

**Committee on Trade and Environment Special Session**

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

**11-12 JUNE 2007**

Note by the Secretariat

1. The Committee on Trade and Environment in Special Session (CTESS) held its nineteenth meeting on 11-12 June 2007 on the basis of the agenda set out in the convening airgram, WTO/AIR/3019.

2. The following international organizations were invited to participate as *ad hoc* invitees: the United Nations Environment Programme; the United Nations Conference on Trade and Development; the World Customs Organization; the Organisation for Economic Co-operation and Development; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and the Stockholm Convention on Persistent Organic Pollutants; the Convention on Biological Diversity; the Montreal Protocol on Substances that Deplete the Ozone Layer; and the United Nations Framework Convention on Climate Change.

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

3. The Chairman noted that no new submissions had been presented under this agenda item.

4. The representative of New Zealand said her delegation was currently working and consulting with other delegations on a new paper under Paragraph 31(i) which addressed ideas outlined at the May meeting.<sup>1</sup>

5. The Chairman encouraged delegations to pursue the discussion of the different ideas put forward with a view to identifying aspects that could form part of an outcome under this mandate.

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

6. The Chairman recalled that a very useful exchange had taken place at the May meeting on a submission tabled by the delegations of Canada and New Zealand.<sup>2</sup> Building on the sense of convergence arising from this proposal, the Chairman had initiated a process of consultations on "Elements of a Draft Text under Paragraph 31(ii)". These elements reflected Members' proposals as well as comments made by delegations in previous CTESS discussions both on procedures for

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<sup>1</sup> TN/TE/R/18.

<sup>2</sup> "Continued Work under Paragraph 31(ii) of the Doha Ministerial Declaration", Submission from Canada and New Zealand, TN/TE/W/71, 30 April 2007.

information exchange and criteria for the granting of observer status to MEAs. The Chairman reported that Members had made a good start in developing elements of a draft text under the mandate and that further consultations would be held ahead of the July meeting to make some further progress on the document.

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

7. The Chairman noted that a non-paper had been circulated by the delegations of India and Argentina in document JOB(07)/77.<sup>3</sup>

8. The representative of India said that the integrated approach presented in the non-paper was an attempt to address some of the concerns raised with respect to earlier proposals tabled in the CTESS. India believed that the non-paper was an important step forward towards achieving the objectives of the mandate, and could offer a starting point for finding convergence. He noted that the non-paper was still work in progress, that the approach remained based on end-use and that earlier proposals by the co-sponsors, including the environmental project approach, were not being substituted.<sup>4</sup> The CTESS had spent considerable time trying to agree on a definition of "environmental goods". In his view, the objective of the mandate was to improve and protect the environment, as well as to help developing country Members meet their sustainable development goals. He believed that a list of environmental goods could not be the conclusion of the work under Paragraph 31(iii) and that the mandate could not result in an environmental sectoral initiative under NAMA negotiations.

9. India indicated that the non-paper focused on the identification of environmental activities that could be agreeable to Members, with a view to achieving environmental and developmental goals. Paragraph 3 of the non-paper contained a reference to some of these activities, such as air pollution control, waste water management and soil conservation; however, the list was only indicative. In the co-sponsors' view, developing country Members could select some environmental activities, depending on their priorities, as subject to a possible special and differential (S&D) treatment.

10. As a first step, it was proposed that Members negotiate and agree on a list of environmental activities. Members could then submit a list of entities engaged in such activities and notify it to the WTO. The list of entities would not be a closed list and Members could add entities after notifying the WTO or remove entities from the list, if necessary. All goods imported by the notified entities for carrying out an agreed environmental activity would be granted preferential tariff treatment to be determined by Members. Such preferential treatment could therefore extend to goods that might not be *per se* environmental, such as office equipment and construction materials.

11. The representative noted that the notification of both the activities and the entities carrying out the activities would provide a degree of certainty regarding the preference offered. In India's view, this would be an effective way of ensuring that the goods actually traded were offered preferential access, and that goods receiving preferential access were used for an environmental purpose. It was also suggested that Members consider some form of registration process for the environmental entities, as was commonly done for business enterprises in many countries. The representative noted that the non-paper was not overly prescriptive on the mechanism employed to monitor environmental use, as it was expected that Members would devise the mechanism best suited to their situation. Moreover, developing country Members could offer lower tariff concessions than developed country Members, in accordance with their priorities.

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<sup>3</sup> "Integrated Approach to Paragraph 31(iii)", Submission by Argentina and India, JOB(07)/77, 6 June 2007.

<sup>4</sup> TN/TE/W/51, 54, 60, 62, 67.

12. India recalled that one of the major concerns expressed in earlier discussions was that goods used for environmental purposes were generally at the cutting edge of technology. In the co-sponsors' view, a truly environmental outcome involved free access by developing country Members to new environmental technologies. In this regard, India drew Members' attention to Paragraph 37 of the Doha Ministerial Declaration, which required Members to examine issues related to technology transfer. The non-paper suggested that the WTO Secretariat monitor such transfer of technology on the basis of Members' notifications and report periodically to the CTE. Finally, he noted that the non-paper also addressed the issues of services and non-tariff barriers (NTBs). India was prepared to discuss with other Members and develop these ideas further in order to advance the integrated approach.

13. The representative of Argentina said that his delegation had on many occasions stressed the importance of considering alternatives to the list approach, and that the non-paper offered a new possibility in this regard. He drew Members' attention to three key aspects of the non-paper: (i) it provided scope to further explore areas of convergence based on environmental activities; (ii) it proposed to examine a list of activities rather than products, which was important from the perspective of developing country Members; and (iii) it incorporated the concept of a living list to reflect developments and changes with respect to environmental activities. Argentina believed that the integrated approach could provide a way of moving forward and obtaining a balanced result in the negotiations with respect to development, environment and trade.

14. The representative of Thailand hoped that the new non-paper would help delegations agree on a common approach in order to advance the work under Paragraph 31(iii). Thailand sought some clarification from the co-sponsors with respect to the following points: (i) how the public and private entities that had not yet been established or that were not included initially on the list of entities, would be treated and would be able to compete with the entities listed; (ii) what would be the frequency of the review of the list of entities; and (iii) how the work programme on NTBs mentioned in Paragraph 7 of the non-paper would be set up, i.e. who would be responsible for its implementation, and whether a list of products would have to be drawn up.

15. The representative of Egypt said that the non-paper contained several positive elements, including the suggestion to identify environmental activities. Egypt believed that it would contribute to the understanding of the CTESS mandate, which sought to elaborate a holistic approach to trade liberalization of environmental goods and services. He noted there was a certain parallelism between the reference to environmental activities in the non-paper and the environmental categories presented in the proponents' list. In Egypt's view, convergence was possible on the identification of environmental activities that were important for development and the environment. The representative stressed that the concerns of developing country Members would have to be the focus in this identification process. Another positive element was the reference to the issue of NTBs, which was of major importance to developing country Members as they were developing their own domestic regulations and production capacity in many of the environmental activities discussed. The issue was particularly complex because many of the environmental activities were heavily regulated and subsidised.

