importance of being true to the mandate and to the basic principles of the WTO.

341. Despite this latest effort by India to elaborate on its proposal, the US remained unconvinced that India's proposed approach could deliver the kind of long term benefits that WTO Members and their exporters, consumers and others had come to expect from WTO and from the Doha Agenda. Furthermore, the US was still not convinced that India's proposed approach could deliver environmental benefits. The US believed that the EPA not only failed to deliver trade and environment benefits, but that it also continued to raise questions about the WTO compatibility of such programs generally.

342. Her delegation had already set out in previous meetings its concerns regarding India's EPA, including the lack of transparency and predictability, as well as the crippling bureaucracy related to such an approach. While all of these concerns remained, the US wished to focus its intervention on a few specific points. First, the US noted that India's proposal did not and could not deliver on the mandate. The EPA called for the designation of particular projects as "environmental" and then, based on that designation, allowed the imports for that project to be subject to reduced tariffs that had not been specified. In other words, as India itself described, the concessions granted would be entirely project-driven. In the US' views, this focus on the project as the sole determinant of whether an import would receive duty reduction for its environmental benefit was not consistent with paragraph 31(iii), which called upon Members to consider means to eliminate barriers to "environmental goods and services". The mandate was clear in its use of "environmental" as the qualifier. It was therefore the goods and services, in and of themselves, that were to serve an environmental purpose, and not a project where some good would be utilized. The US also thought that the ministers did not envision temporary reductions of tariff and non-tariff barriers that would be limited to the duration of certain projects. Instead, they intended binding, long-term commitments to reduce or eliminate these barriers to trade in environmental goods in accordance with the workings of the WTO.

343. Second, the US remained concerned about the WTO compatibility of the proposal more generally. Specifically, the US was not convinced by India's assertion that its approach did not conflict with the MFN principle set out in Article I of the GATT 1994. It was the US' understanding that under the EPA, a given product, if used for an environmental project pre-approved by the Designated National Authority, would receive a lower tariff rate than the exact same product used for some other purpose, or imported by a direct consumer. India had suggested that this approach was consistent with the MFN obligation because the tariff reductions were given without reference to the origin of the imported product. However, even without such explicit reference to origin, the identical product from two different sources could be subject to differential tariff treatment: a lower tariff for a product used in an environmental project, and a higher tariff for the same product not used in the project.

344. India had noted that according to the Border Tax Adjustments Working Party Report, the "end-uses of a product in a given market" could serve as a basis to distinguish one product from

another, in particular, to distinguish a product used for an environmental project from a product not used in that context. The US was interested in hearing more about this legal rationale. Along the same line, the US noted that when seeking to elaborate how a "like product" might be defined, the cited portion of the BTA Working Party Report referred to "[s]ome criteria" that might be used, only one of which was a product's end-use. This, in the US' view, was followed in GATT and WTO panels and Appellate Body Reports, which had refused to make a "like product" determination solely on the basis of one characteristic but rather had examined a number of criteria, including end-use. Therefore, the US thought that it was not clear how India's suggestion to distinguish products solely on the basis of end-use would fit with this established practice. In addition, it appeared that even when end-use was considered as a criterion in dispute settlement cases, this criterion did not refer to the specific project that the imported product would be used for; rather, "end-use" was determined on the basis of the general activity for which that product was typically employed. The US sought further explanation from India on how such differential treatment to identical products would be consistent with the MFN obligation.

345. Concerning customs procedures, the US was of the view that the details of domestic implementation of the project approach remained unclear. The US once again invited India to elaborate on its experience in implementing its own program. To this end, the US sought answers to the following questions: once a project was approved by the Designated National Authority, how was the tariff concession bound as suggested in paragraph 5 of the Indian paper? Moreover, once the project was approved, was the relevant product permitted to enter simply by the importer presenting a certification of end-use with the bill of lading or were there any additional requirements? Would India consider these additional steps appropriate in light of the trade facilitation negotiations being conducted "with a view to further expediting the movement, release and clearance of goods"?

346. The US also expressed concern about how India envisioned the EPA would interact with the WTO dispute settlement mechanism. The US noted India's suggestion that the CTESS would formulate criteria to be employed by the Designated National Authority in determining whether a particular project qualified for tariff concessions. The US also noted that India appeared to acknowledge that the failure of the Designated National Authority to grant concessions to a particular project, in accordance with the established criteria, could be challenged before a WTO panel. However, the US thought that a favourable ruling from a panel or the Appellate Body would be an empty victory, to the extent that projects were inherently time-bound and could not afford to wait for the completion of dispute settlement proceedings before importing their necessary inputs. Furthermore, given the case-by-case nature of the project approach, it was unlikely that any dispute settlement decision would positively influence in any meaningful way subsequent decisions made by the Designated National Authority. This, in the US' view, reinforced the notion of unpredictability and increased transaction costs inherent in the EPA.

347. India had suggested that administrative decisions on the designation of projects and the consequent tariffs imposed on imports could be reviewed along the lines of reviewing determinations of anti-dumping and countervailing measures under the WTO Agreements by dispute panels and the Appellate Body. This suggestion appeared to be premised on the existence of a particular type of review accorded to anti-dumping and countervailing measures in dispute settlement. The US invited India to articulate what sort of review this would entail and, in particular, how this review might differ in cases involving other trade-related measures. The US also asked what were the common characteristics shared by anti-dumping and countervailing measures on the one hand, and decisions taken pursuant to the project approach, on the other hand, so as to warrant the same type of treatment by dispute settlement panels. For example, did India envision the Designated National Authority to arrive at its decisions on particular projects following a quasi-judicial or investigative process akin to that followed by investigating authorities in dumping and subsidy cases? If so, the US wondered if such an exhaustive process would be practical and cost-effective for companies to employ when seeking to import goods at reduced tariffs, and if such a procedure would be consistent with the

objective of the mandate to encourage and to reduce barriers to trade in environmental goods and services.

