

**Committee on Trade and Environment
Special Session**

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

12-13 OCTOBER 2004

Note by the Secretariat

1. The Committee on Trade and Environment Special Session (CTESS) held its tenth meeting on 12-13 October 2004 on the basis of the agenda set out in the convening airgram, WTO/AIR/2372.

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

2. The representative of Australia presented a new Australian submission under this item, document TN/TE/W/45. The submission was intended to build on the experience exchange on the negotiation and implementation of specific trade obligations (STOs) in multilateral environmental agreements (MEAs) that had taken place at recent meetings. It also built on document TN/TE/W/7 in which Australia had suggested a concrete, rather than a hypothetical, way forward on this particular negotiating mandate. Australia found the two papers presented by Hong Kong, China and the United States (US) on their experiences to have been useful (TN/TE/W/28 and TN/TE/W/40).

3. In its submission, Australia had chosen to focus on the Basel Convention, the Montreal Protocol, and the Convention on International Trade in Endangered Species (CITES), since these MEAs had been in force for many years and were familiar to WTO Members. National coordination between different domestic agencies and stakeholders had been a critical factor in ensuring that international obligations were fully understood and taken into account in the negotiation of these MEAs, and in the domestic implementation of their STOs. The submission set out the processes that had been established to ensure that national coordination occurred in all stages of negotiation, ratification and implementation. In the negotiations phase, coordination was an interdepartmental process involving all relevant agencies and consultations with stakeholders, such as State and Territory Governments, non-governmental organizations (NGOs), industry and the general public. It also took the form of including representatives from many different agencies in Australia's delegation to international conferences and negotiations.

4. At the ratification stage there was another extensive consultations process, particularly when treaties were tabled before parliament. This triggered scrutinization by the Joint Standing Committee on Treaties. A "national interest analysis" was conducted on why Australia should join a treaty, taking a range of factors into account. A similar coordination process operated with respect to Australia's domestic implementation of international commitments, which was tailored to the agreement and obligations in question. Under the Basel Convention, for instance, the permit system to control trade in hazardous waste was administered by the Department of Environment and Heritage. Consultations took place with all stakeholders, including, when required, with the Department of Foreign Affairs and Trade on issues with implications on multilateral or bilateral trade. This ensured that the permit system under Basel, or the comparable permit system under CITES, and the licensing system under the Montreal Protocol, were designed not only consistently with Australia's

obligations under these MEAs, but also with WTO obligations. Science-based decision-making played an important role in both CITES and the Montreal Protocol, and was a key feature of their mutually supportive relationship with the WTO. The US had come to a similar conclusion when it had analysed the Rotterdam Convention on Prior Informed Consent for Hazardous Chemicals and Pesticides in International Trade (PIC), the Stockholm Convention on Persistent Organic Pollutants (POPs), and CITES.

5. The Australian experience lent weight to the conclusion that the trade and environment relationship was working well, and that effective national coordination was key. Harmony between MEAs and trade obligations required good governance mechanisms. The five common ingredients to the conventions that Australia had been involved in included: (1) consultation, consisting of the engagement of stakeholders, including industry and NGOs; (2) coordination, in order to inform the right hand of government of what the left hand was doing; (3) legislation, to implement the conventions and ensure their accountability to the general population; (4) information, to ensure that decision-making was based on science and technical advice; and (5) transparency, so that all stakeholders understood the range and limits of their obligations.

6. The representatives of India, Hong Kong, China, the Philippines, Brazil, Thailand, Mexico, the United States, China, Argentina, and Indonesia welcomed the approach of national experience sharing. In addition, the representatives of India, Brazil, Thailand and Mexico shared the conclusion reached by the US and Australia that greater national coordination was the key to achieving compatibility between different international obligations. The representative of India called for the continued sharing of national experiences in the CTESS, including by developing countries and the "demandeurs," as this would shed light on how the mandate worked in practice. The representative of the Philippines agreed with Australia's selection of three MEAs which seemed to fit the criteria suggested by Colombia at the last meeting, and with the conclusion reached in paragraph 30 of the Australian submission. The representatives of Brazil, Thailand and Mexico also agreed that the MEA-WTO relationship was already working well, and Brazil and Mexico supported paragraphs 29 and 30 of the Australian paper. Brazil added that the national experience sharing was still at a very early stage in the CTESS, since only a few submissions had thus far been tabled. The representative of the United States appreciated the way in which the Australian paper had teased out some of the elements in MEAs that contributed to their supportive relationship with WTO rules, such as science-based procedures and inclusiveness, and called for a further sharing of national experiences.

7. The representative of Japan believed that national coordination was important. Japan had always coordinated domestically on issues involving more than one ministry, and believed that the continued sharing of national experiences would certainly be helpful to the CTESS. However, while Members believed that there were no substantial conflicts between MEAs and WTO rules, Japan argued that it would nevertheless be helpful to explore the development of an "interpretative understanding" as had been called for in its submission, document TN/TE/W/10.

8. The representative of Chinese Taipei posed three questions to Australia. The first was on paragraphs 13 and 20 of its paper, in which it was argued that Australia had implemented the permits, and import and export licensing requirements, of the Montreal Protocol and the Basel Convention consistently with the requirements of those MEAs and of WTO rules. Chinese Taipei wondered whether that meant consistency with GATT Article XI. The second question was on paragraph 29 of the paper, where Australia suggested that the relationship between STOs and WTO rules was working well. It wondered how Australia responded to the argument that the fact there had been no conflict to date did not necessarily preclude future conflicts from arising. The third question was on Australia's statement that Ministers had not instructed the CTESS to make changes for change's sake. Did that mean that there would be no changes possible pursuant to the Paragraph 31(i) mandate?

9. The representative of Chile agreed that national coordination was important, not just for the WTO-MEA relationship, but for the relationship between WTO rules and any set of international

obligations. It pointed out that in the UNESCO Convention on Cultural Diversity, which was currently under discussion, many Members had taken conflicting positions to the ones which they were advocating in these negotiations.

10. Turning to the Australian paper, Chile found that it had mainly focussed on Australia's national coordination in the implementation of MEA obligations, and wondered how the coordination process was undertaken during the negotiations phase. Second, it found it interesting that Australia had to implement international obligations through national legislation. In Chile, this was not the case, since international obligations were automatically implemented domestically, requiring only regulations and not legislation. It wondered how Australia addressed the concerns of third parties when converting international obligations into domestic legislation. Third, it enquired about Australia's experience in the implementation of CITES, and its reasons for focussing in its paper on "detriment assessment" under that Convention. Had more problems been encountered with respect to this particular provision than with other MEAs?

11. The representative of Senegal explained that Senegal had taken several measures to implement the Montreal Protocol, including to establish a permit system for ozone-depleting substances. It believed that it could be useful for the WTO to recognize the right of Members to implement the STOs in the MEAs to which they were a party. This would ensure respect for what was another important set of international obligations. Members that were not parties to MEAs would, of course, not be bound by them.

12. The representative of Korea agreed with the importance of national coordination, transparency and accountability in the negotiation of MEAs, and with the fact that the WTO-MEA relationship was working well. Recently, Korea had conducted a study on industry's awareness and preparedness for the implementation of STOs in seven MEAs. These were the Kyoto Protocol, the Basel Convention, PIC, POPs, the Biosafety Protocol, the Montreal Protocol and CITES. To its disappointment, the level of awareness turned out to be relatively low, especially in the case of small and medium sized enterprises (SMEs). One of the justifications given was that MEAs were difficult to comprehend. While they had not been involved in any particular conflicts between trade and the environment, many industries seemed to be seriously concerned about the potential for trade disputes at the national and international levels concerning MEAs. They hoped that governments could step up their information sharing and consultation mechanisms for conflict prevention. It was Korea's hope that the national experience sharing of the CTESS could contribute to drawing useful lessons for the mutual supportiveness of the WTO and MEAs.

