Appendix I

Trade and Environment in the GATT/WTO[1]

WTO Secretariat

I. INTRODUCTION

1. At the start of the seventies, GATT contracting parties recognized the need to address in the GATT environmental issues as they relate to trade. The Group on Environmental Measures and International Trade, set up in 1971, was the first institutional framework created to that effect within the GATT. Some twenty years later a group of countries, considering that it was important for contracting parties to gain a better understanding of the interrelationship between environmental policies and GATT rules, requested the activation of the 1971 Group. The work programme of the GATT also included the issue of domestically prohibited goods, which had been raised by some developing countries at the beginning of the eighties.

2. At the end of the Uruguay Round, Trade Ministers adopted the Decision on Trade and Environment which anchored environment and sustainable development issues in WTO work. They set up the Committee on Trade and Environment and assigned to it a broad mandate, covering virtually all aspects of the trade and environment interface. Work in the Committee has contributed to build up communication between trade and environment experts at both the national and international levels.

3. The environment was not, as such, a subject of negotiations during the Uruguay Round. At the beginning of the eighties, the need to

protect the environment was not as high on the political agenda of governments and no attempt was made to put this subject on the agenda of the Round. Environmental considerations were, nevertheless, not totally absent from the preoccupations of negotiators and are reflected in various WTO instruments. This Note also briefly summarizes trade disputes which concerned issues related to human or animal health, or the environment.

4. Over the past few years, steps have been taken to increase transparency of WTO activities. The derestriction of WTO documents has been facilitated and all derestricted documents are now readily available on the WTO homepage. Moreover, the Director-General and the Secretariat have taken various initiatives to improve the dialogue with civil society.

II. WORK IN THE GATT ON ENVIRONMENTAL ISSUES

A. Group on Environmental Measures and International Trade

1. Preparatory work for the 1972 Stockholm Conference

5. During the preparatory work for the Conference on the Human Environment, which took place in 1972 in Stockholm, the GATT Secretariat was requested by the Secretary-General of the Conference to make a contribution. In response to this request, the Secretariat prepared on its own responsibility a study entitled "Industrial Pollution Control and International Trade".[2]

6. The study focused on the implications which the introduction of measures for control of industrial pollution might have for international trade. Recognizing the need for governments to act to protect and improve the environment while at the same time avoiding introducing new barriers to trade, it explored some of the problems that would have to be solved in evolving guidelines for action that would permit effective pollution control without damage to the structure of international trade.

2. Establishment of the Group on Environmental Measures and International Trade

7. In October 1971 the Director-General, Mr. Olivier Long, suggested that contracting parties should follow the problems that could be created for

international trade by anti-pollution measures concerning industrial processes: "[i]n other words, to consider the implications of industrial pollution control on international trade, especially with regard to the application of the provisions of the General Agreement. Contracting parties carried a special responsibility in this area. They had to ensure that the efforts of governments to combat pollution did not result in the introduction of new barriers to trade or impede the removal of existing barriers. It was, therefore, perhaps worth considering whether it would not be useful for the CONTRACTING PARTIES to set up a flexible mechanism which could be used at the request of contracting parties if the need arose".[3]

8. In the discussion that followed, several representatives expressed agreement that the GATT had certain responsibilities in dealing with the implications of industrial pollution control on international trade. Many of them supported the idea of establishing a standing mechanism for the purpose. There was, however, some divergence of views on the nature and objectives of this mechanism and as to whether it should be set up in anticipation of the problems or whether one should await further developments. Some representatives suggested that a decision be made only after the Stockholm Conference had taken place; others thought it best to take up work on this matter before the issues had been settled there. Some representatives considered that the GATT was sufficiently equipped to deal with the matter and doubted the need for the establishment of a new mechanism.[4]

9. At the November 1971 Council meeting, the Council agreed to the establishment of a Group on Environmental Measures and International Trade and gave it the following mandate:

> 1. to examine upon request any specific matters relevant to the trade policy aspects of measures to control pollution and protect the human environment especially with regard to the application of the provisions of the General Agreement taking into account the particular problems of developing countries;
> 2. to report on its activities to the Council.[5]

10. In introducing the terms of reference, the Director-General stated that:

> [t]he functions of the proposed group would be limited to the consideration of specific matters that were relevant to the applica-

> tion of the provisions of the General Agreement. There was, thus, no danger of duplicating or encroaching on work going on in other bodies on this very large problem of environment. The Secretariat was not aware of any problem that could be placed before the group at present, were it established. One could, nevertheless, anticipate that concrete problems could well arise in this area. For this reason, it was better to equip oneself with the necessary machinery ahead of time rather than to wait until a particular problem had developed and then set up an appropriate organ, since its constitution would then be difficult and its nature strongly influenced by the particular case at hand.[6]

11. The Group was thus set up as a standby machinery which would be ready to act, at the request of a contracting party, when the need arose. It was agreed that Mr. Kaya (Japan) should be Chairman.[7] During nearly twenty years, however, no request was made to convene a meeting of the Group.

3. Activation of the Group on Environmental Measures and International Trade

12. At the Ministerial meeting in Brussels in December 1990, the countries from the European Free Trade Association (EFTA)[8] circulated a formal proposal for a statement on trade and environment to be made by Ministers. They declared that priority attention should be devoted to interlinkages between trade policy and environmental policy, and for that purpose required the CONTRACTING PARTIES to: (a) undertake a study on the relationships between environmental policies and the rules of the multilateral trading system; (b) consider the implications of preparatory work for the 1992 United Nations Conference on Environment and Development, and the possibility of submitting a GATT contribution to that Conference; (c) convene in 1991 the GATT Working Group on Environmental Measures and International Trade under an updated mandate, in order to provide contracting parties with a forum for these issues.[9] The Brussels Ministerial Meeting failed to conclude the Uruguay Round and no effect was given to the proposed statement.