16. As the approach in the non-paper was based on end-use, it addressed the issue of product coverage in a more mainstreamed fashion. In this regard, he noted that the CTESS had encountered difficulties understanding how many of the proposed industrial products could qualify as "environmental goods". Moreover, the non-paper mentioned some development issues that had been raised by Members, including in relation to policy space. The non-paper also covered the issue of services, which had not been given enough attention in the CTESS; he recalled that according to experts, environmental services constituted a large portion of trade in this area.

17. Egypt looked forward to further elaboration on the issues of capacity building and S&D treatment. As many environmental issues transcended Members' borders, he emphasized the need to think creatively beyond longer implementation periods for developing country Members or exemptions for least-developed country Members. He requested the co-sponsors to provide further information on the entities, including with respect to the selection process. Egypt noted that environmental goods and services was a new area in the WTO and for this reason, the issue had to be dealt with in a progressive manner. Finally, recalling the position of his delegation against the inclusion of hazardous waste, he asked the co-sponsors to comment on the reference in the non-paper to the category of solid waste management.

18. The representative of Vietnam asked the co-sponsors whether Paragraph 6 of the non-paper was meant to be restricted to the services imported by the listed entities, and sought further clarification on the type of services that would be covered. In particular, he asked about the kind of preferential access that India and Argentina had in mind.

19. The representative of the Philippines asked the co-sponsors whether a numerical limit would be set on the number of public and private entities involved in environmental activities. Moreover, he asked whether the list of entities would be limited to those with an established track record or programme for implementing such environmental activities, or whether the applications for accreditation would be open-ended. He pointed out that the non-paper was unclear as to who would develop criteria for the goods that would receive preferential treatment. He wondered whether this would be negotiated in the CTESS, or whether each entity would establish its own criteria to determine which products would be classified as environmental goods. Lastly, on technology transfer, he noted that the non-paper stated that it was necessary that developing country Members had unrestricted access to alternate and clean environmental technologies. In this regard, he asked the co-sponsors about the conditions that restricted access to these technologies.

20. The representative of Australia said her delegation welcomed the fact that through this non-paper, the co-sponsors were thinking over some of the implications of the project approach and practical issues surrounding its implementation. Australia had some questions and concerns about how the integrated approach would operate from a practical point of view. In the Australian context, private and public entities were frequently involved in a wide range of activities, only some of which were environment-related. If Members confined the list of entities to those exclusively involved in environment-related activities, this could significantly reduce the scope for environmental goods liberalization. Moreover, she wondered what would be the practical effect of this approach on how companies structured their businesses. For economies like Australia, which had privatized and disaggregated environmental functions, such an approach might present more problems and challenges than for economies that had publicly owned utilities.

21. The representative of Australia asked India whether a selected entity had to exclusively carry out environmental functions or whether its activities could be disaggregated, i.e. a listed entity could certify that goods were imported for a specific environmental activity, while other non environment-related activities performed by the same entity would not receive a preferential access. This raised the question as to whether any good imported by an entity on the list, no matter what the good was, would be eligible for preferential treatment. She wondered whether Members would have some flexibility in terms of setting their own criteria in this regard. The approach proposed by the co-sponsors would allow import on preferential terms of a number of goods that were not really environmental or that were used across a company whose activities might be only partially related to the protection of the environment. This would make the assessment of private and public entities all the more challenging. In this regard, Australia asked whether this would be done by individual Members or whether the WTO would have a role in monitoring the review.

22. With respect to making changes to the list of entities, Australia asked whether it would be done by Members through a process of notification or whether a negotiation was envisaged. In the latter scenario, she wondered whether there would be numerical limits and whether some record would need to be shown. For Australia, such processes could act as a significant barrier to new entrants in a rapidly expanding field.

23. The representative of Costa Rica was of the view that the ideas presented in the non-paper constituted a positive move in approaching environmental issues, and ensuring development and access to technologies. Concerning Paragraph 6 of the non-paper, Costa Rica sought clarification with respect to the meaning of "preferential access" in reference to services imported by the listed entities for carrying out environmental activities. In particular, Costa Rica asked whether this preferential access would cover all modes of supply, as well as national treatment received by service suppliers from other Members; whether this would be listed under additional commitments; and whether it would apply only to environmental services or to any service imported by the listed entities.

24. The representative of Chile thanked the co-sponsors for their effort to present an alternative approach on the Paragraph 31(iii) mandate. Chile welcomed the suggestion regarding environmental activities, which could form part of the final outcome, although his delegation regretted that some of the ideas presented were not fully developed in the non-paper. As stated by Argentina and Egypt, some elements of the non-paper could be explored further, including the identification of environmental activities, which seemed to overlap with categories identified in the proponents' list. The representative was not convinced that the integrated approach was in line with the mandate, as it involved a case-by-case reduction or elimination of tariffs. Chile believed that the mandate called for a multilateral process that should provide certainty and predictability in liberalizing environmental goods. In addition, his delegation believed that the integrated approach would be contrary to basic principles of the multilateral trading system, namely the Most-Favoured Nation (MFN) principle, as it would grant some privileges to certain goods, depending on the importer.

25. In Chile's view, the integrated approach raised a number of questions. For instance, the representative asked whether there would be a minimum number of entities to be included in the list; what would be the criteria to draw up a list of entities (e.g. whether the entity was representative of the sector or had a certain level of participation in internal production); whether the negotiation would take place before or after notification of the entities; whether the list would be negotiated on a bilateral basis, similar to the request and offer process in services negotiations, or a process similar to that in NAMA and Agriculture negotiations; and how the list would be managed.

26. The representative was also concerned that the document did not further elaborate on certain aspects, namely transfer of technology and the reference to the mandate in Paragraph 37 of the Doha Ministerial Declaration. In this respect, he asked why the concept of transfer of technology would deserve a particular treatment that was not contemplated in other areas of the negotiations, such as NAMA. Chile requested the co-sponsors to explain the meaning of "assured access to technology" or "unrestricted access to clean technologies" in Paragraph 4 of the non-paper. In particular, he asked how access to technology could be guaranteed despite certain limitations to access, such as intellectual property.

27. Moreover, Chile had questions similar to those raised by Costa Rica and Vietnam regarding the services aspect of the non-paper. His delegation also shared Egypt's view regarding NTBs and shared its interest in the idea of establishing a structured work programme. He suggested to look at what was being done in the context of NAMA on this issue and noted that other NTBs could be included in the work programme, such as export taxes and differential import duties. In conclusion, Chile noted it had many doubts with respect to the integrated approach. While his delegation was not convinced that the list approach as presently structured was the best solution, it seemed that the integrated approach raised more questions than it provided answers.

28. The representative of China said that the contribution by India and Argentina had provided useful new input at a critical time in the discussions under Paragraph 31(iii), in particular by addressing important development aspects of the negotiations. First, the non-paper highlighted the priority areas for many developing country Members, such as air pollution control, water and waste water management. Second, it attempted to solve the issue of S&D treatment as called for by many delegations. Third, the non-paper also addressed the issue of transfer of technology and proposed a monitoring mechanism in this regard. Above all, China believed that the integrated approach was an improvement of the project approach by way of expanding the scope and making the work more predictable and transparent.

29. The representative said that the non-paper showed some convergence with other approaches, in particular as regards to product category specifications. His delegation was interested in working further on the ideas developed in the non-paper in order to address China's technical concerns, e.g. with respect to the large number of entities involved and whether preferential treatment should be granted to all goods imported by listed entities. Finally, China expressed an interest in exploring further the issue of technology transfer in the context of Paragraph 31(iii) negotiations.