348. These questions and concerns raised by the US were in addition to those already raised in respect of previous submissions related to the project approach. The US underscored that these were not technical issues such as how one might compose a particular ex-out from its tariffs schedule, but rather, these were fundamental questions that stroke at the core of the WTO agreements. The US delegation noted it had only grown more concerned about this type of approach with each new paper put forward, and that it did not see any future for this type of unilateral import scheme for environmental goods or in the WTO system more generally.

349. Turning to Uruguay's paper, the US said that it agreed with many of the points highlighted, including Uruguay's assessment that the idea of determining environmental goods on the basis of projects that rested exclusively on national criteria was in principle contrary to the mandate and to the essence of the WTO agreements. The US also agreed that it would be difficult for the CTE to establish a criterion that would cover all of the different conceptualizations and aspirations of Members, and expressed its interest in exploring Uruguay's alternative to use the broader concept of environmental activities.

350. The US believed that the categories that Members had used to identify individual products could be considered as "environmental activities", including for instance the categories of waste water treatment, hazardous waste management, air pollution control, renewable energy, natural resources protection, and remediation and clean up of soil and water. The US further agreed with Uruguay's observation that many of these categories consisted of activities covered by MEAs. For example, the US had proposed devices which were effective at reducing sea turtle mortality and preserving endangered species, which was completely in line with the objectives of CITES. However, the US did not agree that goods which fell within these environmental activities or categories should qualify for tariff reduction or elimination only in the event that they were used in internationally certified projects. In fact, the US did not understand why Members would want to limit liberalization of these goods to special projects, nor did it understand how the added bureaucracy of an international certification or administration as such would be desirable or workable. Such bureaucracy, in the US' view, would appear to stunt any potential trade or environmental gains.

351. The US reiterated that many of the ideas contained in Uruguay's paper could help identify a set of environmental goods that Members would be interested in exploring further. However, once identified, the US felt that these goods should not face increased bureaucracy or market access hurdles but should rather be given improved market access so that they could rapidly deliver environmental and other benefits to the widest group of consumers.

352. The representative of Chile thanked the delegations of India and Uruguay for their proposals and said his comments would focus on the latter. First, Chile thanked Uruguay for its interesting approach based on the relationship between the WTO and MEAs, which seemed to address the mandate of paragraph 31 in a more a holistic manner. Second, regarding the last paragraph of the introductory part of the document where Uruguay pointed out that a project-based approach was not only contrary to the mandate but to the very essence of the WTO agreements, Chile sought more elaboration from Uruguay. In Chile's view, the proposal by Uruguay seemed to incorporate certain aspects of a project-based approach. Third, like Korea, Chile noted that the identification or definition of "environmental activities" would raise problems similar to those faced by Members with respect to the identification of environmental goods, or the identification of "specific trade obligations" under Paragraph 31(i). Fourth, with regard to Uruguay's suggestion that exportable goods which derived from the said environmental activities would be listed by CTESS as environmental goods and would therefore qualify for the reduction or elimination of tariffs and NTBs in accordance with the Doha mandate, Chile wanted to know what would happen with respect to the goods that would not be listed by the CTESS. Chile presumed that these goods would nevertheless

qualify for a tariff reduction pursuant to the Doha mandate on non-agricultural products in the context of the NAMA negotiations. Lastly, Chile asked Uruguay to elaborate further on the concept of international certification. Chile agreed there was some justification for not leaving it up to the national authority to define what were the relevant environmental activities or environmental goods covered by the mandate. However, his delegation was not clear as to what Uruguay had in mind with regard to an international certification process.

353. Chile hoped delegations could find a constructive way forward in the discussions under paragraph 31(iii). Members needed to keep an open mind with respect to the list and project approach in order to find an intermediary solution, since both approaches seemed to have their own merits and drawbacks. Chile hoped that the next meeting would see a constructive engagement on the part of all delegations.

354. The representative of Mexico thanked the delegations of India and Uruguay for presenting their documents. In her delegation's view, both papers had merits in seeking to offer a response to the question of how to guarantee that a good that would receive better tariff treatment would in fact be used for an environmental purpose.

355. With regard to the Indian proposal, Mexico had questions regarding how the EPA could be implemented within the rules of the multilateral trading system, for instance in how it would interact with the DSU. Furthermore, Mexico noted India's assertion in the last part of paragraph 6 that "Members are entitled to rely upon the criteria relating to the end-uses of products in a given market, to that extent a product used for a specific environmental purpose could be distinguished from the same products used for a different purpose." According to Mexico, this was the basis of the discussion under paragraph 31(iii).

356. Mexico thanked Uruguay for its efforts to propose criteria that could guide Members in fulfilling the mandate. Her delegation had some questions with respect to the proposal. With regard to the question of international certification, Mexico asked how such a procedure would work. Moreover, Mexico was not clear how the criteria based on environmental activities covered by MEAs would help channel the environmental goods discussion. With regard to paragraph 4 of the paper, which provided that "environmental activities would consist in those activities covered by an MEA and recognized by this MEA through the recognition of methodologies or the approval of related projects", Mexico asked how this concept related to Uruguay's assertion that one of the stated advantages of this negotiating approach was that "the reference for the definition and trade liberalization of environmental goods and services under Paragraph 31(iii) would be the commitments and understandings already agreed on in the context of the MEAs." More concretely, Mexico wanted to know whether Uruguay understood environmental activities to be part of the commitments and understandings achieved in MEAs, or synonymous with them.

357. The representative of Australia thanked both Uruguay and India for their papers. She noted that Australia shared many of the sentiments expressed in the paper by Uruguay. For instance, Uruguay seemed to share Australia's view that some of the products put forward did not warrant their inclusion on a list of environmental goods. Australia shared Uruguay's concerns that including goods on a list on the basis of PPM criteria carried with it the risk of creating unjustified NTBs, which her delegation recognized had particular implications for developing country Members. Australia also noted that EPPs could have environmental costs of production that Members needed to consider when analyzing proposals for inclusion of such products on a list of environmental goods. Australia further shared Uruguay's concern that the project approach appeared to rest on determination by individual Members and was contrary to the principles of the multilateral trading system enshrined in the WTO agreements.