13. The EFTA contracting parties followed this initiative by a statement at the 46th Session of the CONTRACTING PARTIES in which

they indicated that they believed it was important and urgent for contracting parties to gain a better understanding of the interrelationship between environmental policies and GATT rules in order to establish coherent multilateral cooperation in this field.[10] In February 1991 they requested the Director-General, Mr. Arthur Dunkel, to convene, at the earliest appropriate date, the Group on Environmental Measures and International Trade. Among the reasons they gave for their request, they explained that

> [t]he approach to environmental policy making varied considerably from country to country due to differing geographical settings, economic conditions, stages of development and environmental problems. Accordingly, governments' priorities on these problems differed as well. The important point here was that the resulting differences in actual policies could set the stage for trade disputes. The EFTA countries' prime concern was to ensure that GATT's framework of rules worked, provided clear guidance to both trade and environment policy makers and that its dispute settlement system was not faced with issues it was not equipped to tackle. . . .
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> The EFTA countries were aware that one could not say with certainty exactly what the interlinkages between environmental and trade policies were. A great deal of technical work was therefore needed before drawing conclusions and beginning to strike a balance between different interests in this area. They believed that it was important to start studying the complex issues in this field soon, and had accordingly requested the Director-General to convene the 1971 Working Group at the earliest appropriate date. They considered the Group to be the appropriate forum to tackle the issues that have arisen and would arise in the context of environmental policies, so that the GATT can be maintained as a relevant body of rules in all respects. A careful study of the Group's mandate had led the EFTA countries to believe that it was sufficient in scope.

14. The EFTA countries also suggested that, like other international bodies, GATT might make a contribution to the 1992 United Nations Conference on Environment and Development (UNCED).[11]

15. Several delegations supported the proposal to convene the 1971 Group, considering the GATT could not remain outside the debate

which had commenced, but had to be part of it. Other delegations were of the view that such an initiative was premature and that one should await the outcome of the UNCED. Some also considered that priority should be given to concluding the Uruguay Round. The appropriateness of the mandate of the 1971 Group was also raised. While some agreed that one should start pragmatically with the existing mandate, others considered that this mandate did not encompass the general issue of the interlinkages between trade and environment.

16. In view of the differences which existed on the proposal for the convening of the Group, the Council decided to request the Chairman of the CONTRACTING PARTIES, Ambassador R. Ricupero (Brazil), to conduct informal consultations, in particular to reflect upon whether the existing mandate of the group was the most appropriate.[12] In April 1991, Ambassador Ricupero reported that a consensus had emerged to hold a so-called "structured debate" on the subject of trade and environment at the following Council meeting. With respect to the proposal for reconvening the 1971 Group, informal consultations continued with the aim of solving the problem of the terms of reference and deciding which contribution the GATT might make to the UNCED process.[13]

17. To facilitate the structured debate, the Chairman went on to circulate an "outline of points" that could be used by delegations participating in the Council debate. According to this Note, "the purpose of such a debate would be to identify measures taken on environmental grounds which could affect trade and development in the light of the provisions in GATT and Tokyo Round instruments". This illustrative list of points was built around five broad themes: (i) relationship between environmental policies, trade policies and sustainable development, including further liberalization of trade, (ii) identification of measures taken on environmental grounds that directly or indirectly affect international trade, (iii) identification of sectors of particular interest to developing countries, taking into account their trade, financial and development needs, in which trade may be affected as a result of environmental policy measures, (iv) trade provisions in international environmental instruments; principles and concepts adopted or under discussion, (v) identification of GATT articles and Tokyo Round instruments relevant to trade measures taken for environmental purposes.[14]

18. Some thirty delegations participated in the structured debate.[15] A large number of issues were raised, ranging from: the need to ensure that GATT rules and environmental protection were mutually supportive; the relation between trade restrictions in international environmental instruments and GATT rules; the application of GATT rules and principles to trade-related environmental issues; the distinction to be made between legitimate environment-related measures and protectionist ones; the particular concerns of developing countries; poverty as the main source of environmental degradation in developing countries and economic growth brought by trade as a prerequisite for achieving sustainable development.

19. In the course of the debate, the ASEAN contracting parties proposed to request the GATT Secretariat to prepare a factual paper on trade and the environment. The ASEAN contracting parties suggested that the following elements be included: (i) historical background on circumstances which led to the establishment of the 1971 Working Party with its particular mandate; (ii) background information on any other GATT work in the past on environmental issues; (iii) describe how existing international arrangements on environmental protection, such as the Vienna Convention, Basel Convention, etc., affect GATT principles; (iv) listing of trade measures taken by countries for environmental protection, and environmental measures with trade implications. The proponents further specified that "the paper should not attempt an assessment of the broad question of the effects of environmental policies and measures on international trade".[16]

20. The structured debate, however, did not allow delegations to reach a consensus as to whether the 1971 Group should be activated and under which terms of reference. Consultations therefore continued and in July, Ambassador Ricupero had to note that "additional efforts were required to reach a consensus on how these issues should be dealt with in the GATT itself. . . . [M]ore time was required to allow delegations to develop ideas which could lead to an understanding on this matter . . . The best approach to develop the necessary mutual understanding and to allow a positive treatment of these issues in the GATT would be to identify specific issues which could properly be examined in the 1971 Group".[17]

21. Eventually, contracting parties agreed that the 1971 Group on Environmental Measures and International Trade ("EMIT Group", as it

would be called from now on) be convened to examine the following three items:

> (a) trade provisions contained in existing multilateral environmental agreements (e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer, the Washington Convention on International Trade in Endangered Species and the Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal) vis-à-vis GATT principles and provisions;
> (b) multilateral transparency of national environmental regulations likely to have trade effects; and
> (c) trade effects of new packaging and labelling requirements aimed at protecting the environment.