13. The representative of the European Communities (EC) believed that national experience sharing was an important building block of the more detailed analysis of the relationship between MEAs and WTO rules which would need to follow. The first point which the EC wished to make in relation to the Australian paper concerned paragraph 4, which suggested that the CTESS had agreed on the MEAs that contained STOs. The EC wished to remind delegations that there were MEAs beyond those six, and that it was important to examine how national coordination took place in their regard as well. With respect to the need for MEAs to be science-based, the EC's position was that an MEA's formulation of trade measures had to be left entirely up to that MEA. WTO Members were only responsible for ensuring that their implementation of MEAs was consistent with WTO rules. It was that implementation process that the EC wished to discuss, in particular in relation to the statement by Senegal about the need to ensure that WTO Members that were parties to MEAs had sufficient leeway to implement their MEA obligations.

14. Paragraph 5 of the Australian paper, which clearly stated that domestic coordination was important, seemed to fit very well with one of the principles espoused in the EC's paper, TN/TE/W/39. It was the principle that stated that: "when governments around the world develop positions for MEA negotiations it is desirable that they give consideration to relevant WTO rules so as to ensure a mutually supportive relationship." Therefore, the EC believed that the CTESS was

coming close to agreeing on a "good governance" principle. Once other national experiences were tabled, it could foresee that other principles would eventually emerge and come to underpin the WTO-MEA relationship.

15. In relation to science-based decision making in MEAs, the EC believed that another principle that it had advanced in its paper had captured it. The EC had argued that multilateral environmental policy should be made within MEAs, and not in the WTO, in accordance with each body's respective competence and mandate. Therefore, this principle had already addressed the issue of decision-making in MEAs. This showed the potential for the national experience sharing approach to complement the conceptual approach. The EC wondered whether other Members had objections to this principle, and was willing to discuss it further. On another note, the EC felt that the Australian paper had addressed, somewhat dismissively, the hypothetical scenarios of conflict between MEAs and WTO rules. There was nothing hypothetical about Paragraph 31(i) negotiations. There was a mandate from Ministers which needed to be addressed. The mandate had to go beyond mere experience sharing. The Australian paper would contribute to going beyond this, but through a bottom-up approach, and hence the EC welcomed it. The EC hoped that the CTESS could gradually come to "push the envelope a little further" by discussing "international" coordination as well. This was linked to Paragraph 31(ii).

16. The representative of Switzerland was pleased that Australia had shared its experience, which would certainly be valuable for the Swiss administration to examine. Switzerland was interested in the five principles set out by Australia of consultation, coordination, legislation, information and transparency. They could be useful concepts to draw upon in this discussion. However, with respect to the Australian conclusion that "everything was fine," and its comment on not making changes for change's sake, it was important to point out that effective national coordination did not mean that there would be no other problems. Coordination at the international level and WTO-inconsistent "implementation" also needed to be addressed. Therefore, the discussion could not end with the Australian paper. In the US paper, interesting observations had been made on the need to carefully design export restrictions and STOs so as to ensure that they were science-based, the need to pay attention to the procedures for changing existing agreements, and so on. These were certainly useful concepts which required further discussion.

17. Switzerland also wished to share its national experience with the CTESS. Switzerland undertook extensive consultations before the negotiation of an environmental agreement, and prior to preparing implementing legislation. Consultations involved the different cantons, and the relevant organizations at the federal level. Issues presented to parliament required cantonal support. There was another important step in the consultations process, which was the consultation of NGOs, the private sector and interested individuals. In addition, parliamentary commissions were also consulted and invited to comment. Early consultations of these commissions facilitated the ratification process, as well as the process of developing implementing legislation. Switzerland stood ready to provide additional information on its domestic processes if CTESS Members required.

18. However, it wished to draw the attention of Members to how national coordination had been achieved on the issue of the precautionary principle. The principle had been particularly challenging in terms of domestic coordination. Switzerland had found that many different areas of the government held different interpretations of the principle. Those dealing with health, with veterinary issues, with the environment and with trade all had different views. Thus, an Inter-Ministerial Working Group at high level was established to fulfil three objectives: (1) to develop a catalogue of criteria for the implementation of the principle, based on international obligations and international law; (2) to coordinate the different interpretations; and (3) to develop guidelines for Swiss negotiators of specific agreements, in case the principle arose. The Working Group proved to be very useful, and it developed a broad paper on the subject.

19. In the context of current negotiations, Switzerland believed that it would be important to identify principles that could lead to mutual supportiveness, no-hierarchy, and deference between MEAs and the WTO. The concept of "no-hierarchy" was particularly challenging to implement, since each agency (dealing with intellectual property, environment, trade, etc.) tended to think that its area was the most important. On mutual supportiveness, the United Nations Framework Convention on Climate Change (UNFCCC) provided a particularly good example of how the objectives of an environmental accord could go hand in hand with WTO rules. While the objective of the UNFCCC was to stabilize greenhouse gases (GHGs), and of the WTO to enhance economic welfare, sustainable development had been recognized in the WTO as a key objective. Furthermore, the UNFCCC had itself upheld the need for an open, equitable and non-discriminatory multilateral trading system, and for special and differential treatment (S&D) for developing countries. The principle of deference ensured that issues were not taken in the wrong forum simply because that was more convenient. This also applied to dispute settlement, where there was a temptation to use the WTO dispute settlement mechanism to settle many different kinds of disputes. Members had to be careful with such matters, so that different legal regimes did not interfere with each other. Whereas the principles which Switzerland proposed were relatively clear, there was still room for their discussion. Even though there were no problems today, some could arise in future, and Members needed to ensure that the WTO and MEA systems coexisted peacefully.

20. The representative of New Zealand saw value in national experience exchange, and in national coordination, which would minimize the risk of conflict between different legal regimes. Conflict or problem prevention was the first-best outcome in these negotiations, and good processes could go a long way to building fences and reducing the need for WTO dispute settlement. As Australia had pointed out, national coordination, both in the negotiation of MEAs and in their implementation, could play a key role in conflict prevention, and in fact New Zealand had similar processes in place to the ones described by Australia. In extending the discussion of practical experiences into the future, the CTESS could look at similar experiences of coordination and due process at the international level in the negotiation of MEAs. Part 6 of the Australian paper, which examined the features of STOs that facilitated their supportiveness of WTO rules, actually provided a good starting point. New Zealand agreed with the EC that the CTESS should not negotiate MEA provisions in this forum, but could examine the features of STOs that helped prevent conflict. Paragraph 31(ii) could also contribute to conflict prevention and had to be explored.

21. The representative of Canada found the US and Australian papers to have been very useful. They demonstrated the importance of bringing relevant governmental departments together to ensure "whole-of-government" perspectives on the negotiation of MEAs. Canada had had a similar coordination process in place since the early 1990s. It had helped inform different governmental departments, and reduced differences between them, although not entirely eliminating them. It was Canada's impression that in the Biosafety Protocol, in PIC and POPs, countries had spent a significant amount of time examining the trade measures to be contained in these agreements, and therefore to avoid potential clashes with the WTO. Despite this, it still seemed that countries that were taking a "coordinated" position were in the minority, which created a potential for conflict. Therefore, a recommendation for countries to undertake national level coordination could be a useful outcome of this mandate.