30. The representative of Brazil expressed her delegation's support to the integrated approach proposed by India and Argentina. In particular, she noted that the non-paper addressed the mandate as a whole, as well as issues of particular interest to developing country Members that had not been discussed in the CTESS so far, such as environmental services. Her delegation was also pleased that the co-sponsors had mentioned activities such as air pollution control and renewable energy, which were important for both developing and developed country Members. The non-paper also addressed the important issue of transfer of technology contained in Paragraph 37 of the Doha Ministerial Declaration. Brazil stressed the importance of unencumbered access to alternative and clean environmental technologies for developing country Members. In reference to Paragraph 4 of the non-paper, she noted that there were also provisions in many MEAs regarding technology transfer. The work carried out in the WTO Working Group on Transfer of Technology could also shed light in this regard. Moreover, Brazil welcomed the fact that the important issue of NTBs was addressed in Paragraph 7 of the non-paper.

31. The representative of Ecuador welcomed the suggestion by the co-sponsors that new options should be considered in connection with the mandate in Paragraph 31(iii). Ecuador believed that this was a useful exercise and that Members should discuss further some of the technical aspects of the non-paper. In particular, she shared the view expressed by other delegations that this was a positive contribution, and that only an integrated or holistic approach to the mandate would contribute to sustainable development goals.

32. She noted that environmental activities were an interesting aspect of the non-paper, and that some of the activities mentioned in the document, such as pollution management, were of interest to many Members. Ecuador also welcomed the fact that the proposal sought to remedy the problem of multiple use inherent to the list approach. Ecuador considered Paragraph 31(iii) negotiations to be sui generis in nature, and different from NAMA or Agriculture negotiations. While being sympathetic to this new submission, Ecuador had also noted the various questions raised by other delegations and looked forward to further discussions on the non-paper.

33. The representative of Chinese Taipei noted that the suggestion by the co-sponsors of the non-paper to identify and agree on environmental activities was somewhat similar to the categories mentioned in the proponents' lists of environmental goods. In this regard, she noted that reaching convergence on categories or activities would set a good basis for further discussions. However, her delegation had some concerns regarding the next step proposed in the submission, and looked forward to further clarification from the co-sponsors regarding the suggestion to negotiate a list of public and private entities and grant preferential tariff treatment to products imported by those entities. If this

was the intention, Chinese Taipei wondered about the criteria that would apply in this negotiation, and the reason for limiting preferential tariff treatment to certain entities only. In particular, her delegation wondered how this would contribute to enhance the mutual supportiveness of trade and environment, while being consistent with WTO rules. She wondered how the dual use problem would be resolved, with regard to entities that performed other functions than environmental ones. Chinese Taipei noted that the co-sponsors had also made some suggestions on the issue of NTBs. In this regard, the representative suggested that, based on the aforementioned activities or categories, Members could further discuss the identification of products with the objective of addressing relevant NTBs faced by all WTO Members.

34. The representative of the European Communities (EC) thanked the co-sponsors for their new submission. Making a general point in relation to paragraph 2, he disputed the suggestion that it would not be possible to reach agreement on a list of environmental goods. The representative said the process of the proponents of the list approach over the past year had shown it was possible to converge on an idea of what were environmental goods. If Members put their minds to the challenge and could multilateralize the work, a list could be achieved. The representative added that there were elements in the non-paper that bolstered his view that agreement could be reached multilaterally on a list of environmental goods.

35. The representative said the non-paper created a number of difficult and substantive challenges for his delegation. In particular, the EC sought clarification on some challenging legal concerns and difficult practical issues. With respect to environmental activities, the representative observed that the proponents were non-committal as to what constituted environmental activities but did provide something of a guide through a listing of a number of activities in paragraph 3 of the non-paper. Recalling the separate non-paper circulated by a number of delegations on 27 April 2007<sup>5</sup>, which proposed twelve environmental categories, the representative asked if the proponents viewed those categories as environmental activities that would qualify for tariff liberalization.

36. Recalling his optimism that a list of environmental goods could be agreed upon multilaterally, the representative said there were a number of signals in the non-paper that had led him to this conclusion. First, paragraph 2 referred to "few environmental goods"; while phrased in the negative, the reference could also be read positively as confirming that there were indeed some environmental goods. Second, paragraph 4 contained a reference to "clean environmental technologies"; clearly, therefore, such technologies existed and the proponents must have an idea of what those technologies were. The representative said it would be constructive to efforts to arrive at convergence if the proponents could specify what were those "few environmental goods" and what were those "clean environmental technologies"; then Members could have a serious negotiation about how to liberalize trade in those goods and technologies.

37. Concerning paragraph 6 of the non-paper, the representative said his delegation did not understand the concerns of the proponents and some other delegations that had taken the floor on environmental services. The fact that there was no substantive debate on this aspect in the CTESS did not mean there was no negotiation on liberalization of environmental services. The negotiation on environmental services was being dealt with as part of the Services negotiations. The representative asked the proponents to clarify what they wanted with respect to environmental services. In that regard he asked if they were seeking regular reports from the Services negotiations, as he did not believe it was the proponents' intention that CTESS duplicate work happening elsewhere.

38. Also with respect to environmental services, the representative said his delegation was concerned with what was being proposed in paragraph 6. For his delegation, the Services negotiations should deliver environmental services to be liberalized and scheduled accordingly. That would be the

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<sup>5</sup> JOB(07)/54.

appropriate legal environment. The current non-paper, however, appeared to be proposing a dual and secondary legal system. It was not clear to the EC how the systems would overlap and work in practice. The representative sought clarification in this regard.

39. The representative also sought clarification on a number of legal issues with respect to the non-paper. First, in relation to the concept of discrimination, he observed that the non-paper proposed that there should be an agreed list of environmental activities and also a central register; Members would inscribe on the register those entities that normally carried out the agreed environmental activities in their territories and all goods imported by the notified entities for carrying out the activities would be granted preferential treatment. The representative said that, in the view of his delegation, this was a recipe for disaster and legal disputes because, by definition, some entities would not be on the register. For example, new entities would not be on the register. This seemed to the EC to be *de jure* discrimination – not only between entities but also between countries – that would lead to legal disputes. A second legal issue was whether or not the proponents saw their proposal for ad hoc tariff reduction to inscribed entities as consistent with Article I of the GATT. This was a point that had been raised by the delegation of Chile and the representative asked how the proponents viewed the proposal in relation to the MFN principle.

40. The representative observed that paragraph 7 of the non-paper dealt with non-tariff barriers and read, in part, "Noting that domestic regulatory requirements often act as NTBs, Members should consider relaxing those requirements to the extent necessary for the effective conduct of the agreed environmental activities." His delegation agreed that this was an important paragraph but viewed it differently from the proponents. The representative observed that the proponents were proposing that Members create a central bureaucracy and that the bureaucracy manage a list of environmental entities and govern all trade in environmental goods. He asked if the proponents genuinely thought this approach relaxed regulatory requirements and fostered trade in environmental goods.

41. The representative of Norway thanked Argentina and India for the non-paper and provided preliminary comments. Norway found some elements of the non-paper of particular interest and importance. In this regard, the representative highlighted the list of environmental activities as highly relevant for the negotiations under Paragraph 31(iii). She further observed that the concept of environmental activities seemed to overlap with environmental categories as used in document JOB(07)/54; this aspect should be explored further to see if there were possibilities for convergence between different approaches in the Paragraph 31(iii) negotiation.