22. These three issues would be addressed within the Group's original mandate. The Group would be open-ended, i.e. open to any contracting party which wished to participate. Because of the burden on delegations arising from the Uruguay Round, until January 1992 it would limit the number of its meetings as much as possible.[18] Consultations led to the designation of Ambassador H. Ukawa (Japan) as Chairman of the Group.[19]

23. The EMIT Group met from November 1991 to January 1994.[20] As noted by the Chairman in assessing the results of two years of work, discussions in the EMIT Group resulted in delegations being better informed of, and more comfortable with, the subject matter of trade and environment. The exercise permitted the building of confidence and a spirit of mutual trust and cooperation. The Group had not been established as a negotiating forum and there was a widely shared view that it was premature to adopt a prescriptive approach until the dimensions of any problems that might exist were more clearly identified, particularly with respect to the significance of the trade effects that were involved. The Group had viewed therefore its role as one of examining and analysing the issues covered by its agenda.

24. The Chairman noted that there was agreement on a number of points. Discussions should remain within the mandate of the Group and GATT's competence, namely the trade-related aspects of environment policies which could result in significant trade effects for GATT contracting parties. GATT was not equipped to become involved in the

tasks of reviewing national environment priorities, setting environmental standards or developing global policies on the environment. For the Group, there was no policy contradiction between upholding the values of the multilateral trading system on the one hand, and acting individually or collectively for the protection of the environment and the acceleration of sustainable development on the other. If problems of policy coordination did occur, it was important to resolve them in a way that did not undermine internationally agreed rules and disciplines that governments reinforced through the Uruguay Round negotiations. The Chairman also stressed that it was important to ensure that the multilateral trade rules did not present an unjustified obstacle to environmental policy-making. An important point was the considerable extent to which the GATT rules already accommodated trade measures used to protect national environmental resources. He concluded that an open, secure and non-discriminatory trading system underwritten by the GATT rules and disciplines could facilitate environmental policy-making and environmental conservation and protection by helping to encourage more efficient resource allocation and to generate real income growth.[21]

4. GATT's contribution to the UNCED and follow-up to the UNCED

25. The issue of a GATT contribution to the Rio Conference had been addressed during the informal consultations held by the Chairman of the CONTRACTING PARTIES in the course of 1991. In September 1991, the GATT Secretariat circulated a Factual Note on Trade and Environment, which covered the elements outlined in the ASEAN proposal.[22] At the invitation of the Council, the Director-General sent this document, together with the section on trade and environment from the GATT Annual Report,[23] as the Secretariat's contribution to the UNCED.

26. The second question arising in relation with the UNCED was that of the follow-up action GATT contracting parties should undertake with respect to the Rio Declaration and *Agenda 21.* At the July 1992 Council meeting, the Director-General noted that *Agenda 21* contained a number of recommendations directly relevant to the work of the GATT in the field of trade, environment and sustainable development. He suggested that contracting parties should consider how to proceed on these recommendations.[24]

27. Reporting on this subject to the 48th Session of the CONTRACTING PARTIES, Ambassador B. K. Zutshi (India), Chairman of the Council noted that

> it was clear that contracting parties warmly welcomed the UNCED Declaration and the progress that had been made by the UNCED in fostering further multilateral cooperation, and were determined that GATT should play its full part in ensuring that policies in the fields of trade, the environment and sustainable development were compatible and mutually reinforcing. It was also clear that the GATT's competence was limited to trade policies and those trade-related aspects of environmental policies which might result in significant trade effects for GATT contracting parties. In respect neither of its vocation nor of its competence was the GATT equipped to become involved in the tasks of reviewing national environmental priorities, setting environmental standards or developing global policies on the environment. Nevertheless, the multilateral trading system did have a central rôle to play in supporting an open international economic system and fostering economic growth and sustainable development, especially in the developing countries, to help address the problems of environmental degradation and the over-exploitation of natural resources.
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> The importance attached by the UNCED to a successful outcome of the Uruguay Round negotiations had been welcomed, and remained the top priority for contracting parties. It held the key to the liberalization of trade and the maintenance of an open, non-discriminatory multilateral trading system, which were main elements of the framework for international cooperation that were being sought to protect the environment and to accelerate sustainable development in developing countries. Also, the special concerns that had been raised by the UNCED about the need to improve market access for developing countries' exports, particularly by reducing tariff and non-tariff impediments, including tariff escalation, and to improve the functioning of commodity markets were well recognized.[25]

28. The CONTRACTING PARTIES further invited the Committee on Trade and Development and the EMIT Group to focus on the relevant

sections of *Agenda 21* and report to the Council on the progress they were making in that area.[26] The review took place in a special session of the Council in February 1994. Contracting parties generally considered the successful conclusion of the Uruguay Round to be an important step towards creating the conditions for sustainable development. They considered that trade liberalization and the maintenance of an open, non-discriminatory trading system were key elements of the follow-up to the UNCED. They noted that work that had already been undertaken in the GATT on trade and environment, both in the EMIT Group and the CTD, could be considered as follow-up to the UNCED. Contracting parties also agreed that further UNCED follow-up should await the decision of Ministers at their forthcoming meeting in Marrakesh on 12–15 April 1994 regarding the future work programme on trade and environment.[27]