22. The paper presented by the Convention on Biological Diversity (CBD) in document TN/TE/INF9/Rev.1 reminded delegations that decisions of the Conferences of the Parties (COPs) were taken by consensus, and so were the listing and de-listing procedures of the PIC and POPs Conventions. The benefit of consensus, although admittedly more time-consuming and onerous, was the mitigation of conflict at the implementation stage. The two tendencies of increased participation and consultation across all governmental and domestic stakeholders, coupled with decision procedures in MEAs that required consensus, lessened the possibility of conflict. The CTESS could construct outcomes on the basis of this. Canada asked both Australia and the US to explain how their national coordination processes resolved strongly held, conflicting, views by different departments. It

wondered if these conflicts were resolved at senior level or by cabinets, or if any particular agencies intervened.

23. The representative of Peru enquired about the types of problems that Australia encountered in domestic coordination, and highlighted that for developing countries coordination was even more difficult to undertake. The national experience sharing would eventually allow the CTESS to draw conclusions and should be continued. On a preliminary basis, Peru supported paragraphs 29 and 30 of the Australian paper.

24. The representative of Venezuela explained that Venezuela would try to follow Australia's example of sharing its experience with the CTESS, particularly since there were some good experiences to report. Venezuela highlighted the importance of technical and financial assistance, as well as of capacity building, for national coordination. A discussion of technical assistance could usefully be undertaken within the context of the national experience sharing. It had coordinated domestically on issues pertaining to the Basel and PIC Conventions, but was encountering difficulties. Finally, Venezuela believed that Australia should not be criticized for having only addressed three MEAs, since the national experience sharing needed to be undertaken gradually and required time. The representatives of Cuba and Ecuador agreed with the challenges that developing countries faced, and with the need for technical and financial assistance. Furthermore, Ecuador called for attention to be paid to coordination at the international level. The representative of Chad believed that even in order to follow these negotiations, some Members would require technical assistance.

25. The representative of Egypt found the "national interest analysis" referred to by Australia to have been very interesting and worthy of consideration. Like Canada, Egypt also wondered how difficult coordination issues were resolved (as mentioned under paragraph 12 of the Australian paper), and whether superior governmental authorities were asked to intervene.

26. The representative of Zimbabwe shared Zimbabwe's experience of CITES and the Montreal Protocol. Whereas the objectives of CITES were very noble, Zimbabwe's experience had not been very positive, particularly with regard to elephants. The elephant population had so grown that it had come to exceed the capacity of national parks to manage it, turning into a menace. Elephants had spilled into areas that they were not supposed to inhabit. Zimbabwe also encountered problems with respect to its ivory stocks, which it was not allowed to sell externally, and for which there was insufficient domestic demand. As far as the Montreal Protocol was concerned, Zimbabwe was in the process of phasing out ozone-depleting substances and refrigerants. It was also in the process of training customs officials to keep abreast of changes relevant to the implementation of the Protocol.

27. The representative of Australia provided preliminary responses to the questions posed. Australia was pleased that other Members had also shared their national experiences at this meeting. There were a number of common themes throughout most interventions. One, was that national coordination was an objective that most Members shared; and two, was that there seemed to be an absence of real-life problems. With respect to the question by Chinese Taipei on the relationship between the Basel Convention and GATT Article XI, Australia pointed out that the Basel Convention had been in force for a long time and that no problems had arisen *vis-à-vis* that article of GATT. On Chinese Taipei's comment that there could be conflicts in future, Australia did not wish to make a quantum leap from a discussion that showed no problems into a discussion that would anticipate problems. The problem first needed to be clearly identified, hence the importance of national experience sharing. Australia was not yet ready to decide on the outcome of the negotiations, since a body of evidence first needed to be constructed. The "interpretative understanding" proposed by Japan, on which Australia had previously commented, took the CTESS outside its mandate.

28. In response to Chile's comments, Australia emphasized that a two-way coordination process between trade and environment officials was required. As an example, a representative from the

Department of Environment and Heritage had been part of the Australian delegation to this CTESS meeting. With respect to Chile's question on the impact of Australia's domestic legislation on third parties, Australia emphasized that its legislation did not have extra-territorial effect. Australia had implemented all its MEA obligations, including *vis-à-vis* non-parties, but in a WTO compatible manner through close coordination between its different governmental bodies. On why it had referred to CITES and the non-detriment study, it explained that it had done so simply in order to provide concrete examples.

29. Australia felt that the EC intervention had shown how different the two approaches were that some CTESS Members were pursuing. The vast majority of Members seemed to be interested in a continuation of the national experience sharing approach, and not the EC approach. In response to the EC's comment on the selection of MEAs in the Australian paper, Australia reiterated that it had simply chosen three of the MEAs that had been in force the longest and which were familiar to Members. It added that it did not believe that its paper passed judgement on MEAs, but rather it was intended to illustrate how national coordination could enhance mutual supportiveness. In situations of overlapping jurisdiction between the WTO and MEAs, if such situations arose, Australia was confident that this could be addressed at the national level. It did not agree with the EC that the CTESS was close to agreeing on governance principles as a problem had not even been established. With respect to the Swiss intervention, while Australia believed that certain Members continued to approach the negotiations in a very different fashion, it welcomed its sharing of its national experience.

30. In response to Peru's question, Australia indicated that difficulties in national coordination were indeed encountered. However, it seemed to Australia that even the most difficult problems were resolvable through the right players being brought together for the development of a coordinated view. To answer Egypt's and Canada's related question, on the governmental bodies that intervened in situations of strongly held and conflicting views, decisions would ultimately be referred to the cabinet. However, there was a whole range of levels that such situations would need to pass through first, and which would involve discussions between different agencies. Australia was pleased that Venezuela, Peru, Ecuador and Chad had all emphasized the importance of technical assistance and capacity building to ensure national coordination. Finally, it welcomed the submission of additional national experiences.

31. The representative of Japan clarified that Japan was not opposed to national experience sharing, which it had found to be quite useful. However, it had simply agreed with the EC that it would be important at some stage to draw conclusions from these discussions.

32. The representative of the European Communities was pleased that Australia agreed that the CTESS should not pass judgement on MEAs. The EC was dissatisfied with the use of the term "demandeur," since all Ministers had agreed to these negotiations. There were no demandeurs; there was simply a mandate to which all Members needed to respond. The success of this mandate was vital to the overall success of the Round. With respect to the comment made on the fact that there was no problem to be fixed, the EC pointed out that the negotiating mandate had nowhere suggested that a particular problem needed to be solved. The mandate was designed to clarify an existing relationship, and there was no need to first identify a problem. However, the EC saw the national experience exchange as valuable, since it showed the processes required at the national level. It complemented the conceptual approach.

33. The EC believed that Australia was mistaken in arguing that the CTESS was "quantum leaps" away from discussing principles. A principle was a statement of general application, and the Australian paper had itself contained one such principle – that of furthering national coordination. However, the EC was willing to spend more time on these discussions, so that no delegation would feel that it was being rushed. This negotiation could equally examine why there had been no problems, and the factors that had helped maintain this situation.

34. The representative of Australia clarified that Ministers knew exactly what they had signed up to, and that the Paragraph 31(i) mandate had been very heavily negotiated, and tightly circumscribed. Australia was contributing to the achievement of that mandate through its paper. It was not ready to "codify" principles in the CTESS, prior to discussing national experiences.