358. In relation to the specific question regarding the need for criteria, Australia believed that the criteria of clear and direct environmental benefit was extremely useful. The categories that Members

had been examining also provided a useful basis for the discussion of goods on the lists. While Australia agreed that MEAs could contribute usefully to the discussions, for instance, by providing information to the CTESS in their role as ad hoc invitees, Australia was less clear that identifying environmental goods on the basis of activities covered by MEAs would progress the discussion. In particular, Australia noted that often MEAs covered specific issues, such as biodiversity or ozone depletion but not, for example, monitoring of environmental degradation, or soil and water remediation. Many of the issues that Australia thought should be covered in a list of environmental goods were more nationally based and were therefore not covered by international environmental agreements.

359. Australia noted that MEAs often provided a negative list, for instance in the context of the Montreal Protocol on Substances that Deplete the Ozone Layer, and it was not clear to Australia whether the proposal by Uruguay would extend beyond those products covered in the list or whether it would extend to all environmental goods having any relationship to the protection of the ozone layer. In Australia's view, the process would generate a substantial work load for MEA Secretariats, which existed to manage the operation of the agreement rather than to act as a certifying agent for trade purposes.

360. Australia thanked India for its recent submission and for the further clarification it provided to the project approach. However, Australia continued to have serious reservations regarding the project approach. Despite the clarifications offered in the paper, Australia still had difficulties understanding how India's proposal would fit within the WTO multilateral rules-based system, particularly with respect to the MFN principle. Australia also shared the views expressed by other delegations regarding the need for transparency and certainty for business. More specifically, Australia remained concerned about how SMEs would find the resources to get projects approved, even with some kind of fast-track approval process, or how they would secure the benefits of projects in other countries. Australia was worried about the transaction costs and red tape created for businesses of all sizes in having to participate in a project approval process overseen by a Designated National Authority to qualify for tariff reductions.

361. Australia asked how the EPA would provide additional binding tariff concessions when no Member would be forced to undertake environmental projects. In this regard, Australia was not convinced the EPA would really contribute to fulfilling the mandate under paragraph 31(iii). Furthermore, Australia had some concerns regarding the application of the dispute settlement system to the EPA. In her delegation's view, this could operate as a significant disincentive to both Member countries and businesses, with the potential threat of dispute settlement action and the consequent uncertainty that this would produce. Australia further noted that it would not be a simple task for the CTESS to develop any criteria, definitions or types of environmental projects. Lastly, Australia asked how the EPA could be effectively scheduled in the manner that scheduling commitments currently operated.

362. The representative of China thanked Uruguay and India for their efforts and contribution to the negotiations. China welcomed India's paper, which provided further clarifications regarding the EPA. The Chinese delegation believed that the EPA would be helpful to promote a solution on the environmental goods and services mandate and laid a good basis for future negotiations.

363. China further welcomed Uruguay' efforts to bridge the gap between the different approaches and to explore possible solutions for the negotiations. China shared Uruguay's analysis of the current difficulty in defining "environmental goods" and in assessing the environmental risks and benefits of these goods. In order to avoid the difficulties of having to define environmental goods, Members had agreed to the principle of "defining by doing". However, after three technical discussions, it seemed that the lack of definition or criteria for identifying environmental goods was a barrier that prevented Members from moving forward in the negotiations.

364. Uruguay had proposed that the CTESS identified environmental goods and services based on "environmental activities" covered or recognized by MEAs. In China's view, if Members could reach consensus on their understanding of "environmental activities" related to MEAs and agree to judge environmental goods and services based on this criterion, Uruguay's proposal could be an intermediate solution. Furthermore, this proposal would also be conducive to enhancing the communication and cooperation between WTO and MEAs. Nevertheless, China shared the concerns expressed by Chile and Mexico regarding Uruguay's proposal on international certification. Specifically, China sought further clarification from Uruguay on how international certification would be undertaken in practice, and which organization or entity would carry it out.

365. The representative of South Africa thanked Uruguay and India for their papers and said that she would focus her comments on the paper by Uruguay. First, she noted that one of the fundamental problems with the list approach was its expansive coverage. South Africa therefore welcomed the additional criteria proposed by Uruguay, and particularly how such criteria envisaged to reflect the interests of developing country Members.

366. Regarding the linkage between the CTESS work and the work undertaken in other international bodies, and particularly MEAs, South Africa noted it was still reflecting on the possible implications of the proposal. Although the areas of work undertaken by these organizations were considerable, South Africa pointed out that it would not necessarily cover all environmental activities undertaken nationally. At the same time, it could also expand the coverage significantly, which would raise problems similar to those raised by the list approach. South Africa asked how Uruguay's proposal would help refine the list of products rather than expanding it. In addition, South Africa sought clarification regarding the international certification process proposed by Uruguay, namely whether such a certification system would be similar to a multilateral verification procedure, and how it would help Members deal with the complex issue of multiple uses.

367. The representative of Egypt said that the value added of the submissions by India and Uruguay was that they focused discussions on the environmental end. As noted by South Africa, Egypt believed that the list approach had proven to be quite vast and expansive. With respect to Uruguay's paper, Egypt wished to know how Members would define "environmental activities", given that Uruguay tied "environmental activities" entirely to MEAs. He noted that the membership of these agreements was diverse and often different from the membership of the WTO. Furthermore, Egypt felt that trying to agree on a definition of environmental activities would give rise to the same difficulties as those raised in the discussion of environmental categories under the list approach. Therefore, Egypt asked for further clarification on the process of defining such activities. For instance, he asked whether Members could be selective about these activities or whether they would need to look at all environmental activities related to the MEAs. With respect to the issue of international certification, Egypt also sought some clarification regarding the designated body that would undertake the certification.