B. The Issue of Domestically Prohibited Goods[28]

1. Historical background

29. The subject of exports of "domestically prohibited goods" ("DPGs") was included in the GATT's work programme at the 1982 Ministerial meeting as a result of concerns expressed by some developing countries regarding the export of products whose domestic sale was either prohibited or severely restricted in order to protect human health or safety, or the environment. The Ministerial Declaration adopted at the 38th Session of the CONTRACTING PARTIES held at Ministerial Level therefore encouraged contracting parties to notify GATT, "to the maximum extent feasible, of any goods produced and exported by them but banned by their national authorities for sale in their domestic markets on grounds of human health and safety".[29] Consultations held around that time with interested delegations made it possible in particular to shed light on the definition of "domestically prohibited" goods, or to identify DPG-related practices in exporting countries. They also pointed to the complexity of the issues involved and the practical problems of managing such trade.[30]

30. In 1986, as talks for launching the Uruguay Round were underway, the possible inclusion of the subject in the negotiations was raised. While several developing countries were in favour, others considered

that work in this area should be carried out under the regular GATT activities. The latter view prevailed.[31] At the Montreal Ministerial meeting ("Mid-Term Review") in December 1988, some delegations again proposed to include the subject of DPGs in the Uruguay Round. In his concluding remarks, the Chairman of the Ministerial Meeting, Mr. R. Zerbino, Minister of Economy and Finance of Uruguay, noting that the subject was covered by GATT's regular work programme, suggested that "the GATT Council be requested to take an early, appropriate decision for the examination of the complementary action that might be necessary in GATT, having regard to the work that was being done by other international organizations".[32]

31. In July 1989, the Council decided to establish the Working Group on Export of Domestically Prohibited Goods (hereinafter the "Working Group").[33] Ambassador J. Sankey (United Kingdom) was nominated as Chairman.

2. The Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances

32. The terms of reference of the Working Group were the following:

> [T]he Council agrees to establish a Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances which, in the light of GATT obligations and principles and having regard to the work of other international organizations on these goods and substances, will examine trade-related aspects that may not be adequately addressed, and report to the Council.
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> The Working Group should take into account the specific characteristics of domestically prohibited goods and those of other hazardous substances, and the need to avoid duplicating the work of other international organizations.
>
> The Working Group should complete its work by 30 September 1990, and submit a progress report to the Forty-Fifth Session of the CONTRACTING PARTIES in 1989.[34]

33. The Working Group met between September 1989 and June 1991.[35] At the first meeting, the Working Group, noting the request to have regard to the work of other international organizations, agreed to invite, as observers to its meetings, representatives from UNEP [the

United Nations Environment Programme], FAO [the Food and Agriculture Organization], WHO [the World Health Organization], the UN Secretariat, the ILO [International Labour Organization], the UN Centre for Transnational Corporations, the OECD [Organization for Economic Cooperation and Development], the ITC [International Trade Centre], and the International Atomic Energy Agency. Throughout the work of the Working Group, these representatives provided technical expertise and advice to delegations, to the Chairman and to the Secretariat.

34. Several contracting parties submitted proposals to the Working Group.[36] The Chairman subsequently presented a working paper containing a Draft Decision on Trade in Banned or Severely Restricted Products and Other Hazardous Substances, which was based on the two proposals presented by Cameroon and Nigeria on one hand, and by the European Community on the other, and took into account comments by other delegations. This Draft Decision was the subject of discussion in the Working Group, at both the technical and drafting level, and the text was revised to meet the requirements and advice of delegations and technical experts. Despite intensive efforts which continued into June 1991, a final version of the text could not be agreed.

35. At the July 1991 meeting of the Council, the Chairman of the Working Group submitted a report together with the text of a draft Decision on Products Banned or Severely Restricted in the Domestic Market, and explained that one country remained unable to accept it without amendments.[37] Although its mandate was extended, the Working Group never met again. At the end of the Uruguay Round, it was agreed in the Marrakesh Ministerial Decision on Trade and Environment to incorporate this issue into the work programme of the WTO Committee on Trade and Environment.

III. TRADE AND ENVIRONMENT IN THE WTO

A. The Committee on Trade and Environment

1. The Marrakesh Decision on Trade and Environment

36. Towards the end of the Uruguay Round, GATT contracting parties agreed that the Trade Negotiations Committee (TNC) should

adopt a work programme on trade and environment and present it, together with recommendations on an institutional structure for its execution, at the Marrakesh Ministerial Conference.[38] This led to the adoption, on 14 April 1994, of the Decision on Trade and Environment (hereinafter the "Marrakesh Decision")[39] in which Trade Ministers noted that it should not be contradictory to safeguard the multilateral trading system on the one hand, and act for the protection of the environment and the promotion of sustainable development on the other hand. Ministers further noted their desire to coordinate policies in the field of trade and environment, "but without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects".