35. The representative of the United States was pleased with the many interventions made on national experiences. The US did not see national coordination as a principle, but rather as an exercise of good governance. To answer Canada's question on how conflicting views were resolved, the US explained that the United States Trade Representative's (USTR) Office had the authority to coordinate trade policy across the US government. USTR was part of the Executive Office of the President, and so did not fall under any particular ministry. The US had a Trade Policy Staff Committee (TPSC) which was composed of seventeen agencies with permanent seats. Depending on the issues which were discussed, other agencies could also be included. Some of the agencies that were regularly involved included the Department of Commerce, the Department of Agriculture, and the Department of the Interior, from which the US delegation to this CTESS meeting had in part been composed.

36. Various Sub-Committees operated under the TPSC, and one of them prepared for CTE meetings. Therefore, all work started at Sub-Committee level, and if agreement could not be reached, the issues were referred to the TPSC. If disagreements arose at the TPSC, although that was fairly uncommon, then they would be referred to a body known as the Trade Policy Review Group (TPRG). Disagreements at the TPRG level, in turn, were referred to a cabinet-level group that considered the issue. However, this was seldom required.

37. With respect to recent developments in MEAs, the representative of the Convention on Biological Diversity read out the statement contained in document TN/TE/INF/9/Rev.1. The representative of the European Communities welcomed the information, which also related to Paragraph 31(ii) of these negotiations. Many of the issues raised were of direct relevance to trade, such as those on notification and the provision of information. The representative of Burundi drew attention to the problems which developing countries experienced in dealing with living modified organisms (LMOs), which they could not control. It was important to assist developing countries in controlling the importation of LMOs.

38. To conclude, the Chairman indicated that the CTESS had been pursuing two tracks in parallel under Paragraph 31(i) negotiations - the national experience-sharing track and the conceptual track - and that both tracks had been complementary. The former Chair of the CTESS had pointed to the complementarity between these two tracks in a report to the Trade Negotiations Committee (TNC), document TN/TE/6. With respect to the national experience sharing approach, the Chairman called on additional national experiences to be submitted to the CTESS, and on the proponents of this track to begin working together between CTESS meetings to identify emerging "common ground." With respect to the conceptual approach, the Chairman called on its proponents to also begin working together between CTESS meetings to reflect on the many reactions expressed to their proposals to date. In addition, he called on the proponents of both approaches to work together more closely to start bridging their differences, and to explore potential synergies between Paragraphs 31(i) and (ii) of the negotiations.

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

39. The European Communities believed that the list of issues under Paragraph 31(ii) that had been compiled by Ambassador Yolande Biké continued to be valid, and that further discussions of these issues was required (TN/TE/7). Paragraph 31(ii) was a fundamental component of good governance, and more attention needed to be paid to it. The EC had previously proposed a number of

ideas for exploration under this mandate, such as an increased visibility of the WTO Secretariat at MEA COPs, but believed that it could be useful if more ideas were tabled.

40. In response to a suggestion by the EC, the Chairman indicated that the Secretariat would update document TN/TE/S/2.

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

41. The representative of Chinese Taipei presented a new submission under this item, document TN/TE/W/44, which contained an initial list of environmental goods. Document TN/TE/W/44 was a new and improved version of a previous "room document" that Chinese Taipei had circulated, containing eight more items that had been added on the basis of "direct-use." In its deliberations on this mandate, the CTESS had made numerous references to the Asia Pacific Economic Cooperation forum (APEC) and Organisation for Economic Cooperation and Development (OECD) lists. However, Chinese Taipei believed that each of these lists had been developed for a specific purpose. The APEC list offered a much more practical approach for identifying environmental goods and for the assignment of product groupings. The main reason for this was that the list had been developed through product nominations by APEC members, which eventually led to a list and a classification system. The idea behind the list was to promote sustainable economic growth through trade liberalization in the environmental goods sector. This mirrored the objective of the Doha Ministerial Declaration, where Members had been also been instructed to liberalize trade.

42. Chinese Taipei's list included a total of 78 environmental goods, all in the category of pollution control. They had been divided into six distinct groups which were: air pollution control, wastewater management, solid/hazardous waste management, remediation/clean-up of soil and water, noise/vibration abatement, and monitoring/analysis and assessment. These goods had been chosen on the basis of the "direct-use" criterion and because of the frequency of their use in pollution control processes. Chinese Taipei's APEC experience demonstrated that "direct-use" was the most practical and effective criterion for the identification of environmental goods in pollution management. It could be a useful criterion for other Members to focus on in the development of their lists.

43. The representative of India wondered if it would be possible for delegations that presented their lists to explain why they believed that the products they suggested were environmental. Whereas in paragraph 7 of the TN/TE/W/44, Chinese Taipei stated that its list had been based on the concepts of direct use and pollution control, India enquired whether the criterion that been mentioned by that delegation at the last meeting had also applied; namely, that of a trade surplus in the products in question. It also enquired about the way in which "direct-use" had been assessed. The representatives of Venezuela and Malaysia supported India on the need to explain the environmental benefits of any list. The representatives of Peru, Argentina and Senegal requested additional information on the methodology used to construct the Chinese Taipei list.

44. The representative of Chile wondered if it would be possible for delegations that submitted lists to inform the CTESS of the tariff and non-tariff barriers (NTBs) facing their products in the event that they were importers, and, if they were exporters, of the obstacles encountered upon export. The WTO Environmental Goods Workshop (EGW) that had been held on 11 October 2004 demonstrated that environmental goods were not always subjected to high tariffs. Having said that, Chile wished to point out that it was not yet in a position to agree to a "list" as the outcome of these negotiations. The representative of Peru agreed with Chile on the need for trade data to be provided along with lists.

45. The representative of Japan welcomed the Chinese Taipei list, and indicated that Japan would welcome the submission of lists by any other Member. It would be helpful if those lists took account of CTESS discussions and did not include products based on process and production methods (PPMs).

46. The representative of the European Communities indicated that the CTESS had been pursuing two approaches on this item: a "bottom-up," list-driven, approach; and a "top-down" discussion on criteria. The EC welcomed the Chinese Taipei submission which pursued the bottom-up approach. It did not believe that any of the products suggested in that submission would be problematic for the EC. They seemed to be fairly "classic" pollution control products. However, the EC believed that it would be fairly important to underpin the product identification exercise with environmental objectives, such as the ones that were multilaterally agreed within the Millennium Development Goals and MEAs. National environmental priorities could also guide the debate.

47. The EGW that had just been held demonstrated that there were many issues that merited further discussion in this group. They included: dual use, tariff structures for different goods, pollution prevention, and HS issues, in order to ensure that whatever outcome was reached could make sense for customs officials. It could be helpful to draw up a list of those issues for a more structured debate. The work being undertaken in other fora, such the United Nations Conference on Trade and Development (UNCTAD), could also feed into CTESS work. Delegations needed to reflect on what the CTESS could do with the issues raised in the EGW.

48. The representative of Thailand indicated that Thailand would reflect more closely on the Chinese Taipei list, in consultation with its industry. Thailand believed that, while the submission of lists was useful, Members needed to reach a consensus on the criteria for, and scope of coverage of potential environmental goods. The most important criteria were that the products have pollution control, remediation and prevention as their end use, and that they be classifiable under the HS. Definitions based on multiple end use and PPMs had to be avoided. On another note, Thailand observed that UNCTAD had indicated in document TN/TE/INF/7 that developed countries already applied fairly low rates on the goods on the APEC and OECD lists, of around 10%, and that they were net exporters of those goods. It appeared to Thailand that developed countries had relatively little to do in order to fulfil the Paragraph 31(iii) mandate. Developing countries, which were net importers, and who imposed higher tariffs, would bear the brunt of the work. Therefore, a mechanism was required to address this imbalance. It was for this reason that Thailand supported China's proposal of the creation of a development list, which gave developing countries a certain flexibility.