368. With regard to the Indian paper, Egypt thought that it clarified many of the questions that had been raised in previous discussions concerning the EPA. This approach provided a solution with respect to the identification of environmental goods, an issue that remained controversial under the list approach. The EPA allowed Members to see the benefit of a product within a certain context, taking into account the environmental situation in different parts of the world. Moreover, in Egypt's view, India's paper allowed Members to look at the issue of policy space and to address NTBs. Egypt noted that it had been implementing environmental projects together with donor countries and had been successful so far in managing such projects, including from an administrative point of view. In conclusion, Egypt believed that the contributions by India and Uruguay would help refine the work of the Committee by bringing Members closer to an understanding of the end use of the products that were being examined.

369. The representative of Canada said that his delegation considered the paper by Uruguay to be a valuable and significant contribution to the negotiations. Canada recognized the merit of the broader concept of environmental activities proposed by Uruguay, which could be seen as complementary or similar to the categories of goods proposed, such as air pollution control; water cleaning; waste management; and monitoring and assessment equipment, which was invaluable in the identification and remediation of environmental issues that many MEAs sought to address. Canada noted Uruguay's suggestion that environmental activities would consist of activities "covered by an MEA and recognised by that MEA through the recognition of the methodologies or the approval of related projects." Moreover, Canada agreed with Uruguay's view that the idea of determining environmental goods on the basis of projects resting exclusively on national criteria was in principle contrary not only to the mandate but also to the very essence of the WTO Agreements.

370. Canada asked what tools and services could be used in this context to implement the actions of MEAs. Additionally, Canada asked how the identification of goods and services under paragraph 31(iii) would proceed on this basis. Canada also wished to know whether the concept of a "living list" would have any role to play in this process, especially given that the MEAs were addressing environmental issues on an ongoing basis. Canada sought clarification as to why the paper focused on exports of environmental goods and not on imports. Canada also appreciated the general principle that environmental activities would be conducive to the alleviation or eradication of poverty and promotion of health and sustainable development and welcomed further discussions in this regard. However, Canada expressed its reservation concerning the requirement of international certification for environmental activities or programmes as this could be administratively burdensome and contrary to the goals of the mandate.

371. Canada observed that Uruguay's focus on activities or projects seemed to exclude consumer products as environmental goods. His delegation considered that individual consumer choices played an important role in environmental protection and could help to address some of the international environmental and global issues that Members faced.

372. With regard to India's submission, Canada shared many of the points raised by the US delegation. Canada noted that the sector-specific agreements on market access mentioned by India, including on chemicals, medical equipment and information technology, seemed in fact to lend support to the list approach, since these various agreements were based on a list of goods that had been identified for liberalisation. With regard to the policy space and unilateral action underlying the Decision on TRIPS and Public Health cited by India as an example supporting the project approach, Canada noted that it was appropriate to differentiate between the special circumstances of major public health problems that would need to be addressed in this context, and the broad-based, long-term environmental conditions that Members were seeking to address through paragraph 31(iii) negotiations. Finally, Canada asked India to elaborate on the basis of a concrete example on how the EPA would offer predictability to SMEs in terms of market access opportunities for their exports of environmental goods.

373. The representative of Argentina thanked Uruguay and India for their submissions. His delegation considered that the two papers provided useful elements that could help progress in the negotiations. Argentina asked Uruguay to explain with a concrete example how its approach could be implemented. More specifically, his delegation sought further clarification regarding the scope of "environmental activities".

374. With regard to the Indian proposal, Argentina considered that the paper clarified some of the issues and criticisms made by some delegations on the EPA. Argentina had specific comments on paragraphs 4 and 6 of the Indian paper. With regard to India's suggestion in paragraph 4 that the domestic implementation of the framework would be subject to dispute settlement, Argentina agreed with India that this would give greater predictability. With respect to paragraph 6, Argentina did not see any inconsistency between the EPA and the MFN principle, given that the final use was also a

distinctive factor in the identification of a product, as had been recognized in the jurisprudence of the Appellate Body. If the determination of "like products" was based only on physical characteristics, Members would need to restrict themselves to this criterion and to exclude from the discussions dual or multiple use products. This was an issue that Members had been discussing for some time and for which no solution had been found. In Argentina's view, Members needed to explore new ideas such as those proposed by Uruguay and India in order to find a way forward in CTESS discussions.

375. The representative of New Zealand first noted, with regard to the paper by Uruguay, that his delegation agreed with the assertion that "determining environmental goods on the basis of projects that rest exclusively on national criteria is, in principle, contrary not only to the mandate, but to the very essence of the WTO agreements." New Zealand welcomed Uruguay's view that the negotiations would need to be informed by a list of environmental goods. Concerning the reference to environmental activities, New Zealand sought clarification from Uruguay as to how these would be identified, in particular as regards to Uruguay's suggestion that "at the same time all activities conducive to the alleviation or eradication of poverty, health programmes, activities that promote sustainable development would also be considered environmentally relevant." He noted that this language suggested a sufficiently broad basis on which to engage, as it seemed to extend beyond the criterion of single environmental end use.

376. New Zealand was hesitant about aspects of Uruguay's proposal regarding international certification. In New Zealand's view, plans or projects were the business of sovereign national governments and not something that should be assessed by the WTO or that was within the competence of the CTESS. New Zealand was unclear about the value of subjecting national plans to an assessment by a trade-focused body such as WTO. In sum, while New Zealand had certain queries regarding the specifics of the proposal, it welcomed Uruguay's constructive and focused approach to the negotiations.

377. With respect to India's paper, his delegation appreciated India's efforts to respond to some of the questions that had been posed regarding the EPA. New Zealand particularly welcomed the formal confirmation that India's proposal was designed to meet the collective objective of Members to improve transparency, predictability and commercial certainty of global trade. In this regard, New Zealand welcomed India's unequivocal assurance that this was the case for its approach.