37. The Marrakesh Decision directed the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment (CTE), whose tasks are: "to identify the relationship between trade measures and environmental measures, in order to promote sustainable development; (b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system".[40] The Marrakesh Decision lists ten items, encompassing all areas of the multilateral trading system: goods, services and intellectual property. These items are commonly referred to in the following order:

> Item 1: "the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements"
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> Item 2: "the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system"
>
> Item 3: "the relationship between the provisions of the multilateral trading system and:
>
> (a) charges and taxes for environmental purposes
> (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling"

Item 4: "the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects"

Item 5: "the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements"

Item 6: "the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions"

Item 7: "the issue of exports of domestically prohibited goods"

Item 8: "TRIPS"

Item 9: "Services"

Item 10: "appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation".

2. The Sub-Committee on Trade and Environment

38. Pending the establishment of the CTE, the Marrakesh Decision stipulated that work on trade and environment should be carried out by a Sub-Committee of the Preparatory Committee of the WTO. The Sub-Committee on Trade and Environment (SCTE) met in the course of 1994 under the chairmanship of Ambassador L. F. Lampreia (Brazil). It based its work on the terms of reference established by the Marrakesh Decision, while building on the work previously accomplished in GATT bodies, such as the EMIT Group or the Working Group on Domestically Prohibited Goods.[41]

39. With respect to its work programme, the SCTE focused on the first, third and sixth items, building whenever possible on the work of the EMIT Group. Under item 1, the Sub-Committee examined the use of trade measures for environmental purposes, particularly those applied in the context of multilateral environmental agreements and those applied specifically to non-parties to those agreements. Delegations began

reviewing the potential advantages and disadvantages of *ex ante* and *ex post* approaches to establishing the relationship of these measures to the provisions of the multilateral trading system. With regard to item 3, delegations began reviewing the use of environmental taxes, in particular in the context of GATT disciplines on border tax adjustment, and examined further environmental regulations and standards, notably those related to eco-labelling, on the basis of the work that had already been undertaken on this subject by the EMIT Group. Under item 6 of the work programme delegations highlighted for further examination issues such as the effects of tariff escalation, non-tariff barriers and trade distorting subsidies on the environment, export diversification and its relationship to environmental protection, market opportunities for environmentally friendly products particularly from developing countries, and the importance of technology transfer, technical and financial assistance in pursuit of sustainable development.

40. The SCTE transmitted its working documents and reports to the WTO's Committee on Trade and Environment.

3. Work of the Committee on Trade and Environment

41. As stipulated in the Marrakesh Ministerial Decision on Trade and Environment, the General Council of the WTO established the Committee on Trade and Environment (CTE) at its first meeting, held on 31 January 1995. It was agreed that the CTE would be open to all Members of the WTO and would report to the first biennial WTO meeting of the Ministerial Conference, when its work and terms of reference would be reviewed, in the light of recommendations by the Committee itself. The General Council nominated Ambassador J. C. Sanchez Arnau (Argentina) as Chairman of the CTE.

(a) Work of the CTE until the Singapore Ministerial Meeting

42. The CTE held its first meeting on 16 February 1995. It adopted a programme of work whereby each meeting would focus on some of the ten agenda items. CTE Members also agreed that meetings would be organized such that, once discussion of the items constituting the focus of the meeting had been completed, delegations could address, if they wished, the item(s) that had been discussed at the previous meeting. The work of the CTE was assisted by background and analytical papers prepared by the Secretariat, as well as documents submitted by delegations.

43. The CTE initially extended observer status to those intergovernmental organizations (IGOs) which had had observer status in the SCTE: the United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the International Monetary Fund (IMF), the United Nations Environment Programme (UNEP), United Nations Development Programme (UNDP), the Commission for Sustainable Development (CSD), the Food and Agriculture Organization (FAO), the International Trade Centre (ITC), the Organization for Economic Cooperation and Development (OECD), and the European Free Trade Association (EFTA).

44. Until May 1996, CTE Members completed two full rounds of analysis of each individual item of the agenda.[42] At the May 1996 stocktaking exercise, it was noted that

> In preparing for the Singapore Ministerial Conference, the CTE has held a general debate on all items of its agenda. Some agenda items have been disaggregated, some specific issues and problems have been identified. The general debate clarified and promoted understanding of some issues and also permitted the identification of divergences of view. In some cases more analytical work is required. As a result of this process, the CTE is now in a position to centre its attention on specific issues, including issues covered by proposals submitted or to be submitted by Members, keeping in mind the need for a balanced and focused approach to the whole agenda.[43]

45. The CTE then focused its activities on the preparation of its report to the first Ministerial Conference in Singapore. Members agreed that the report had to be comprehensive, balanced among the agenda items and among the different "schools of thought" and perceptions of the issues under debate. The document "would include conclusions and recommendations if any".[44] The CTE Report to the Singapore Ministerial Conference was adopted on 8 November 1996, with the understanding that it "did not modify the rights and obligations of any WTO Member under the WTO Agreements".[45] As noted by the Chairman, this statement made it possible for a number of delegations to join the consensus and approve the report.[46] The Report contains a brief introductory section which sketches the CTE's establishment and outlines its work programme; a second section presents the discussions and describes

the documents submitted by delegations; the third section includes the conclusions and recommendations.[47]

46. At Singapore, Trade Ministers endorsed the Report and directed the CTE to continue its work under its current mandate:

> The Committee on Trade and Environment has made an important contribution towards fulfilling its Work Programme. The Committee has been examining and will continue to examine, *inter alia,* the scope of the complementarities between trade liberalization, economic development and environmental protection. Full implementation of the WTO Agreements will make an important contribution to achieving the objectives of sustainable development. The work of the Committee has underlined the importance of policy coordination at the national level in the area of trade and environment. In this connection, the work of the Committee has been enriched by the participation of environmental as well as trade experts from Member governments and the further participation of such experts in the Committee's deliberations would be welcomed. The breadth and complexity of the issues covered by the Committee's Work Programme shows that further work needs to be undertaken on all items of its agenda, as contained in its report. We intend to build on the work accomplished thus far, and therefore direct the Committee to carry out its work, reporting to the General Council, under its existing terms of reference.[48]