49. The representative of Ecuador agreed with Thailand that it was necessary to draw up criteria to guide the negotiations. Any list to be drawn up in the CTESS had to be a WTO list, and not just an APEC or OECD list. The list would have to reflect the interests of developing countries and to avoid using PPMs. The representative of Malaysia agreed with Thailand that many developing countries were net importers of products on the APEC list. They already applied relatively low tariffs to them, such as 2% for laboratory equipment in Malaysia and no tariffs at all on these products within ASEAN due to preferential rates. It remained to be seen, therefore, what market access developing countries would gain from these negotiations.

50. The representative of Kenya believed that many developing countries faced problems in the area of environmental policy, in their industrial competitiveness, and in their use of state-of-the-art clean technology, all of which impacted upon these negotiations. Kenya was concerned that the individual submission of lists by all WTO Members could be very time consuming, and suggested that the WTO Secretariat prepare a guide, or criteria to guide, the identification of environmental goods.

51. The representative of Peru believed that at this stage of the negotiation it would be best to follow a practical approach. However, the conceptual debate that the EC was proposing could be useful towards the end of these discussions, when a critical mass of products would be submitted, from which criteria could be deduced. Hence, it was important for delegations to explain their choice of products.

52. The representative of Korea believed that the six categories proposed by Chinese Taipei could serve as a useful basis for CTESS discussions. Korea enquired about the way in which Chinese Taipei had reflected the views of industry in the construction of its list, and whether consultations with industry had been held. It indicated that it was currently finalizing its own list, which contained 95-105 products. These had been chosen on the basis of the following criteria: the likely acceptance of the goods by WTO Members, based on the discussions held to date; practicality in terms of customs administration and other implementation issues; and participation by developing and developed countries in their trade. In addition, Korea had adhered to the following guidelines: (1) that the end use be for an environmental purpose; (2) that the product be one that would be classifiable under the HS code, or for which ex-outs could clearly be developed based on its characteristics; and (3) that the selection not be PPM-based. Korea hoped to submit its initial list to the next CTESS meeting.

53. The representative of the United States welcomed the Chinese Taipei list, and reiterated the US' support for the approach taken in APEC. In response to the EC, the US explained that it saw the current discussions as progressing quite well, and that the practical approach of the submission of lists was the best way to proceed. The US was not convinced that trying to define environmental goods or to discuss concepts and principles, nor MEAs or the Millennium Development Goals, would advance these negotiations. Such discussions could in fact lead to the CTESS being "out of synch" with the Negotiating Group on Non-Agricultural Market Access (NAMA). The US was not opposed to more structure, but there were questions which Members would never be able to answer. The submission of lists allowed countries to consider specific sets of products that were put before them. Submitting categories of products to the CTESS, as Canada had done at the last meeting, could also be useful for the work of the Committee.

54. The representative of Venezuela agreed with the US that it would be better not to engage in a definitional exercise, and indicated that Venezuela was in favour of the creation of a WTO list. Venezuela commented in a preliminary manner on the Chinese Taipei list. In the EGW, the World Customs Organization (WCO) had explained that for the purposes of HS classification, it would be better if countries were to use objective, physical, criteria for the identification of products. Venezuela wondered which objective and physical criteria Chinese Taipei had used in drawing up its list.

55. The representative of Tanzania associated his delegation with the statements made by India, Venezuela, Thailand and Senegal. Tanzania emphasized that the main problem which developing countries faced was that of poverty, and that only when this problem was addressed could progress be made on this negotiating mandate, which had to be addressed by NAMA. The representatives of Tunisia and Nigeria emphasized the importance of technical assistance for developing countries in this area of negotiations.

56. The representative of Israel indicated that Israel was fully committed to these negotiations, and saw the development of a specific list of products as the way forward. Other approaches could lead to a loss of momentum. Moreover, these negotiations had to be kept as simple and focussed as possible in order to achieve concrete results, as had been done in Chinese Taipei's paper and in the US paper that proposed a core and a complementary list. Israel believed that, at least for the moment, focus had to be placed on end use, which had also been the criterion used in the APEC list. The CTESS needed to expedite its work so as to feed into NAMA.

57. The representative of Australia welcomed the Chinese Taipei paper, and agreed that the APEC process had been very practical. It had not been a hypothetical or an analytical exercise but, rather, a concrete negotiation. It would therefore be useful for the CTESS to look at the practical experience which APEC had gained. One such experience lay in how APEC had decided to approach the issue of PPMs. The APEC rejection of the PPM criterion had been done for good reason, for it was neither workable nor rational, and would not have produced increased market access and trade

liberalization. Instead, there was serious concern that the reverse could occur, with PPMs opening the door for disguised protectionism. Therefore, Australia was comforted by the emerging consensus in the CTESS to not employ this criterion. It wondered if it would be possible for the Committee to take an early decision on not using PPMs in these negotiations, so as to raise comfort levels.

58. There had been references at the EGW to classification issues, particularly to dual use. Australia believed that the APEC experience demonstrated that this problem could be tackled, and suggested that the CTESS explore how APEC had done this. Australia was also interested in the categories put forward by Canada, and Chinese Taipei's concept of direct use. Lists and categories would be the best way forward. Australia supported tariff reductions on as wide a range of goods as possible to achieve environmental benefits. It was currently working on the types of categories that needed to be subjected to further liberalization, with a view to making a more detailed contribution soon.

59. The representative of Switzerland agreed with the EC that it would be useful to pursue two approaches in parallel under this item; a top-down and a bottom-up approach. The development of criteria would allow environmental objectives to be addressed in a coherent manner. Switzerland intended to submit a new document to the next meeting that would act as a tool in the definition of environmental goods. On Chinese Taipei's paper, Switzerland agreed that "direct-use" was a practical and effective criterion for Members to use in the area of pollution management. However, it enquired about how the concept of direct-use would be applied in practice. At previous meetings, China had suggested the development of a "common list" and a "complementary list," with the former satisfying the market access interests of developing and least-developed countries, and the latter protecting infant industries. While there was a rationale behind this proposal, Switzerland felt that it would increase the complexity of the negotiations. Furthermore, a development list could not cover all developing countries irrespective of their level of economic development and vulnerability. Any exemption would need to be commensurate with a country's economic standing, and should mainly be granted to the economically weak.

60. With respect to the EGW, Switzerland had found the trends in the environmental goods industry to be particularly useful. It was estimated that the industry had attained a value of 550 billion Euros in 2002, and to have included SMEs and niche players. Thus, it was an industry with significant potential, allowing not only for North-South trade, but also South-South trade eventually. These trends had to be taken into account in the current negotiations. Finally, on the PPM issue, Switzerland reiterated that it itself had pointed to the difficulties involved in using the PPM criterion in past discussions, in particular due to the absence of international standards. However, it felt that Australia's proposal to have a Committee decision preventing PPMs from ever being raised was premature. Such a discussion could not be completely precluded in future, in particular if good ideas emerged.