378. New Zealand had already commented on earlier papers focusing on the EPA but wished to offer some additional comments, based on the concrete experience of New Zealand companies. His delegation welcomed discussions of all Members' approaches and experiences with regard to environmental goods. In this context, India's further elaboration of its own experience with the project approach had added richness to the dialogue, in particular as part of the information exchange in the CTESS. New Zealand believed that this process had been particularly useful to those Members that were already implementing the project approach. While New Zealand appreciated India's suggestion that legal certainty would be enhanced through the formal adoption of the project approach, it noted that in paragraph 3 of its paper, India had also pointed out that the project approach already addressed the objectives of predictability and transparency.

379. On a related point, New Zealand was not entirely clear about India's suggestion in paragraph 4 of its paper that administrative decisions under the EPA could be reviewed "along the lines of reviewing determinations of anti-dumping and countervailing measures under the WTO agreements". More specifically, it was not clear to New Zealand how the project approach would fit within the scope of the relevant WTO disciplines.

380. New Zealand would continue seeking to understand how this approach could help clarify the scope of environmental goods, since in its view this was a proposal for a modality rather than one that actually addressed the definition or the scope of products. New Zealand fully understood India's point about the environmental benefits provided by the project approach. New Zealand also recalled India's

helpful presentation on its approach with respect to specific products. However, New Zealand's experience in trading into the project approach in the context of small projects of less than US$1 million, or even projects as small as US$250,000, was somewhat more difficult to align with the approach as elaborated in India's submission. The experience of New Zealand companies with such projects showed that the cost advantages cited for the project approach were simply insufficient to meet the cost of compliance with administrative procedures required for these companies to obtain the tariff benefit. In some cases, it had been difficult for New Zealand companies to accept that while their products were being used in a project, they would face a higher tariff rate because the company had failed to meet the requirements of project approval, while the same product provided by a larger company that had more means to secure the concession attracted the preferential rate. New Zealand struggled to see how this differential treatment fit with India's point in paragraph 6 of the paper regarding the MFN principle.

381. The representative of Japan thanked Uruguay and India for their papers. With regard to the paper presented by India, Japan shared the concerns expressed by Korea, the United States, Australia, Canada and New Zealand. Japan asked India to explain how Members would bind tariff concessions under the EPA, and whether India had closed the door to considering any consumer products as environmental goods.

382. The representative of the EC said that his delegation shared most of the concerns raised by other delegations regarding India's submission, namely with respect to the compatibility with the MFN principle, despite India's assurances in paragraph 6 of the paper.

383. The EC appreciated Uruguay's creative attempt to bridge the gap between the different approaches, and was especially sympathetic to Uruguay's holistic approach which aimed at finding synergies between the different parts of the mandate. However, the EC remained sceptical about the compatibility of this approach with Article II of the GATT, especially taking into consideration the temporary nature of the lowering of tariffs under the EPA.

384. The representative of Indonesia thanked India and Uruguay for their papers, which gave a new flavour to discussions on environmental goods, particularly by focusing on countries' needs to implement MEAs. These submissions had also reminded Members of the fact that the list-based approach was not the only, nor the most effective way of dealing with the negotiations under paragraph 31(iii). He noted that for many developing country Members, including Indonesia, participating in the list approach presented a real dilemma, and this participation had resulted in questioning how the environmental goods list could contribute to the development and environmental dimensions of the mandate. In this context, Indonesia thought that an alternative or complementary approach to the list such as the EPA would be needed to ensure a "triple win" outcome in the negotiations.

385. Indonesia welcomed the new submission by India on the EPA. In his delegations' view, the mandate under Paragraph 31(iii) was specific and limited; it was therefore necessary to ensure that the approach followed did not result in expanding the mandate by including goods that were not truly environmental. At that stage, Indonesia felt that the EPA would enable Members to draw the necessary linkages to bring about the environmental and developmental dimensions of the mandate.

386. The representative of Switzerland thanked the delegations of Uruguay and India for submitting their proposals. Switzerland shared the view expressed by Uruguay in its paper that determining environmental goods on the basis of projects that rested exclusively on national criteria was not only contrary to the mandate but to the very essence of the WTO agreements. Moreover, Switzerland welcomed Uruguay's suggestion that environmental goods should be identified in relation to MEAs. Switzerland had proposed in its submission in TN/TE/W/57 that environmental goods should contribute to globally agreed environmental goals, such as the Johannesburg Plan of Implementation. At the technical discussions, Switzerland had also made this linkage with respect to

all products proposed on their list. Like other delegations, Switzerland wanted to know how Uruguay suggested to define "environmental activities".

387. Switzerland acknowledged India's efforts with its recent submission to explain the project approach further, but noted her delegation's continued reservations with this approach, including with regard to its compatibility with the WTO multilateral trading system. Switzerland shared most of the concerns raised by Korea, the United States, Canada, EC, New Zealand and Japan in this regard. For instance, her delegation did not agree with the parallel drawn by India in paragraph 2 of the paper between the project-based approach and sector-specific agreements, since some of the sector-specific examples cited by India, e.g. information technology, chemicals and pharmaceuticals, were indeed agreements based on a list of goods agreed upon by Members.

388. Furthermore, Switzerland agreed with Canada's point regarding the reference to the Decision on the TRIPS Agreement and Public Health, which provided that the TRIPS Council could upon request look at the possible flexibility within the TRIPS Agreement for those countries facing public health problems such as AIDS, malaria or tuberculosis that needed to have access to affordable medication. The decision provided a waiver from the obligations of the TRIPS Agreement which was automatically granted to the countries meeting those requirements. This was an exceptional case for which an exceptional solution had been found as a result of long and cumbersome negotiations.

389. Furthermore, Switzerland pointed out that the EPA did not provide transparency and predictability, and could exist independently of the multilateral trading system. Switzerland also believed that SMEs could be disadvantaged as a result of the burdensome administrative process under the EPA. As several other delegations had mentioned, Switzerland also thought that the proposal would not be in line with the trade facilitation objectives pursued in the Doha Round.

390. Lastly, the paper had made reference to the fact that the list approach was static. On this issue, Switzerland recalled the proposals made by New Zealand and Switzerland regarding the living list approach. According to this proposal, a list of environmental goods established in the CTESS could evolve over time in order to reflect the rapid technological trends in this sector.