(b) The Singapore Report

47. The Report recalls that the work of the CTE was guided by the consideration contained in the Ministerial Decision that there should not be nor needed to be any policy contradiction between upholding and safeguarding an open, equitable and non-discriminatory multilateral trading system on the one hand and acting for the protection of the environment on the other. These two areas of policy-making were both important and they should be mutually supportive in order to promote sustainable development. Discussions demonstrated that the multilateral trading system had the capacity to further integrate environmental considerations and enhance its contribution to the promotion of sustainable development without undermining its open, equitable and non-discriminatory character; implementation of the results of

the Uruguay Round negotiations would represent already a significant contribution in that regard.

48. The CTE's discussions were also guided by the consideration that the competence of the multilateral trading system was limited to trade policies and those trade-related aspects of environmental policies which could result in significant trade effects for its Members. It was recognized that achieving the individual as well as the joint objectives of WTO Member governments in the areas of trade, environment and sustainable development required a coordinated approach that drew on interdisciplinary expertise. In that regard, policy coordination between trade and environment officials at the national level had an important role to play. Work in the CTE was helping to better equip trade officials to make their contribution in this area.

49. The Report states that WTO Member governments were committed not to introduce WTO-inconsistent or protectionist trade restrictions or countervailing measures in an attempt to offset any real or perceived adverse domestic economic or competitiveness effects of applying environmental policies; not only would this undermine the open, equitable and non-discriminatory nature of the multilateral trading system, it would also prove counterproductive to meeting environmental objectives and promoting sustainable development. Equally, and bearing in mind the fact that governments had the right to establish their national environmental standards in accordance with their respective environmental and developmental conditions, needs and priorities, WTO Members noted that it would be inappropriate for them to relax their existing national environmental standards or their enforcement in order to promote their trade. As noted by OECD Ministers in 1995, there was no evidence of a systematic relationship between existing environmental policies and competitiveness impacts, nor of countries deliberately resorting to low environmental standards to gain competitive advantages.

50. The CTE worked intensively on the issue of the *relationship between trade measures in multilateral environmental agreements (MEAs) and the multilateral trading system* (items 1 and 5). It examined whether there was a need to clarify the scope that existed under WTO provisions to use such measures. Various proposals were made in that regard. However, the report concluded that there was no agreement for the time being to

modify WTO provisions in order to provide increased accommodation in this area. Many delegations shared the view that WTO provisions already provided broad scope for trade measures to be applied pursuant to MEAs in a WTO-consistent manner.

51. In its conclusions and recommendations on this issue, the Report endorsed and supported multilateral solutions as the best and most effective way for governments to address global and transboundary environmental problems; it pointed to the clear complementarity that existed between this approach and the work of the WTO in seeking multilateral solutions to trade concerns. It acknowledged that trade measures could, in certain cases, play an important role, particularly where trade was a direct cause of the environmental problem; trade measures played an important role in some MEAs in the past, and they could be needed to play a similarly important role in the future. But, it also pointed out that trade restrictions were not the only nor necessarily the most effective policy instrument to use in MEAs: adequate international cooperation provisions, including financial and technology transfers and capacity building, were often decisive elements of a policy package for an MEA.

52. The CTE also examined carefully some characteristics of the trade measures used in MEAs. It concluded in particular that problems were unlikely to arise in the WTO over trade measures agreed and applied among Parties to an MEA. However, concerns were expressed regarding measures applied to MEA non-signatories. The Report stated that, in the negotiations of a future MEA, particular care should be taken over how trade measures might be considered for application to non-parties.

53. Regarding the relationship between WTO dispute settlement procedures and those found in MEAs, the report recognized that WTO Members had the right to bring disputes over the use of a trade measure taken pursuant to MEAs to the WTO dispute settlement system. However, disputes arising over the use of a trade measure applied pursuant to an MEA between two WTO Members which were both signatory to an MEA should be resolved through the dispute settlement mechanism available under that MEA.

54. The CTE report stressed in several instances the importance of ensuring policy coordination between trade and environment experts. First and foremost, policy coordination had to take place at the national

level, in order to prevent governments from entering into conflicting obligations in different treaties they were signatories to: this was best done at the negotiating and drafting stage. At the international level, the report encouraged cooperation between the WTO and relevant institutions.

55. The "unilateral" trade measures taken for environmental purposes were also under scrutiny. Most of the delegations which intervened in the CTE on this issue considered that GATT Article XX did not permit a Member to impose unilateral trade restrictions that were otherwise inconsistent with its WTO obligations, for the purpose of protecting environmental resources that were outside its jurisdiction. Another opinion expressed in the CTE was that nothing in the text of Article XX indicated that it only applied to protection policies within the territory of the country invoking the provision.

56. A number of *trade-related environmental policies* not covered elsewhere in the work programme of the CTE were discussed under item 2. Property rights, tradable emission permits, fiscal instruments, emission taxes, liability system, deposit-refund systems and environmental subsidies have been mentioned. Moreover, there was an exchange of views on the use by governments of environmental reviews of trade agreements, and of the relationship and compatibility of general trade and environmental policy-making principles.