42. With regard to the list of public and private entities to be submitted by Members, Norway's initial reaction was that this could be complicated to arrange. How were Members to ensure that all interested parties, including small and medium sized enterprises, were included on an equal basis? For privatized economies such as Norway, this would not be an easy task. It would also lead to administrative burdens both for the WTO Secretariat and Members. Nor was Norway convinced that the proposal, as formulated, would facilitate sound technology choices in a more general sense, including at the household level.

43. The representative recalled Norway's emphasis throughout the negotiations on the importance of environmental credibility. This was crucial to securing an environmentally sound outcome and Members therefore needed to choose the right approach to secure this outcome in the best way. Norway recognized the importance of access to the latest technology in that regard and recalled activities carried out by the WTO Secretariat, UNEP, UNCTAD and others. Norway was a strong supporter of that work. The representative also pointed to the fact that by fulfilling the mandate on reduction or elimination of tariffs and non-tariff barriers to environmental goods, Members would enhance access to technology.



44. The representative of Switzerland thanked Argentina and India for the non-paper and gave preliminary remarks. Her delegation welcomed the proposal in paragraph 3 for a definition and agreement on environmental activities such as air pollution control, water and waste water management, and soil and soil conservation, to name a few. Those environmental activities had been put forward by the proponents of the list approach in document JOB(07)/54 as "environmental categories". For Switzerland, whether they were called environmental activities or environmental categories should not be a major debate; the most important issue was to reach convergence on those environmental categories or activities.

45. Further referring to paragraph 3, the representative said Switzerland continued to have serious concerns with the idea that all goods imported by the notified entities would be granted preferential tariff treatment. That remained a pick and choose approach, as mentioned by Chile and others, and also retained elements from the project approach upon which Switzerland had previously expressed reservations. The integrated approach also seemed unfavourable to small and medium sized enterprises, which might be severely disadvantaged compared to larger companies, and did not represent an adequate representativeness of the sectors. With respect to the additional suggestion in paragraph 3 of post-audit systems to be put in place by Members to monitor the actual use of products imported for agreed environmental activities, the representative said that would seem to increase rather than reduce bureaucracy. The representative added that the integrated approach would not be in line with the objective of trade facilitation being pursued in the Doha Round, as the result would be more paperwork and bureaucracy.

46. The representative raised a number of questions and queries regarding the non-paper and sought clarification from the co-sponsors. On paragraph 3, how would entities be eligible for inclusion on the list of public and private entities at the national level? Also, what would be the situation for future public and private entities? With respect to the additional suggestion in paragraph 3 that all goods imported by the notified entities for carrying out agreed environmental activities be granted preferential tariff treatment, why were all goods to be exempted from tariffs? On paragraph 6, the representative said it was not clear to her delegation how services imported by the listed entities for carrying out agreed environmental activities would be granted preferential access. Finally, on paragraph 7 dealing with NTBs, it was not clear to Switzerland how regulatory requirements could be relaxed to the extent necessary to facilitate the effective conduct of agreed environmental activities; also, would such relaxing of regulations be only temporary and only for a specific sector?

47. The representative of Korea thanked the proponents for their new input into CTESS discussions on Paragraph 31(iii). Korea appreciated the paper's comprehensiveness in addressing most of the important elements under that mandate, albeit in a brief and concise manner. Korea particularly considered the issues of technology transfer and non-tariff barriers mentioned in sections B and D respectively as important and meriting further discussion. Korea was open to further elaboration of the details on those issues.

48. The representative focused on the proposed integrated approach in paragraph 3 of the non-paper and said her delegation found both positive and less positive aspects in that approach. On the positive side, Korea welcomed the suggestion by the proponents of identifying or agreeing on environmental activities. Like other delegations, Korea found similarities between the illustrative environmental activities in the co-sponsors' non-paper and the categorization used for product specification in the separate non-paper submitted earlier by a group of Members, including Korea, at the preceding session of the CTESS.<sup>6</sup> Korea believed those common elements could be a possible ground for building convergence on the categories of environmental activities which were important for achieving environmental and developmental objectives.

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<sup>6</sup> JOB(07)/54.

49. On less positive aspects, the representative said Korea struggled with the suggestion of agreeing on a list of public and private entities carrying out agreed environmental activities. She noted previous speakers had raised many questions and concerns on this idea; similarly, Korea was unfamiliar with this kind of approach and remained to be persuaded of its practicability and workability. The representative advised that within Korea there were more than 10,000 private companies involved in a range of activities and the list was in constant flux as new companies began operations and others ceased their activities. When contemplating the work involved in the construction of lists of all 150 WTO Members; verification of other Members' lists; negotiation of a central list within the multilateral process; and re-negotiating that list periodically, Korea feared the WTO would be overwhelmed by the sheer bureaucratic exercise. The representative noted that the Indian delegate had referred in his introductory presentation to registration and notification processes, but had not mentioned the negotiation process. She asked for clarification of how the proponents envisaged that latter aspect.

50. The representative said her delegation was perplexed at the suggestion that all products that the notified entities claimed to be necessary for agreed environmental activities would be granted preferential tariff treatment. She asked if it was the intention of the proponents to delegate to private companies the power to decide the definition of environmental goods, since Members had thus far failed to do so. Moreover, if so, how were Members expected to provide 100 per cent or less tariff concessions on a predictable basis – since the product coverage would be at the discretion of the private entities?

51. Regarding the possibility of a negative list as mentioned by the representative of India, Korea remained to be convinced that this was a better solution for addressing concerns about multiple uses of products that had been raised previously in relation to the list approach. The representative asked what would be the benefits of agreeing on a list of entities instead of a list of products. She also asked if the proponents would not find it more useful to focus on some sort of positive/product list. In this regard, the representative encouraged the proponents to consider in their approach integrating lists of products rather than lists of entities. By doing so, the integrated approach could be a constructive basis for bridging the gap and moving forward the Paragraph 31(iii) negotiations.

52. The representative of Mexico thanked Argentina and India for their contribution and made three points. First, Mexico shared the concerns expressed by the proponents in paragraph 2 of the non-paper, notably with respect to the fact that there was no internationally agreed definition of "environmental goods" and in terms of ensuring that goods once imported were actually used for improvement of the environment. Second, like other delegations, Mexico viewed positively the suggestion from the proponents to focus on identifying and agreeing on environmental activities; this could help the CTESS move towards convergence. Third, Mexico had questions as to how the mechanism proposed by the proponents would operate. The representative said overall Mexico agreed with the concerns raised by Argentina and India and felt also that their non-paper helped give some context to the CTESS discussions – so the discussions were not considered merely a market access negotiation.

53. The representative of Canada said his delegation welcomed the non-paper from Argentina and India and the effort it represented. Canada also welcomed the potential offered in the submission for convergence on certain elements. For example, the idea in the non-paper regarding environmental activities was similar to the concept of environmental categories as put forward by a group of delegations, including Canada, in document JOB(07)/54. Thus, the activities identified in the co-sponsors' non-paper, including air pollution control, water and waste water management, soil and soil conservation, solid waste management, environmental monitoring and analysis, energy saving management, and renewable energy were all categories contained in JOB(07)/54. The representative said Canada saw other elements of convergence as well, for example with respect to the idea of a

living list – albeit in a slightly different context as elaborated by Argentina in its introduction of the non-paper.