391. The representative of the Philippines welcomed India's paper which it considered as a positive contribution that provided greater clarity on the EPA. The Philippines had also considered with interest the proposal by Uruguay based on the concept of "environmental activities", which tried to incorporate some of the elements of the list and project approaches. The Philippines welcomed some of the positive ideas contained in the paper, such as the suggestion that Members should pay particular attention to technical assistance and cooperation, technology transfer and S&D treatment.

392. His delegation requested further elaboration from Uruguay, first on the term "recognition of the methodologies", which was one of the suggested means of qualifying MEAs' environmental activities aside from approval of related projects; and second, on the need for international certification of national environmental projects or plans and how such certification would be carried out, including whether criteria, definition and types of environmental projects agreed by CTESS would be sufficient, as proposed by India. With respect to Uruguay's focus on exportable goods, the Philippines noted that importable goods could also help developing country Members meet their trade, environmental and developmental requirements.

393. Finally, his delegation agreed with Uruguay that one of the main difficulties in the Committee's task of identifying environmental goods was that many goods had multiple uses. In this regard, the Philippines sought Uruguay's views with respect to focusing on single environmental end use under its approach in order to establish a list in the CTESS.

394. The representative of Uruguay thanked delegations for their constructive comments. She noted that her delegation's intention with this proposal was to contribute to the progress of the

discussions in the Committee by introducing an approach that would serve as a basis for reaching agreement on a criterion for identifying environmental goods and services. Uruguay said that the idea behind the proposal was to obtain environmental benefits from the liberalization of these goods and services, but also to achieve a more global vision of the concept of sustainable development.

395. Uruguay hoped that many of the questions raised would continue to be discussed among delegations so that progress could be made in the negotiations. As for the question of the approach followed in the paper, particularly its focus on exportable goods, Uruguay said that it had attempted to incorporate the interests of developing country Members, but also to include goods that were required to carry out environmental activities. Uruguay had noted the comments regarding the issue of international certification, in particular how such a proposal could be implemented. Her delegation would continue to reflect on these comments and would come back with a more detailed response at a later stage.

396. The representative of India said his delegation was thankful for the comments provided on its most recent submission. The paper was intended to respond to some of the questions and concerns previously raised with respect to the EPA. In India's view, the EPA allowed Members to deal with the various aspects of the mandate in a more comprehensive manner. He recalled that the overall objective of the negotiations was to benefit not only trade, but also the environment. India believed that Members needed to show the same openness in their approach in WTO as they were showing in other fora dealing with environmental issues.

397. India's paper attempted to review the WTO mechanisms that could establish the compatibility of the EPA with the multilateral trading system. To this end, the paper gave some examples from the Uruguay Round where Members had agreed to focus on sector-specific issues. India considered the environment as one of the sectors that Members needed to specifically address. Proceeding on the basis of a list was only one of the various mechanisms or methods available to achieve the objective of the mandate; this was why India had provided the example of the Decision on the TRIPS Agreement and Public Health. In his delegation's view, the environment was as important as public health issues. Members needed to consider these issues in a more constructive and forward looking manner in order to achieve genuine benefits from the negotiations.

398. In its first submission on the EPA[12], India had suggested that the broad criteria for identifying environmental projects could be agreed upon in the CTESS. By way of example, the paper mentioned that the project could focus on air pollution control, water waste management, solid waste management, etc. These criteria embraced a broad range of global environmental considerations. In addition, the EPA gave space to respond to local concerns. In that sense, the approach addressed both Members' common and differentiated responsibilities.

399. Regarding the issue of whether the EPA involved long-term commitments, India noted that once agreed, the tariff reduction on goods used in projects would be permanent. Such tariff reduction would be decided upon in CTESS and would be implemented by the national authorities. With regard to the arguments on the lack of transparency, India noted that there were many ways of bringing more transparency in the implementation of projects and that each country could decide on the kind of structure they wanted.

400. As India had already pointed out in a previous submission[13], the EPA did not require a heavy bureaucracy. The Designated National Authority could comprise of representatives from Government, private sector, civil society or any other entities deemed appropriate by national governments. It could be an independent body; its main function could be to determine the products required in a particular project and give instructions to the customs authorities to let the goods in without charging

[12] TN/TE/W/51, paragraph 14.
[13] TN/TE/W/60.

the tariff duty. This process would be necessary only the first time the goods would be considered for preferential rate, and the approval could be automatic thereafter, unless the project authority felt that a product had to be replaced by a new technology or product. India did not see how such a procedure would be particularly costly or burdensome for Members.

401. With regard to the comments on dispute settlement, India said that what was suggested in its proposal was that administrative decisions taken could be reviewed along the lines of reviewing determinations of anti-dumping and countervailing measures. For example, if a national authority took a decision which was not in line with the agreement in WTO, such a decision could be reviewed. India encouraged Members to think constructively about this review process rather than dismissing it at the outset. His delegation would continue to reflect on some of the comments made and revert back to the issues at a later stage.

402. The representative of Colombia recalled that his delegation had submitted a document in the course of the technical discussions, which had been circulated in Job(06)/149. He noted that constructive comments had been made on this paper by several delegations in the context of the technical discussions.

403. The Chairman said that he wished to make some remarks on the technical discussions that had been held on 4-5 April, 10-12 May and 12-13 June 2006. He recalled that at Hong Kong, Ministers had instructed Members to intensify the negotiations and to "complete the work expeditiously" under Paragraph 31(iii) of the Doha Declaration.[14] The CTESS had therefore agreed at its February 2006 meeting to start a process of technical discussions to examine products, systems or projects with a view to clarifying the scope of the work under Paragraph 31(iii). Members had agreed to engage in this exercise on the understanding that it would not prejudge the issue of approach to be followed to fulfil the mandate.