61. The representative of China, responding to Switzerland's comment on the dangers of having a development list cover all developing countries, explained that it would be a potentially explosive issue to begin selecting the countries that could or could not participate in that list. Even though China recognized that many developing Members had different concerns, it preferred not to go down the suggested road of distinguishing between Members. One option to consider was to have Members nominate products for the development list on a voluntary basis. The representative of Switzerland explained that Switzerland's intention was by no means to ignite an explosive issue. Switzerland wanted these negotiations to deliver benefits to developing countries, particularly since the discussions so far had focussed on developed country concerns. It had simply wanted to make the point that many developing countries had different interests which would need to be reflected in any list, as China had itself recognized.

62. The representative of Canada welcomed the Chinese Taipei paper, and was interested in the work undertaken by UNCTAD on the environmental goods of interest to developing countries.

UNCTAD had mentioned at the EGW that it had deliberately avoided using PPMs, which was interesting, since PPMs could indeed be a barrier for some products. It would be useful to examine the UNCTAD list in greater detail to determine the interests of developing countries. Developing countries were obviously free to table their own lists to the CTESS, but it seemed that some were reluctant to actually do so. Canada wondered if this process could be encouraged by further analytical work on products of interest to these countries, and on the trade barriers which they faced. It encouraged UNCTAD, and WTO Members, to do further work on the UNCTAD list.

63. The representative of Indonesia shared the view that the APEC list provided a practical approach, but emphasized that it should only be taken as a starting-point, since there were many developing countries that were competitive in products that were not on that list. Indonesia agreed with those delegations that suggested that the best way forward was the continued submission of lists, as opposed to conceptual and theoretical discussions. Furthermore, it wished to remind delegations that market access was not the sole objective of these negotiations, and that there were environmental objectives too, which required technical assistance and capacity building for developing countries.

64. The representative of Argentina agreed that the best way forward would be the continued submission of lists, as had been done by Chinese Taipei. While numerous references had been made to the APEC and OECD lists, Argentina believed that these lists had not been drawn up for the purposes of the negotiations, and that further work was therefore required. Neither of these lists fully reflected the interests of developing countries. The UNCTAD list presented an interesting alternative. In terms of structuring future work, Argentina believed that Members needed to identify the coverage of the negotiations in terms of actual goods, and to then deal with modalities. The US had already broached the latter issue, and Members needed to reflect on whether there would be one list, or a main list and a supplementary one. China's idea of a "development list" required additional consideration, and Argentina asked if it would be possible for China to explain its idea further at future meetings. The negotiations needed to take account of all tariffs, as well as NTBs. But the first stage in the negotiations needed to be that of tariff reduction. The representative of Cuba agreed with Argentina's comments, and with Venezuela's observation that there needed to be a WTO list. The different stages of a country's economic development needed to be considered. Therefore, China's two-list proposal was worthy of further consideration.

65. The representative of New Zealand welcomed the Chinese Taipei paper. While some referred to the paper as containing "classic" environmental goods, New Zealand still believed that it would be important to have information on the methodology used to construct the list. For instance, on how dual use was addressed, and tariff classification handled. It would also be useful, as Chile had suggested, to have information on the trade barriers facing certain products. Work done by UNCTAD and the OECD could be drawn upon. With respect to the two approaches mentioned by the EC, New Zealand explained that there could be harmony between these approaches through explanations being provided of the products which Members listed. For instance, the problem of dual use would be very interesting to discuss with specific products in mind. Finally, New Zealand wished to remind delegations of the importance of linking work under this item to progress made in NAMA, and maintaining a similar pace.

66. The representative of Qatar explained that the Qatari list of environmental goods that had been submitted to the CTESS was not associated with the OECD list. It was a stand-alone list, which in some ways complemented the OECD list in one category, that of clean energy and technology. The representative of Kuwait, on behalf of Kuwait, Bahrain, the United Arab Emirates and Saudi Arabia, expressed support for the Qatari list. The representatives of Senegal, Gabon, Jordan and Tunisia also joined in supporting the Qatari list.

67. The representative of Chinese Taipei responded to questions raised on the Chinese Taipei list. The list had been developed on the basis of two criteria, "direct-use" for an environmental purpose, and "pollution management." To make the direct-use criterion workable, Chinese Taipei

employed end-use certificates to identify environmental goods, and exempt them from tariffs. At present, pollution control equipment was tariff exempted in Chinese Taipei. It was from its trade statistics that Chinese Taipei discerned the products that could be classified as environmental. It had tried to submit to the CTESS products that would be the least controversial, which basically meant pollution control equipment. With respect to environmental benefits, Chinese Taipei's experience had shown that the importation of high-quality environmental goods did indeed benefit the environment. There were economic benefits as well from the trade liberalization process. On the issue of industry consultation, it was the Industrial Development Bureau that had been put in charge of developing this list. The Bureau maintained contact with many different agencies and associations, including manufacturers' associations. Furthermore, as Chinese Taipei's tariffs on environmental goods were already at zero, the list had been deemed unlikely to affect manufacturers.

68. As agreed at the last meeting of the CTESS, the representatives of UNCTAD, the OECD and the World Customs Organizations (WCO), presented their work to the Committee. The representative of UNCTAD introduced document TN/TE/INF/7, which UNCTAD had submitted to the CTESS. UNCTAD treated environmental goods as more than a trade issue, to be seen in the broader context of sustainable development, where access to environmental goods, services and technologies was an important precondition for environmental and resource management in developing countries, as well for their competitiveness in international markets. However, in the context of the negotiations on market access, this proposition was neither simple nor straightforward. Developing countries were clearly not substantial suppliers of environmental goods and services. It was clear that a situation in which the environmental benefits would flow to one set of WTO Members, but the trade benefits to another, would not be acceptable in these negotiations. This issue was the main problem in these negotiations.

69. A starting-point for discussions on product coverage had been provided by the APEC and OECD lists. UNCTAD had prepared statistics on these lists, and its briefing note had shared these figures. Essentially they showed that the products on these lists represented a fraction of the NAMA mandate and included few products of interest to developing WTO Members as exporters. There were no specific tariffs that targeted environmental goods more than any other set of goods. A significant share of developing country trade consisted of multiple end-use products, which implied that these countries faced a trade-off between reduced tariff revenues and uncertain environmental benefits. However, the applied rates in developing countries in practice were low.

70. One coverage-related issue that had arisen repeatedly in many of the proposals submitted to the CTESS was that of PPMs. There seemed to be a broad convergence of views that such a criterion should be avoided. Most proposals tended to favour end-of-pipe pollution management equipment, except for items with other significant industrial uses. This was not surprising, considering that these environmental goods were derived from an absolute classification criterion, closely linked to environmental services, and covered a great number of HS codes. Developing countries were naturally interested in capturing the technological benefits of these negotiations. However, proposals for cleaner technologies were more difficult to entertain, as these were often identified based on subjective criteria, were not necessarily linked to environmental services, and covered fewer HS codes. There would be a need for WTO Members to circumscribe this category in order to be able to negotiate on particular goods and technologies.

71. Claims had been made with respect to other environmentally preferable products (EPPs), such as sustainable agricultural goods, including: organics; tropical produce; sustainable fisheries and forestry products; natural fibres; bio-pesticides, non-timber forestry products and products made using natural dyes. In the context of the WTO negotiations, some of these claims might give rise to problems. PPMs, in the case of sustainable agriculture, fishery and forestry; the absence of a negotiating track for agricultural environmental goods such as ethanol or organics; and difficulties in finding appropriate HS codes were all problems for most EPPs. It seemed clear that any agreement on environmental goods would necessitate dealing with very diverse product groups, and was

therefore bound to be different from other possible sectoral deals, which required the reduction of tariffs in the same or approximate HS chapters.