54. The representative said Canada disagreed with the assertion in paragraph 2 of the non-paper on the improbability that a list of environmental goods for preferential tariff treatment would ever be developed. In Canada's view, JOB(07)/54 showed clearly that the co-sponsors had taken on board numerous comments and had reviewed and refined the products proposed. The representative recalled that the original list of 480 products had been reduced to approximately 150 products; the co-sponsors had also acknowledged that more work was required and had invited further detailed comments on JOB(07)/54 – to assist them to make additional improvements, as required. Specifically, the representative wondered if Argentina and India would be prepared at some point in the future to suggest some of the products they would have in mind to be used in the environmental activities they proposed.

55. The representative said his delegation did not find particularly useful the suggestion from the proponents to identify public and private entities to carry out agreed environmental activities. Setting aside the fact of the work that would be entailed and setting aside also the fact of needing to agree on the environmental activities and criteria to be used to identify entities, his delegation had given thought to how the proponents' suggestion might be applied in Canada. Canada was large in area but small in population. Nonetheless, conceivably there could be tens of thousands of entities in the country. Canada had a federal government, ten provinces, three territories and roughly 10,000 municipalities. The representative said his delegation could easily see all those jurisdictions having responsibilities for environmental protection and undertaking environmental activities. That was just in the public sector alone; if the private sector were included as well, there would again be thousands and thousands of entities. In that context, the representative wondered how such an approach would achieve certainty and transparency.

56. The representative raised a number of questions in relation to the issue of non-discriminatory treatment of like products. He asked the proponents if like products would be treated in a consistent way across the board. In this regard, he invited comments from the proponents as to whether or not environmental goods used in large scale environmental activities would be accorded the same treatment as products used in smaller environmental activities or at the household level. If they were not accorded the same level of treatment, Canada would see this as discriminatory treatment and contrary to WTO rules. On a related subject, the representative observed that while the delegate of India in his introductory presentation did not see it as necessary to identify environmental goods to be utilized in agreed environmental activities, nonetheless he had raised the possibility of a negative list of goods that may not be obvious environmental goods. The representative speculated that such a negative list could result in a very interesting bureaucratic outcome with many items to be added and negotiated. He further asked a question as to why, if it was possible to identify non-environmental goods, it was not possible to identify environmental goods?

57. The representative said Canada placed great emphasis on the role of individual households in addressing environmental issues. Individual choices made by consumers each day could lead to significant and historic shifts to sustainable forms of consumption and living. In that regard, many of the 150 products put forward by the co-sponsors of JOB(07)/54 could be used in both large scale environmental activities as well as small scale and household-level environmental activities. Some examples were solar panels, ground source heat pumps, water filters and purification systems, fuel cells, solar stoves, septic tanks, reservoirs for drinking water, and heat exchange units. The representative observed that all those items could be purchased by an individual to put into their home. Canada viewed such items as environmental goods. In concluding, the representative invited a response from the proponents concerning the role played by households in the delivery of environmental objectives, for example, to reduce energy consumption and reduce air pollution.

58. The representative of Japan thanked the proponents for the non-paper. He made a number of positive comments on the non-paper and also raised several questions. On the positive side, like the EC, Japan had noted the comment in paragraph 2 of the non-paper that there were "few environmental goods that can be called inherently so". Japan very much looked forward to hearing from the proponents what sorts of products they had in mind. Also, paragraph 3 of the non-paper referred to environmental activities and mentioned several activities in that regard such as air pollution control, renewable energy and waste water management. Japan agreed with comments by China and Brazil on the importance of those activities. The representative noted also that JOB(07)/54 had included several categories covering *inter alia* air pollution control, renewable energy and waste water management. Thus, his delegation saw potential for convergence on the environmental activities part of the submission.

59. With reference to the suggestion in paragraph 3 of the non-paper to identify public and private entities to carry out agreed environmental activities, the representative said he had undertaken some rough calculations; if 150 WTO Members each submitted 10 entities, that would mean 1,500 entities; if they submitted 100 entities, that would mean 15,000 entities; and if they each submitted 10,000 entities, the total would be 1.5 million entities. The representative asked if it was the intention of the proponents that Members should negotiate such lists of entities.

60. The representative referred to the suggestion, also in paragraph 3 of the non-paper, that all goods imported by the nominated entities receive preferential tariff treatment. He noted also the proponents' suggestion that Members might agree a negative list of goods that were not obvious environmental products and which, therefore, would not be eligible for preferential tariff treatment. In that regard, the representative observed that there were around 4,500 non-agricultural products at the HS 6-digit level and around 600 or 700 agricultural products. Thus, if there were to be a negative list, it would be much larger than the list of 480 products originally put forward by selected Members and far larger than the list of 153 products submitted by the co-sponsors of JOB(07)/54.

61. With respect to post-audit systems, the representative speculated that if such systems had to focus on hundreds of thousands of entities, it would create significant administrative costs and could also hinder private businesses. He invited the proponents' views on this aspect. On technology transfer, the representative said this was very important but there were difficult issues as could be seen in the proceedings of the Working Group on Trade and Transfer of Technology. The representative said Japan shared views expressed by the delegation of Chile on this point.

62. The representative of Nicaragua thanked Argentina and India for the non-paper and agreed with previous speakers that there were positive elements in the proposal that would enrich the CTESS discussions on Paragraph 31(iii). Expressing preliminary comments, the representative agreed that the final use of goods and services of an environmental nature should have a direct link with improvement of the environment. In Nicaragua's view, the approach in the negotiations should be an integrated one to ensure a real contribution to sustainable development. Nicaragua also viewed very positively the coverage of such elements as technology transfer. With respect to NTBs, the representative said this was a crucial aspect if there were to be a balanced result from the negotiations and to ensure that the development dimension of the mandate was fulfilled. The representative said her delegation awaited with interest the answers to be circulated by the proponents to the various issues raised.

63. The representative of New Zealand welcomed the non-paper and willingness of Argentina and India to work to try to find a way forward on Paragraph 31(iii). New Zealand did not see the proposal as advancing discussions in the CTESS, nor as a basis for convergence. New Zealand also disagreed with the concern elaborated in paragraph 2 of the non-paper that the lists of environmental goods presented by developed country Members primarily benefited themselves. The representative said New Zealand had worked hard to identify the clear trade and development benefits of the items it

had proposed. Also, document JOB(07)/54 had demonstrated significant movement by the co-sponsors, including New Zealand, in terms of the products listed, in response to concerns expressed by Members. The representative said the co-sponsors of JOB(07)/54 had done their best to identify developing country interests, but needed more information. She added that it was unfortunate that the information was still not available and that the non-paper from Argentina and India had not helped to identify specific items of interest to developing countries.

64. The representative said the suggestion that Members agree on environmental activities was one that New Zealand had found interesting when first presented by Uruguay. In JOB(07)/54, the co-sponsors had sought to identify products and categorize them in ways that were relevant, environmentally. Thus, for example, the document referred to renewable energy and waste water management and grouped items under those headings. That had been an attempt to respond to the Uruguay suggestion and seemed, in the view of the co-sponsors, a basis on which to move forward on Paragraph 31(iii).