404. The technical discussions had been organized on the basis of categories identified in the lists of goods submitted by the proponents.[15] The first meeting had focused on the categories of Renewable or Clean Energy and Air Pollution Control; the second meeting had covered two additional categories, namely Waste Water Management and Solid and Hazardous Waste Management; and finally, at the third meeting, delegations had examined the remaining categories identified in Members' submissions, including Environmental Monitoring, Analysis and Assessment Equipment; Remediation and Clean-Up of Soil and Water; Cleaner Technology and Products; Environmentally Preferable Products Based on End-Use or Disposal Characteristics; Products with High Environmental Performance or Low Environmental Impacts; as well as Others.[16]

405. The Secretariat had circulated before each meeting a document containing the relevant sections of the compilation list of products for the categories to be discussed.[17] In addition, a number of non-papers had been circulated by the proponents.[18] Furthermore, the delegation of Egypt had circulated a room document addressing various issues related to trade liberalization in hazardous

[14] WT/MIN(05)/DEC, Paragraph 32.

[15] Canada (TN/TE/W/50), Chinese Taipei (TN/TE/W/44 and Corr.1), European Communities (TN/TE/W/56), Japan (TN/TE/W/17 and Corr.1), Korea (TN/TE/W/48), New Zealand (TN/TE/W/49/Rev.1), Qatar (TN/TE/W/19 and Corr.1), Switzerland (TN/TE/W/57 and Corr.1), United States (TN/TE/W/52). The nine lists of environmental goods were compiled in a Secretariat Note circulated in document TN/TE/W/63.

[16] Noise and Vibration Abatement; Resource Management; Heat and Energy Management; Natural Risk Management; Potable Water Treatment; Recycling Systems; Soil Conservation.

[17] JOB(06)/58, JOB(06)/81, JOB(06)/162.

[18] JOB(06)/70, JOB(06)/73, JOB(06)/74, JOB(06)/75, JOB(06)/140, JOB(06)/169, JOB(06)/170, JOB(06)/177, JOB(06)/178, JOB(06)/179.

waste.[19] At the technical discussion in June, other papers had also been introduced by the delegations of Colombia on "Priority categories" and by India on the Environmental Project Approach.[20]

406. Invitations had been extended to a number of international organizations at the second and third technical discussions, namely UNCTAD, UNEP, the World Customs Organization, the OECD, the Basel Convention and the Montreal Protocol on Substances that Deplete the Ozone Layer.

407. The Chairman noted that the technical discussions had engaged Members in an examination of a wide range of products proposed as environmental goods, and had allowed for a more focused debate on the potential benefits linked to these products. However, these discussions had not led to a common understanding on the most appropriate way of addressing the mandate. One point on which delegations seemed to agree, at least in principle, was that the mandate in Paragraph 31(iii) provided a unique opportunity in the Round to achieve a triple win outcome for trade, the environment and development.

408. It had been noted at the technical discussions that improved conditions for access to environmental goods and technologies could make a contribution towards meeting internationally agreed objectives and global sustainability goals. Many provisions of international instruments, including the WSSD Plan of Implementation, the Millennium Development Goals and Agenda 21, for instance, had been cited as being of direct relevance to the various categories discussed. It had been emphasized that trade was only one of the enabling factors that came into play in the complex and challenging process of finding solutions to meet these objectives. As some delegations had pointed out in the course of the discussions, trade was not a "silver bullet". However, it was noted that trade was nonetheless a key component in the equation, and most importantly, it was the area that Members in the WTO could most directly contribute to shape.

409. References had also been made in the discussions to the objectives of certain MEAs, such as the Basel Convention, and their potential synergies with the Committee's work. While the questions raised in this context could benefit from further discussion, delegations seemed to agree that the outcome of the negotiations under Paragraph 31 (iii) should be consistent with ongoing efforts at the international level to meet these environmental objectives. Members also had to ensure that work in this area was consistent with other components of the mandate in Paragraph 31, and with the overall objective of enhancing mutual supportiveness of trade and the environment.

410. The Chairman further noted that considerable information had been presented by the proponents on the environmental use and potential benefits of the goods proposed, building on the information contained in Members' lists and provided at the Information Exchange Sessions held before the Hong Kong Ministerial Conference. The proponents had responded to many questions put to them, and had also expressed their readiness to follow-up with other delegations on any specific issues related to their products. Nevertheless, many developing country Members had expressed the view that not enough evidence had been provided to demonstrate that the proposed products qualified as environmental goods. These delegations did not indicate clearly, however, which products they considered as environmental goods.

411. Moreover, several developing country Members had made the point that the environmental attributes of products were often determined by the context in which these products were used. It had been further noted that what could be considered as environmentally beneficial in one country would not necessarily be so in another. In this regard, these delegations had reiterated their interest in further exploring project-based approaches. As it had been noted, Members' had different needs and

[19] Room document by Egypt, "Liberalizing Trade in Hazardous Waste".

[20] "Paragraph 31(iii) DMD – Environmental Goods: Technical discussion meetings in CTE – Priority Categories", paper by Colombia (JOB(06)/149); "Environmental Project Approach – Compatibility and criteria", Submission by India (TN/TE/W/67).

priorities when it came to the protection and conservation of the environment, and would necessarily have different ways of responding to these priorities nationally. According to the Chairman, an appropriate balance had to be found in the negotiations to take into account these different perspectives and interests, and this would require that Members make certain choices.

412. The technical discussions had also covered the developmental and trade aspects associated with products in the various categories, and the potential sustainable development benefits related to the use and improved access to environment-related goods and technologies. At the same time, questions had been raised concerning the export interest of Members in the products discussed.

413. There were many challenges inherent to defining the scope of the environmental goods sector. While these technical discussions had not succeeded in bringing delegations closer to a common understanding of the scope, they had nevertheless contributed to flesh out the practical issues that would need to be addressed by delegations in fulfilling the mandate. Ultimately, it was for each Member to make its own assessment of the potential environmental and developmental benefits that could result from these negotiations, and to forge its position on that basis. Despite existing divergences, Members had to remain committed to finding a balanced outcome that would reflect the different perspectives and interests.