57. The CTE undertook only a preliminary examination of *the relationship between WTO provisions and environmental taxes and charges* (item 3(a)). Various views were presented on the potential trade effects and general economic and environmental effectiveness of levying environmental taxes and charges. The application of WTO rules on border tax adjustment to environmental taxes and charges was also examined.

58. On *eco-labelling* (item 3(b)), discussions focused on voluntary eco-labelling programmes, including those based on life cycle approaches, and their relationship to the Agreement on Technical Barriers to Trade. CTE Members recognized that well-designed eco-labelling programmes could be effective instruments of environmental policy to develop environmental awareness of consumers, and assist them in making informed choices. But, at the same time, concerns were expressed about their possible trade effect: the multiplication of eco-labelling schemes with different criteria and requirements, or the fact that they could reflect the environmental conditions, preferences and priorities prevailing in

the domestic market might have the effect of limiting market access for overseas suppliers.

59. CTE Members noted that increased transparency could help deal with trade concerns regarding eco-labelling schemes. It could also help to meet environmental objectives by providing accurate and comprehensive information to consumers. Transparency should be ensured in the preparation, adoption and application of the programme, and all interested parties from other countries had to be afforded an opportunity to participate in the preparation of the programme. The Report stressed the importance of WTO Members respecting the provisions of the TBT Agreement and its Code of Good Practice. Further discussion was needed, however, on how criteria based on non-product related processes and production methods should be treated under the TBT Agreement.

60. Regarding the *transparency of trade measures used for environmental purposes* (item 4), CTE Members concluded that no modifications to WTO rules were required for the time being. Transparency is not an end in itself and trade-related environmental measures should not be subject to more onerous transparency requirements than other measures that affected trade. In relation with measures notified under the WTO, the CTE suggested that WTO Members should supply information to other Members, especially developing countries, about market opportunities created by environmental measures. Finally, the Report mandated the WTO Secretariat to compile all notifications of trade-related environmental measures and collate them in a single database accessible to WTO Members.

61. The CTE discussed how the WTO could contribute to *making international trade and environmental policies mutually supportive for the promotion of sustainable development* (item 6). There was a concern that environmental measures could adversely affect the competitiveness and market access opportunities of small and medium-sized enterprises, especially in developing and least-developed countries. Among its conclusions, the CTE emphasized the importance of market access opportunities in assisting those countries to obtain the resources to implement adequate developmental and environmental policies, diversify their economies and provide income-generating activities. Improving market access opportunities and preservation of an open and non-discriminatory trading system was essential for supporting countries in their efforts to ensure

sustainable management of their resources. At the same time, however, the CTE underlined the necessity for countries to implement appropriate environmental policies in order to ensure that trade-induced growth was sustainable.

62. The CTE also discussed whether and how the removal of trade restrictions and distortions, such as high tariffs, tariff escalation, export restrictions, subsidies and non-tariff measures, could benefit both the multilateral trading system and the environment. The Committee had focused first on the agriculture sector, but it was agreed to extend this analysis to other sectors, such as tropical timber and natural resource-based products, textiles and clothing, fisheries, forest products, environmental services and non-ferrous metals, taking into account country-specific natural and socio-economic conditions.

63. *Domestically prohibited goods* (item 7) was an issue of serious concern to some developing and least-developed countries which considered that they did not have sufficient timely information about the characteristics of these products, nor the technical capacity to make informed decisions about importing them.

64. The CTE noted that a number of international instruments, dealing *inter alia* with the monitoring and control of trade in certain DPGs, entered into force and others were under negotiation (reference was made to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the preparation under the Amended London Guidelines of an internationally legally-binding instrument for the application of the prior-informed consent procedures for certain hazardous chemicals in international trade). WTO should consider to fully participate in the activities of other organizations which have the relevant expertise for providing technical assistance in this field.

65. The CTE stressed the important role that technical assistance and transfer of technology could play in this field, both in tackling environmental problems at their source and in helping to avoid unnecessary additional trade restrictions on the products involved. The CTE will continue to examine what contribution WTO could make in this area, bearing in mind the need not to duplicate work of other specialized agencies. In the meantime, the WTO Secretariat will survey the information already available in the WTO on trade in DPGs, and WTO

Members are encouraged to submit to the Secretariat any additional information they have which could help drawing up a comprehensive picture of the situation throughout the WTO.

66. The CTE started work on the relationship of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) to the environment (item 8). It discussed the role of the TRIPS Agreement in the generation, access to and transfer of environmentally sound technology, and its relations with MEAs, in particular the Convention on Biological Diversity.

67. The Report noted that the TRIPS Agreement already played an essential role in facilitating access to and transfer of environmentally-sound technology and products. Positive measures, such as access to and transfer of technology, could be effective instruments to assist developing countries to meet MEAs' objectives. Delegations disagreed as to whether some provisions of the TRIPS Agreement needed to be amended in order to facilitate the international transfer of technology. It identified several areas on which it intended to focus its future work: (i) facilitating the generation of environmentally sound technology and products; (ii) facilitating their access and transfer; (iii) the creation of incentives for the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the use of genetic resources, which included the protection of knowledge, innovations and practices of indigenous and local communities.

68. Preliminary discussion took place on the work programme envisaged in the *Decision on Trade in Services and the Environment* (item 9). So far, it did not lead to the identification of any environmental measures that Members might need to apply to services trade which would not be covered adequately by the provisions of the GATS [General Agreement on Trade in Services] Agreement, in particular Article XIV(b).