65. The representative said the real problem with the proposal from Argentina and India had to do with implementation. In that regard, she noted that a range of concerns and questions had been raised with respect to how the proposal would operate in a WTO-consistent way and how Members could legitimately identify activities within their borders that would include some entities and exclude others.

66. The representative commented that it was not for the WTO to tell Members which public or private sector firms could engage in trade in environmental goods. From New Zealand's perspective, that kind of approach, including the post-audit processes, appeared to be administratively complex, burdensome, and probably not consistent with what the institution was trying to achieve in the trade facilitation negotiations. Further, while such an approach could work for large multinational enterprises, it would not work for small countries where environmental goods sectors were dominated by small and medium enterprises. Nor would such an approach solve the problem of S&D treatment, as some Members had suggested.

67. On technology transfer, the representative said New Zealand recognized the importance of this aspect but could not compel its private sector to undertake the types of activities contemplated in paragraphs 4 and 5 of the non-paper. On NTBs, the representative said it was useful to know that what Argentina and India were contemplating was a relaxation of regulatory requirements. However, in order to engage in this area, specific information was needed about specific non-tariff barriers on particular products – then New Zealand would be ready to talk about any of its regulations in that regard and to do so on the basis of specific concerns of Members.

68. The representative of Colombia thanked Argentina and India for the non-paper. Colombia viewed the non-paper as interesting, particularly as it sought to overcome difficulties in identifying environmental goods and in terms of multiple use goods. Colombia also welcomed the approach of trying to identify environmental activities as a useful and progressive starting point. The representative said his delegation did not fully understand what the procedures would be for the identification of environmental activities and also public and private entities and added that there was a need for further clarification, particularly bearing in mind the transparency needed in the process.

69. The representative said his delegation was very interested in the topic of technology transfer. This was an element that had been demanded by developing countries and had been debated at length. Unfortunately, there had been only minor response at the multilateral level. The approach suggested in the non-paper recalled projects which would involve national and foreign companies; in Colombia's view, this could facilitate the development of complementary activities which would help the transfer of technology in areas of industry. The representative said his delegation had seen very positive results from projects involving joint ventures by national and foreign companies. He said the

non-paper offered an interesting alternative to give form to the demand by developing countries for technology transfer.

70. The representative said it was interesting to see in the non-paper the proposal for Members to consider a structured work programme to address NTBs faced by developing country Members in the export of environmental goods. This was not something that would be simple but was worth trying. The representative added that it was well known that the major difficulties in market access for environmental goods were linked to non-tariff barriers; this made it more difficult for developing countries' products since those countries did not have the technology nor regulations to guarantee compliance with standards.

71. The representative reiterated his request for further clarification from the proponents with respect to the design and implementation of the proposal. His delegation was willing to engage in a discussion with the proponents to try to clarify doubts.

72. The representative of Brazil commented on a range of points made by other delegations. She referred to comments by the EC delegate concerning the risk of CTESS duplicating work being carried out in the GATS Council. In that regard, she suggested a double standard was being applied because some Members - including some list proponent Members - had similarly proposed a document in the NAMA Group in 2006. Thus when it came to Services, there was duplication of work; but when it came to Goods, there was no duplication of work. In the representative's view, this was a double standard.

73. Responding to a further intervention, the representative said there were indeed environmental goods; however, the difficulty was that the CTESS had been unable to agree on a core set of environmental goods. In her view, the revised list circulated in JOB(07)/54 showed that not even the list proponents could reach a consensus on a short set of products. Despite the fact that they were unable to agree on a list, the proponents were asking other Members to contribute and to make known their interests. In this regard, the representative asked if every WTO Member specified 100 products, how many products there would be in the end. The representative suggested it would be easier to deal with a list of entities than liberalizing and giving preferential tariff treatment to a large number of products.

74. The representative recalled that some Members had referred to the list in JOB(07)/54 as containing around 153 products. However, this number was based on products defined at the HS 6-digit level; when it came to 8-digit subheadings, the list covered over 500 tariff lines. The representative further commented that contained in JOB(07)/54 were some entries called "others", and that these could include an additional 20 subheadings - depending upon how specific a country defined "others" in its HS commitments.

75. Making a further general point, the representative said Members should not lose sight of the developmental objective that permeated the Round. This implied that the debate on the liberalization of trade in environmental goods could not be understood only in terms of promoting the international circulation of such goods. It had to enhance the participation of developing countries in trade and their capacity to develop their own environmental goods industry. For Brazil, sustainable development meant a model of development that did not reproduce the same patterns of energy consumption and environmental resource depletion of developed countries. It also meant generating solutions and environmental goods adapted to the specific and particular needs of each developing country Member.

76. In that context, it was important that developing countries had unencumbered access to new environmental and clean technologies, as mentioned in the non-paper by Argentina and India. In order to facilitate this access, the representative proposed the CTESS should analyse more closely

alternatives for technology transfer. She suggested in this regard that CTESS could identify the existing mechanisms for transfer of technology in MEAs and also seek some light from the Working Group on Trade and Transfer of Technology.

77. Brazil noted that one of the problems with the list was that it gave equal treatment to unequal Members. It ignored Members in difficult situations and at different levels of development. Moreover, this approach entailed the liberalization of a significant amount of industrial goods that had no, or only limited environmental justification. Reiterating her point that 153 products at the HS 6-digit level unfolded into about 500 products at HS 8-digit level, she suggested that 290 out of the 500 subheadings had no clear environmental end use. Moreover, if the criteria for defining flexibilities in NAMA negotiations were applied in this instance, there would be another 40 sub-headings that would have to be considered as sensitive products for Brazil. Therefore, more than half of the products contained in JOB(07)/54 had limited environmental purposes or could hardly fit any definition of environmental goods that Members could agree to. She advised that in the case of Brazil, the consequences of liberalizing trade in such products would generate an annual trade deficit of 1.5 billion US dollars.

78. For her delegation, it was surprising that all kinds of renewable energy products were being contemplated in JOB(07)/54, but biofuels. Biofuels were one of the promising alternatives for substituting non-renewable energy sources. In Brazil's view, biofuel was an environmental good by definition irrespective of the criteria applied. It was therefore inadmissible that renewable energy was overlooked in elaborating a list of environmental goods. The absence of biofuels was the result of an approach that neither reflected a consensus definition, nor respected the particular needs and differentiation amongst Members. Alternatives based on other negotiating areas where Members' sensitivities were taken into account should be sought. She noted that the concept of a living list or a periodically revisited set of products represented an element of uncertainty to investors in the environmental goods industry.

79. In light of recent attempts to characterize these negotiations as a NAMA sectoral, Brazil reiterated its position that nothing in the mandate prejudged or limited the outcome of the CTESS negotiations only to industrial goods. Quite the opposite, the mandate was broadly set with the overarching objective of promoting mutual supportiveness between trade and environment. In this regard, nothing prevented the CTE from dealing with both agricultural and non-agricultural goods, as well as services, as proposed in the non-paper by Argentina and India.