72. Thus far, there had been no agreement on the sectoral modality. Developing country Members had argued for special arrangements that would take into account their interests as exporters as well as their development status, and their ambition to develop an environmental industry of their own. Product coverage could certainly be sensitive to these objectives, as could tariff phase-outs, where it might be agreed that longer periods could be granted on a product-by-product and country-by-country basis. WTO Members could also designate an appropriate number of tariff lines to be treated as sensitive products. These products could be put on a development list or a complementary list, depending on which particular approach was agreed upon. Given the interest of developing countries in EPPs, difficulties in capturing some of these in the HS, and the low tariffs that prevailed with respect to these products, it might prove easier and more productive to focus the negotiations concerning EPPs on NTBs. For instance, certification procedures for products could be simplified and mutual recognition agreements (MRAs) encouraged.

73. The negotiations on Paragraph 31 (iii) might become politically and procedurally linked to other ongoing negotiations and discussions. With regard to NTBs, a link could be made to the trade facilitation negotiations. Matters relating to technology transfer might be seen in conjunction with Articles 66.2 and 67 of TRIPS. The Working Group on Trade and Technology Transfer could be requested to look into the relationship between trade in environmental goods and the transfer of clean technology. Of course, it would be very important to keep abreast of the negotiations in the Council on Trade in Services as well.

74. UNCTAD's future work on Paragraph 31(iii) consisted of, first, assisting developing countries in identifying environmental goods that were most likely to provide "win-win" opportunities. UNCTAD's second line of work was aimed at facilitating consultations on environmental services at the national and regional levels, as well as with Geneva-based delegations. Such consultations, supported by national studies, had proved very useful. The third approach was the provision of support to voluntary WTO-compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods and services, as called for by the World Summit on Sustainable Development. In this respect, UNCTAD's three vehicles for the delivery of technical assistance would be particularly relevant. The first was the BioTrade Initiative; the second was the International Task Force on Harmonization and Equivalence in Organic Agriculture, which UNCTAD had set up together with the FAO and the International Federation of Organic Agricultural Movements; and finally, UNCTAD's joint venture with United Nations Environment Programme (UNEP) - the Capacity Building Task Force.

75. The representative of the OECD introduced document TN/TE/INF/8, explaining that the OECD's work in this area went back over a decade, and had arisen initially as part of its work on environmental policy and industrial competitiveness. There had been considerable interest in obtaining better information on the size and activities of this sector, and several reports had been published in the early 1990s. These prompted numerous questions, for example, on the measurement of exports, and on the modification of environmental and economic policy to encourage and support growth, job creation and trade in environmental goods and services.

76. It had soon become apparent, however, that exploring these questions would involve statistical and methodological challenges. A task force was therefore created in cooperation with the European Statistics Office (EUROSTAT) to address classification and description issues. The fruits of this collaboration were published in a document in 1996, entitled: "The Environmental Goods and Services Industry - Manual on Data Collection and Analysis." This exercise did not, however, address trade aspects. That task was subsequently taken up by the OECD's Joint Working Party on Trade and Environment (JWPTE). This group decided to deepen the analysis, first by identifying a list of representative goods (identified only to the six-digit HS code) and services, for the purpose of

gaining a better understanding of the extent of international trade in this sector, and of the tariff and non-tariff barriers affecting it. The results were published in a document entitled "Environmental Goods and Services – the Benefits of Further Global Trade Liberalization."

77. Following the WTO Ministerial decision to launch negotiations in this area, the JWPTE, in 2003, again turned its attention to this topic. The current phase of its work aimed to explore some of the practical issues likely to arise in the negotiations as well as the options for addressing them; to explore issues associated with particular categories of goods; to develop, through analysis, a better understanding of the market and of the complementary policies that could be adopted to ensure maximum benefits from liberalization; and finally, to document the synergies between goods and services.

78. The first study undertaken by the OECD had a simple objective, to explain the origins, and the similarities and differences, between the OECD and APEC lists. Another study undertaken by the OECD examined the practical issues involved in liberalizing trade in environmental goods. The OECD had also studied the institutional and procedural implications of considering different categories of goods. The experience with various other sectoral liberalization initiatives demonstrated that there could be some scope for an agreement on goods coverage to be reached under Paragraph 31(iii) before an initiative on environmental goods was implemented. This could obviate the need for protracted *ex post* negotiations on classification.

79. One of the categories of problematic goods in which some OECD countries were interested were goods that were defined by their superior environmental performance, for example energy-efficient electrical appliances. As had been seen in Japan's proposed list, several goods that were energy or resource efficient had been given as an example, but those goods were easily identified by their particular physical characteristics and their design. A number of other household and office electrical appliances did not differ fundamentally, at least in a customs classification manner, except in terms of their energy performance. The OECD had produced a paper on the problems which could arise if countries were to define these as environmental goods, and had found that there were many problems; for example, the fact that minimum energy performance standards were applied by only some countries, and that testing requirements differed.

80. The study considered whether there could be ways of reducing tariffs for relatively energy-efficient electrical appliances, but found that many problems would be encountered. However, it did show that ongoing work towards the harmonization of testing procedures was vital to moving forward in this area, and was helpful in overcoming NTBs. Another body of work consisted of national case studies. This was undertaken in recognition of the importance of liberalization for both importing and exporting countries, whatever their stage of development. The OECD had commissioned eight country-specific case studies, one of which was a study from Kenya, and which aimed to identify complementary measures to ensure the maximum realization of benefits from liberalization. At the same time, UNCTAD and the United Nations Development Programme were also commissioning similar country-specific studies, and recently the OECD had undertaken a synthesis of those reports. The OECD was currently engaged in a study exploring the connections between trade in environmental goods and trade in environmental services, which it hoped would be a useful aid to those involved in Paragraph 31 (iii) negotiations.

81. The representative of the WCO explained that the WCO consisted of 164 members, and that, over the years, these members or customs administrations had evolved from purely revenue-collecting agencies into agencies dealing with issues of social and environmental concern. One of the WCO's most important instruments was the HS Convention. The Convention, which applied in approximately 200 countries and in economic and customs unions, was the basis for customs tariffs and international trade statistics. The HS reflected commodities or groups of commodities on the basis of their physical characteristics or objective criteria. So far, the WCO had ruled out end-use and

PPM criteria for the classification of commodities, given the fact that these could create identification problems at the import or export stage.

82. The HS had grown with the needs of its users. The WCO had received various requests from the Basel Convention, the Montreal Protocol and PIC to have their products reflected in the HS. This had been done so far for a number of commodities, and these amendments were implemented every four to six years. The last one was implemented on 1 January 2002, and the next one would be implemented on 1 January 2007. Any amendment to the HS Convention, including its nomenclature, had to be accepted by all contracting parties. This meant that there was a veto right for any contracting party that objected to proposed amendments. The procedure to amend the HS could take several years. For example, for the amendments which came into effect on 1 January 2002, the first discussions had started in 1996. The WCO invited WTO Members to approach the WCO if they wished to have any item classified in the HS. It had responded to a request made by the Qatar in February 2003, designed to help with Qatar's CTESS submission. The WCO looked forward to further collaboration with the CTESS.