414. The Chairman recalled that Members had also discussed indicative parameters or criteria to be applied in the examination of products, categories of products, or projects. In the non-papers that they had presented at the first and third technical discussions, the proponents had sorted the products under the various categories according to different parameters or criteria. In this context, developing country Members had expressed their preference for first identifying goods on the basis of the "single environmental end use" parameter. To the extent possible, the parameter of single environmental end use had been applied, but the scope of the discussions had also broadened to the consideration of other parameters, such as, for instance, whether goods were predominantly used for an environmental purpose; whether they had a "clear and direct environmental benefit"; or whether they were otherwise environmentally beneficial. In the proponents' view, applying single environmental end use as the sole parameter in defining product coverage would be too limiting, as it would leave out many goods that they considered critical to securing the sustainable development outcomes expected from the negotiations.

415. One point that seemed to have emerged from this discussion was that it would be difficult for the Committee to agree on a set of parameters to apply in determining whether a good was environmental for the purpose of the negotiations. In the Chairman's view, the parameters could be helpful as tools to determine what products could be acceptable to delegations.

416. The Chairman said that the discussions had revealed that a majority of the products proposed by Members had dual or multiple uses. In his view, the issue of how to deal with such products remained among the main challenges to fulfilling the mandate in Paragraph 31 (iii). The technical discussions had contributed to sketch out a number of issues in this connection that would require further attention by Members for the negotiations to proceed on the basis of a list of environmental goods.

417. The Chairman noted that among the issues most debated in the technical discussions were classification-related issues and the use of ex outs. Unless Members could agree to confine product coverage to goods identified under the Harmonized System (HS) at 6-digit level, they would have to decide on a more specific product description based on the environmental application or particular characteristics of goods. It was noted that the use of ex outs was not new, and that there were precedents in sectoral liberalization agreements, such as the Information Technology Agreement (ITA). However, some concerns had been expressed regarding the administrative burden related to the implementation of ex outs in national tariff line codes. Questions had also been raised with regard to the ability of customs authorities to screen out at the border goods identified on the basis of their

environmental end use. Moreover, a number of questions had also been raised with respect to the classification of entire plants or systems under the HS, as well as the classification of parts and accessories to products proposed as environmental goods. In had been noted that classification issues related to the products put forward would probably have to be worked out on a case-by-case basis.

418. The Chairman said the WCO had shared useful information with the Committee in the technical discussions that it had been invited to, and that its expertise, as well as that of other international organizations that had conducted work in this area, would be valuable to Members in the further consideration of these issues.

419. Apart from the product discussion, the Chairman said that a number of important issues had also been touched upon in the technical discussions. For instance, some delegations had reiterated the importance of the issue of non-tariff barriers, which was specifically referred to in the mandate. The point had been made that the NTB discussion could not take place in the abstract, and that there was a need to identify specific NTBs in connection to the goods that were being considered.

420. On S&D treatment, the Chairman noted that reference had been made to the proposal by a group of Members, including some of the proponents as well as other delegations, on modalities for the liberalization of environmental goods (TN/TE/W/65). This proposal had introduced some ideas on how the principle of special and differential treatment could be reflected in the negotiations under Paragraph 31(iii) in the context of a liberalization exercise in NAMA.

421. With regard to transfer of technology, the Chairman said that many developing country Members had identified the issue as an integral part of the development component of the negotiations. In their view, the outcome for development would be greater if liberalization of environmental goods was associated with some form of technology transfer. It had been noted that technology was the main driving force behind the selection of goods put forward, and that it was precisely the area where there was the greatest gap between developing and developed countries. While noting that the mandate did not specifically refer to transfer of technology, other delegations had pointed out that facilitating access to and encouraging the use of environment-related technologies could stimulate innovation and technology transfer. Examples had been mentioned in this regard of how some of the products listed had been provided to developing countries through projects that involved technology transfer.

422. As regards environmental services, the Chairman said that it had been noted that the delivery of services was intrinsically linked to some of the products being considered, and that environmental services should be discussed along with the goods. References had also been made to the liberalization of environmental services under way in the Special Session of the Council for Trade in Services. In the view of some delegations, there had not been sufficient analysis of these various issues, and how they could be reflected concretely in the negotiations.

423. With regard to the way forward, the Chairman noted that the technical work that Members had undertaken had allowed for a useful survey of the products put forward in the proponents' lists. In this exercise, Members had further examined and discussed the potential benefits associated with various products. On many occasions, the proponents had indicated that the comments received in these discussions would be useful for their internal process of reviewing the lists. A number of developing countries had stressed the importance of also considering alternative approaches to address the mandate, such as the environmental project and integrated approaches, instead of proceeding only on the basis of the list approach.

424. In concluding, the Chairman noted that all Members seemed to agree that, ultimately, negotiations had to reach an outcome that would be faithful to the mandate and deliver triple-win opportunities for the whole membership. However, there was still no convergence on how to achieve that result. The technical discussions had contributed to Members' thinking on what could potentially

be acceptable to delegations within the scope of the negotiations. In that sense, the Chairman hoped that Members would look back on this phase of their work as an important step towards the fulfilment of their mandate. The Chairman noted, however, that delegations still had a long way to go in effectively addressing the mandate in its entirety.

425. The delegations of Argentina, Brazil, Mexico, Cuba and Ecuador asked the Chairman to confirm that the summary of the technical discussions had been made under the Chairman's own responsibility. These delegations recalled that they had taken part in the information exchange sessions and technical discussions with the understanding that these discussions were informal and without prejudice to Members' positions. The delegations wished to reserve their right to comment later on the issues raised by the Chairman in his summary.

426. The Chairman said that his report on the technical discussions had been made on his own responsibility and any of the issues raised could be taken up by Members in future discussions.

IV. OTHER BUSINESS

427. The CTESS agreed to the renewal of the ad hoc invitations issued for that meeting at the next meeting of the CTESS.[21]

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[21] The following organizations will be invited to participate as *ad hoc* invitees: UNEP, UNCTAD, the World Customs Organization (WCO), the OECD, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and the United Nations Framework Convention on Climate Change (UNFCCC).