80. Brazil also drew Members' attention to an often forgotten element of the mandate, i.e. the reduction or elimination of NTBs. The elimination of such type of barriers was of paramount importance for achieving a triple-win outcome. Fostering organic agriculture, for instance, would bring net benefits to environment, development and trade. To this end, Brazil suggested that the CTESS examine the possibility of requesting that relevant committees of the Codex Alimentarius established rules for organic agriculture. The elaboration and adoption of a common set of standards would represent an improvement to existing voluntary directives. A commitment by WTO Members to adopt an internationally defined set of standards, replacing the extensive set of national parameters, would permit the development of organic agriculture and benefit a number of developing country Members.

81. The representative of the United States (US) said her delegation had a number of questions with respect to the non-paper, including some that had also been raised with respect to the project approach. In particular, the US had concerns regarding the WTO consistency of the proposal and the potential for discrimination, not just among trading partners but also among entities, suppliers and consumers of environmental goods. The US also raised questions with respect to the non-binding nature of the approach; its implementation by customs officials; and whether the proposal would involve binding commitments in the context of the GATS Agreement.

82. She noted that there had been some assertions that the list approach and products put forward were not consistent with development objectives. Brazil, for instance, had mentioned a trade deficit of 1.5 billion dollars in the products put forward by the proponents. In response to Brazil's comment in this regard, she noted that the US had a trade deficit of over 10 billion dollars with respect to the products proposed, but this did not mean that it had no interest in these products, either from an export or import perspective. She noted that one of the co-sponsors had exported to the world in 2006 over a billion dollars of products on the list and had seen those exports grow by 34 per cent between 2004 and 2006, which was probably one of the largest growth rates among the industrial products it exported. The exports of these products to other developing countries had grown by 42 per cent over the same period versus its exports to developed countries, which had grown by 19 per cent. Another co-sponsor had exported nearly 3 billion dollars of these products and had seen its exports grow by 111 per cent between 2004 and 2006. Hence, there was clearly some growth in terms of exports, but liberalization would yield other benefits as well in terms of greater import and use of environmental goods and cleaner technologies.

83. The content of the list would be the determining factor in terms of who would benefit from environmental goods liberalization. There was therefore a need to clarify which products were of interest to developing countries in order to ensure that the list would benefit both developed and developing country Members. The US noted that it could perform some of this work on its own but that it would be easier to hear directly from developing country Members about their interests.

84. In response to some of the comments made by other delegations, the US believed that there could be some utility in identifying a set of environmental activities or categories. In fact, there was probably agreement already about what environmental activities were, based on the activities and categories mentioned in Members' submissions. She recalled that Argentina and India had mentioned a number of activities in their paper, such as air pollution control, waste water management, and renewable energy, that Members would probably agree were environmental activities.

85. While there was potential for agreeing on environmental categories or activities, views seemed to diverge on what the next step should be. For the US, the next step was to identify environmental goods used in carrying out those activities. The proposal by Argentina and India suggested a different route, namely to identify public and private entities that carried out environmental activities. In the US' view, this approach raised many questions. With respect to air pollution control, for instance, the US had proposed some 15 products, including condensers for steam or other vapour power units, vacuum pumps, air pumps, filters, and catalytic converters for automobiles. Based on the Indian and Argentinean proposal, it was unclear what kind of entities would be involved in air pollution control activities. Moreover, the large number of relevant public and private entities made the proposal unmanageable. There was also the question of whether consumers of catalytic converters or solar panels would be able to benefit from a reduction in tariffs on these products. Moreover, it was unclear to her delegation whether foreign and domestic companies alike would be able to benefit from any tariff reduction. As the proposal was open to public companies and involved the listing of entities, the US asked whether it covered government procurement as well, and if so, how this would be dealt with in practice.

86. The representative noted that the co-sponsors had suggested a modality and asked whether they had anything specific in mind in terms of a lower preference margin for developing countries, and how this would take into account the notion of measurable environmental benefits accruing from liberalization. Furthermore, her delegation sought clarification on proposals regarding technology transfer, and whether the co-sponsors intended to table more specific proposals in the Working Group on Trade and Transfer of Technology for Members' consideration.

87. The US agreed with the co-sponsors that NTBs were an important aspect and was willing to explore specific NTBs to the environmental goods sector. However, her delegation cautioned against



the suggestion by the co-sponsors that domestic regulatory requirements be automatically relaxed. While domestic regulatory requirements could add administrative and other costs to trade, that fact alone did not make them NTBs that should be eliminated. Any such requirements, once identified, would need to be considered on their merits and discussed in the Committee, much like the approach followed in the NAMA Group. She noted that in the environmental sector in particular, regulation was actually a strong driver of development of environmental technologies.

88. The US looked forward to hearing responses to the questions and concerns raised and how this could take the work forward in the pursuit of the mandate.

89. The representative of Egypt noted the concern of his delegation regarding the different weight given to certain issues, depending on whether they were discussed in CTESS or elsewhere in WTO. It was clear further work needed to be undertaken in the CTESS under Paragraph 31(iii). Nothing suggested that this work had to focus on a single approach - namely the list - Members had to remain open to considering other approaches. The current list still contained many industrial products such as pumps, generators, pipes, screws and other industrial products, which his delegation believed could not be considered environmental goods.

90. Egypt recalled that some goods discussed in the context of the proposed product coverage qualified as single environmental end use products. As such, these goods could provide a starting point for discussing some of the environmental activities identified by Members. Moreover, Egypt noted that if Members were to address the issue of organic agriculture as suggested by Brazil, the discussions would take a different turn. For his delegation, some indicators or criteria would be needed to guide Members in this discussion. Egypt was concerned about how easy it was for some delegations to leave aside issues like technology transfer, NTBs or S&D treatment, which required further discussion. In Egypt's view, the negotiations could not be limited to a "NAMA plus" exercise. Goods selected for liberalization would have to pass a test with respect to their potential benefits for the environment; in his delegation's view, this aspect of CTESS discussions could not be compromised.

91. He hoped that based on the discussion at the meeting, Members could initiate a process that would take them nearer convergence, for instance by discussing environmental categories or activities. In this regard, he suggested that Members could focus on a few categories to begin with. Finally, Egypt supported the view expressed by Brazil regarding the general framework of the negotiation and believed it was important for Members to focus on that in order to advance the discussions.

92. The representative of Ecuador said that the delegation of Brazil had raised some matters of importance to the negotiations and to the overall mandate. For her delegation, it was important to take into account tariff income with respect to the products put forward in the convergence set. Moreover, Ecuador emphasized the need for predictable and transparent results in the negotiations. In this respect, her delegation did not believe that the suggestion made by certain Members regarding the adoption of a living list, which would involve the inclusion of new products in future, would lead to predictability and transparency.

93. Ecuador believed that the question of NTBs could possibly add value to the negotiations by ensuring more transparent and predictable trade with particular advantages for developing countries, which in most cases lacked the technical or regulatory capacity to access markets, especially those of developed countries. With respect to the suggestion by Brazil regarding organic products, Ecuador believed such a proposal would not be viable, given the difficulties faced by developing country Members with regard to NTBs affecting these products.

94. Ecuador noted that certain environmental goals, such as those recognized at the 1992 Rio Conference on Environment and Development, were often treated as secondary or peripheral in the

context of the negotiations. Her delegation considered that the mandate offered real opportunities to achieve tangible results for developing country Members. Finally, she recalled that Colombia had submitted a paper on criteria that could be useful in future discussions under Paragraph 31(iii).<sup>7</sup> In the absence of a clear definition of environmental goods, such criteria or parameters could provide an objective filter and help negotiations move forward.