83. The representative of Venezuela was interested that the presentations highlighted that the APEC and OECD lists did not represent the full interests of developing countries. As UNCTAD suggested, future work could usefully focus on assisting developing countries in the preparation of their lists and could involve consultations and voluntary initiatives. Paragraphs 9 and 14 of the UNCTAD paper demonstrated certain inconsistencies at the six digit level between the APEC and OECD lists. Many statistics had been overblown and exaggerated the volume of international trade. With respect to the OECD presentation, Venezuela wished to emphasize that tariff reduction, and not elimination, was the objective of the present mandate, and that this had to be borne in mind when the word "liberalization" was used. Venezuela wondered whether the OECD saw any linkage between its paper and the Paragraph 51 mandate of the Doha Development Agenda. With respect to the EGW, Venezuela wished to encourage the Secretariat to hold other such events. However, in the presentation made by the WTO Secretariat at that Workshop, references were only made to the APEC and OECD lists, and no mention had been made of the Qatari list. It would be important to reflect all existing lists in future. Furthermore, account had to be taken of the UNCTAD list, which consisted of 39 products.

84. The representative of Korea pointed out that this was the first time that the WTO had ventured into the area of environmental goods, and that there was no agreed-upon definition of what constituted those goods. It would be extremely difficult to develop criteria for environmental goods. However, further work was required on international standards that could serve as a basis for identifying environmental goods, and on review and verification methods. Such work needed to be conducted in close collaboration with UNCTAD, the OECD, and the WCO. Korea was interested in the statement made by the OECD that there were gains for all countries in liberalizing environmental goods, irrespective of their stage of economic development. It wondered if there statistics to back this statement, which would be an important motivating factor for these negotiations.

85. The representative of Japan welcomed all three presentations by UNCTAD, the OECD and the WCO, and looked forward to examining the new study of the OECD which could inform these negotiations.

86. The representative of the United States found that UNCTAD's work revealed that developing countries had important export interests in the environmental goods sector. For example, several developing countries were net exporters of goods on both the APEC and OECD lists, like ethanol in Argentina, Bolivia, Brazil and Guatemala. UNCTAD had also found that many environmental goods were basic intermediate goods, such as filters, pumps and valves; and that not all the goods on the APEC and OECD lists were high-tech in nature. Furthermore, it had found that most of the goods comprising developing countries' top environmental good exports were also among their top environmental goods imports. In addition, UNCTAD had reported that there might be potential for

increased South-South trade in environmental goods, and the EGW had itself pointed to the potential for increased regional trade amongst developing countries, particularly in Africa.

87. The US wished to encourage developing countries to submit their lists to the CTESS. It also wished to hear more from UNCTAD about the potential developmental benefits of these negotiations, particularly in areas such as water pollution control, wastewater treatment, and potable water treatment. With respect to the OECD presentation, the US looked forward to seeing the outcome of its latest project, which was investigating the synergies between the liberalization of environmental goods and environmental services. Certain case studies would also be conducted within this project to look at the potential benefits to developing countries from the interplay between goods and services markets.

88. The representative of Gabon wondered if UNCTAD could assist Gabon in carrying out a study on the impact of liberalization on tax receipts, and in seeing how technical assistance could be directed to countries that would be negatively affected.

89. The representative of Qatar invited UNCTAD to organize a workshop in Qatar for developing countries on the methodologies that could be used to identify environmental goods.

90. The representative of the European Communities was pleased that UNCTAD had identified a number of objectives for future work, which the EC could support. UNCTAD was doing very helpful work on EPPs, and it would be important to address developing country interests in these negotiations. The EC was also pleased that the OECD had worked in this area, and was currently completing a study that could inform these negotiations. It encouraged the WCO to share more information with the CTESS on the issue of end use and PPMs. Within the framework of the ITA, some countries had used end-use certificates. Furthermore, the EC believed that hand-woven rugs, for example, were classified within the HS Convention, and that their classification was based on a PPM.

91. The representative of Canada took special note of the fact that 18 developing countries were currently involved in various projects with the OECD, UNCTAD and the UNDP on the identification of environmental goods of export interest to them. Canada would strongly encourage the countries involved in those studies to share their results with the CTESS, particularly if these involved the identification of EPPs. Canada also looked forward to the work of the JWPTE.

92. The representative of UNCTAD stated that UNCTAD's work had contributed to, and benefited greatly from, project-based activities that were conducted in Central America on environmental goods and services, with the financial assistance of the Department for International Development of the UK. UNCTAD also highlighted that an Expert Meeting on Environmental Goods and Services had been organized in July 2003. The Chairman's Summary of that Expert Meeting had been made available to the CTESS (TN/TE/INF/6). Responding to the US comments, UNCTAD stated that its statistics did indeed show that developing countries, not necessarily individually, but as a group, were net exporters of certain items. To be precise, they exported 26 out of 182 goods on the combined APEC and the OECD lists, and UNCTAD had a list of those 26 goods. However, it indicated that, when considering statistics at the six-digit level, the HS could lead to overestimation of the volume of trade. It was important to bear in mind that only nine developing countries exported environmental goods, and that their exports represented 90 per cent of total developing countries' exports in 2002. There were various possible explanations for the fact that developing countries were importers and exporters of the same goods. There could be intra-industry trade, but this could also be the result of broad HS classifications. UNCTAD particularly welcomed the proposal by China of a "development list."

93. The representative of the OECD pointed out that the OECD case studies involving developing countries had been conducted through consultants and not governments. Although some of these studies demonstrated that there were goods of import and export interest to developing countries, this

was an ancillary result of these studies. The OECD was looking more at relations between liberalization and other types of measures, such as a country's environmental policies. With respect to the term "liberalization," it clarified that it did not mean full tariff elimination, but only reduction. With respect to Korea's question on the gains from liberalization, the OECD indicated that it would be possible to quantify these, but that that would involve a substantial general equilibrium analysis. The GTAP project could be approached to conduct such an analysis. The OECD felt confident in making the assertion since it was based on work that the OECD had done and which showed benefits for all countries. In the WTO, discussions were mercantilist in nature, but much of the work that the OECD had done had shown how important it was for countries to have access to environmental goods for reasons other than trade. For instance, at the EGW, Mr. Moses Ikiara's presentation had demonstrated how sound environmental policies could attract investment. That meant having access to pollution control equipment, to monitoring services, and so on.

94. The representative of the WCO responded to the EC by saying that any country was free to implement a PPM and end-use based system at the national level, but that this was not an issue which was taken on board under the present HS Convention.

95. The Chairman expressed his appreciation for the various lists of environmental goods submitted to the CTESS, and was pleased that several others had been promised for the next meeting. While there had been discussion at this meeting of two approaches under this item, a conceptual approach, involving criteria and definitions of environmental goods, and another approach consisting of the submission of lists, the Chairman believed that they could complement each other. He encouraged Members to pursue this complementarity by submitting their lists to the CTESS while, at same time, providing some explanation of the methodology employed in their construction. Members were free to draw on the work of UNCTAD, the OECD and APEC in that process.

IV. OTHER BUSINESS

96. The representative of Japan suggested that the ad hoc invitation to the International Tropical Timber Organization (ITTO) be renewed, but the representative of Malaysia objected to the renewal. There was no consensus reached by the CTESS on this matter.

97. The Chairman indicated that the ad hoc invitation to all the organizations that had been invited to this meeting would be renewed¹ and indicated that he would be communicating the date of the next CTESS meeting to delegations in the coming week.²

¹ These organizations were listed in the Annotated Agenda, document JOB(04)/145.

² The date was subsequently set for 24-25 February 2005.