95. The representative of Nicaragua supported the comments made by Brazil and Ecuador on the importance of making progress on the issue of NTBs, and noted the interest of her delegation in organic farming.

96. The representative of India thanked delegations for their comments on the submission. India believed the interventions made had shown an interest in developing further some of the ideas with a view to reaching convergence. In India's view, a single list of goods did not really achieve the underlying objective of the mandate, which was to improve the environment. This objective implied the need to ensure that goods liberalized were indeed used for an environmental purpose. In the non-paper, as well as in earlier submissions, India had suggested an approach to ensure that goods which received preferential tariff treatment were used for the purpose for which this preferential treatment was being granted. Hence his delegation had proposed that Members start first with the identification of environmental activities and then grant preferential tariff treatment to goods used in those activities through the entities. Many delegations had noted similarities between the environmental activities and the categories or environmental objectives mentioned by the proponents in JOB(07)/54. India agreed that there was some commonality in this regard.

97. India noted that some of the questions raised regarding the co-sponsors' submission arose from the fact that it was not suggesting a list of environmental goods. In response to Chile's comment that the proposal was incompatible with the MFN principle, since different treatment would be granted depending on the entities or importers, he noted that the US had made a similar proposal in the Negotiating Group on Trade Facilitation. This proposal suggested that in some circumstances, different treatment - including tariff free treatment - could be given on the basis of operators bringing the goods into a country. Such an approach was therefore not inconceivable. By proposing to identify environmental activities and the entities involved in such activities, India believed the non-paper was addressing the objective of the mandate.

98. Regarding the issue of services and the extent to which preferential treatment would impinge on the services negotiations, India noted that the proposal was to negotiate an outcome which could provide a more preferential access to environmental services, similar to what Members were negotiating for goods.

99. On the issue of transfer of technology, India believed that improved access would be in line with the objective of sustainable development. It would also encompass issues such as the creation of production capacity for environmental goods and access to the latest technologies for improving the environment. He added that the CTE could monitor any hindrance faced in granting such access to technology.

100. With respect to NTBs, India recalled that in the context of the mandate in Paragraph 31, the NTB issue would go beyond what was understood in the context of the NAMA negotiations. India made reference to the ITA Ministerial Declaration which sought to address Members' difficulties with NTBs. India believed that under Paragraph 31, NTBs would not only include commodity trade but would also incorporate issues such as intellectual property and services. India proposed that the work programme itself be based on issues that Members would bring forward. Taking the ITA example further, India noted that the harmonization of electro-magnetic compatibility was discussed and that

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<sup>7</sup> JOB(06)/149.

some guidelines had been adopted in that context. At that stage, India was only considering a provision that would allow further discussions of NTBs.

101. He noted that the EC had raised a number of questions regarding the environmental categories and whether there would be discrimination on the basis of entities. The non-paper proposed that Members register the entities that were engaged in environmental activities. India noted that all businesses were registered with some authority and that registering environmental activities was not an entirely new concept. Furthermore, his delegation believed that the question of the large number of entities that could potentially be registered was one that could be addressed.

102. India had been deliberately non-prescriptive about the process of monitoring or ensuring that listed entities would not misuse the tariff concessions that were available, or would not use the goods for non-environmental purposes. Each Member could devise its own mechanism to ensure that the goods benefiting from tariff concessions were indeed used for an environmental purpose. India had referred in its introduction to a possible negative list, in reference to the fact that entities could import goods which had nothing to do with the environment. Approved entities would be subject to some post-clearance auditing to ensure that there was no misuse.

103. Responding to a question from the US, India confirmed that any entity registered in a country, whether domestic or foreign, would be eligible for tariff concessions. Regarding Egypt's point on the issue of hazardous waste, India explained that the non-paper referred to the management of domestically generated waste and not the import or trade of waste.

104. India had tried to put forward an approach that would help Members find convergence between the different approaches on the table. His delegation welcomed the questions raised and remained open to further discussions with other Members with the aim of reaching convergence.

105. The representative of Argentina said that the questions raised by delegations had been very useful, particularly since the objective of the non-paper was to serve as a basis for developing an alternative approach. With respect to a comment made by the EC regarding paragraph 2 of the non-paper, Argentina believed that no Member had contradicted the fact that some goods were environmental *per se*. In this regard, he mentioned that the delegation of Brazil had given the example of biofuels. As emphasized in paragraph 2, it was in fact the context or the environmental activity in which the good was used that conferred to it its environmental nature.

106. With respect to the comments on the legal consistency of the integrated approach, and in particular the compatibility with the MFN clause, Argentina noted that the approach proposed did not involve discrimination based on the origin of goods. There was the question as to whether a good imported in the context of an environmental activity would be considered "like" another similar product imported for an industrial purpose. He noted that according to WTO jurisprudence, the concept of "like products" went beyond the physical characteristics of the goods.

107. Argentina asked whether accrediting one entity but not another would amount, in and of itself, to discrimination. He doubted this would be discriminatory from a legal WTO perspective, as this would be similar to situations where Members offered subsidies to a particular activity. Argentina agreed with the US' point regarding discrimination between entities and consumers in general but in his delegation's view, this was similar to situations where agriculture was subsidised through consumers and was not contrary to the principles of National Treatment or MFN under Articles I and III of GATT 1994.

108. With respect to the concerns raised regarding the number of entities and the difficulties related to the registration or notification of those entities, Argentina noted that the main objective of notifying and registering entities was to give developing countries the flexibility to progressively

increase the use of these products based on environmental objectives. From the point of view of imports, countries like the US, Australia or Canada could lower their tariffs to zero and not register any entity. As priorities varied among Members, it was important that negotiations yielded results from a development perspective.

109. Responding to the questions raised on the notification procedure, Argentina explained that this was linked more generally to the modalities of the proposed approach. The notification procedure needed not be complex; it could comprise of a listing of entities that would potentially be involved in the agreed environmental activities. He noted that a similar approach had already been adopted in the area of government procurement.

110. Some delegations had raised the question of how to ensure that an accredited entity importing goods on a preferential basis would use such goods strictly in the context of an environmental activity, and not for another industrial purpose. For Argentina, this was a domestic matter that could be addressed at the stage of implementation, for instance through certification or accreditation procedures.

111. Argentina had noted the questions about tariff reductions being made on a case-by-case basis. Under the integrated approach, tariff concessions would not be granted on a case-by-case basis as was the case under the project approach; it would cover all goods required in the context of the environmental activity performed by the accredited entity. Argentina believed that some of the questions raised could be dealt with in more detail when Members would discuss the operational modalities.

112. Finally, Argentina believed that progress under Paragraph 31(iii) negotiations would depend on some opening on the part of the proponents of the list. For his delegation, it would be unacceptable to consider environmental goods negotiations as a simple "NAMA plus" exercise.

113. The Chairman noted that a useful discussion had taken place on the new contribution by India and Argentina. He also recalled that the convergence set of the proponents of the list approach circulated in JOB(07)/54 had been on the table for some time. The Chairman encouraged delegations to pursue their discussions in order to find a way forward under Paragraph 31(iii).

#### **IV. OTHER BUSINESS**

114. The CTESS agreed to the renewal of the ad hoc invitations issued for that meeting and extended to international organization at the next meeting of the CTESS.

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