69. The CTE recognized that there was a need to respond to public interest in WTO activities in the area of trade and environment. Regarding the *relationship with non-governmental organizations* (item 10), CTE Members considered that the primary responsibility for closer consultation and cooperation lay at the national level. Nevertheless, it recommended that the WTO Secretariat continue its interaction with NGOs, for example through the organization of informal meetings. The CTE took note and endorsed the Decisions of the General Council of 18 July

1996 on "Procedures for the circulation and derestriction of WTO documents" and on "Guidelines for arrangements on relations with non-governmental organizations". In order to improve public access to WTO documentation, it recommended that all CTE working documents which were still restricted be derestricted, and encouraged Members to agree to derestrict the papers and non-papers they submitted.

(c) Work of the CTE since the Singapore Ministerial Meeting

70. In 1997 and 1998, the CTE continued to work under the chairmanship of, respectively, Ambassador B. Ekblom (Finland) and Ambassador C. M. See (Singapore), with the mandate and terms of reference contained in the Marrakesh Decision. Since Singapore, CTE Members have adopted a thematic approach (the so-called "cluster approach"), which has allowed the items of the work programme to be addressed in a systematic and more focused manner. A full account of the debates can be found in the minutes of the meetings, and a summarized version is available in the *Trade and Environment Bulletins.*[49]

71. A first cluster regroups those items relevant to the theme of market access (i.e. items 2, 3, 4, and 6). Under *item 2,* Members had an initial exchange of views on the environmental review of trade agreements. With respect to *item 3(b),* Members focused on the effects of eco-labelling programmes on market access and their relation with WTO rules, in particular the TBT Agreement; concrete examples of eco-labelling programmes, presented by delegations, were also discussed. Under the same item, the application of WTO rules to environmental taxes and charges was also raised. In order to fulfil the recommendations contained in the Singapore Report with respect to *item 4,* the CTE established a WTO Environmental Database (EDB) which compiles all environment-related notifications made under various WTO instruments; the EDB is regularly up-dated by the Secretariat.[50] A detailed examination of the potential economic and environmental benefits of removing trade restrictions and distortions took place under *item 6.* CTE Members examined the environmental and trade effects of various types of measures—tariff escalation, subsidies, non-tariff measures—in specific sectors—agriculture, energy, fisheries, forestry, non-ferrous metals, textiles and clothing, leather and environmental services. The

Secretariat contributed to the analysis by preparing a background paper, outlining for each sector the most prevalent trade restrictions and distortions, as well as the environmental benefits associated with their elimination.[51]

72. A second cluster contains the items related to the linkages between the multilateral environment agenda and the multilateral trade agenda (i.e. items 1, 5, 7 and 8). Discussions under *items 1 and 5* focused on the interaction between WTO rules and MEAs containing trade provisions, and various ways of accommodating the two sets of rules. In this respect, the CTE held two informal sessions with a number of Secretariats of multilateral environmental agreements relevant to its work, in order to inform WTO Members on the latest developments in these instruments and help them to better understand the relationship between the environmental agenda and the trade agenda. On *item 7,* discussions continued on the possible modalities of a notification scheme for DPGs. As to *item 8,* CTE Members examined the various aspects of the relationship between the Convention on Biological Diversity and the TRIPS Agreement; they also exchanged views on the effects of the TRIPS Agreement on technology transfer, in particular environmentally-sound technology.

73. With respect to *item 9,* Members exchanged views on the possible benefits for both trade and the environment of liberalizing environmental services. Options for increasing the transparency of the CTE's work and for improving relations with civil society were examined under *item 10.*

74. The CTE has currently granted observer status to twenty intergovernmental organizations, i.e. those which had been granted observer status at the first meeting, as well as: African, Caribbean and Pacific Group of States (ACP Group), Convention on Biological Diversity (CBD), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), International Organization for Standardization (ISO), International Plant Genetic Resources Institute (IPGRI), Latin American Economic System (SELA), United Nations Industrial Development Organization (UNIDO), World Customs Organization (WCO), World Intellectual Property Organization (WIPO).[52]

75. In 1999, the first meeting of the CTE was held on 18 and 19 February and addressed the market access cluster. The next meetings will take place in June and October.

B. Environment-Related Provisions in WTO Agreements

76. The environment was not, as such, a subject of negotiations during the Uruguay Round. At the beginning of the eighties, the protection of the environment was not as high on the political agenda of governments and, except for the issue of domestically prohibited goods, no attempt was made to include the subject in the programme of negotiations. Environmental considerations were, nevertheless, not totally absent from the preoccupations of negotiators and are reflected in several WTO instruments. Environment is also proving to be a cross-cutting issue and questions related to environmental concerns have arisen in various WTO bodies, such as the General Council, the Committee on Technical Barriers to Trade, the Council for TRIPs and the Council for Trade in Services.

1. The Marrakesh Agreement Establishing the World Trade Organization

(a) The Preamble

77. The Agreement Establishing the World Trade Organization (the "WTO Agreement") envisages a single institutional framework for the multilateral trading system which encompasses the GATT 1947, as modified by the Uruguay Round, and other agreements and associated legal instruments resulting from the Uruguay Round. The first paragraph of the Preamble to the WTO Agreement includes, for the first time in the context of the multilateral trading system, reference to the objective of sustainable development and to the need to protect and preserve the environment. It states:

> *Recognizing* that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development, . . .

78. In the *Shrimp* case, the Appellate Body considered that the first preambular paragraph of the WTO Agreement is relevant for the interpretation of provisions contained in the various WTO agreements, such as GATT Article XX. By explicitly recognizing the "objective of sustainable development", the preamble shows that "the signatories to the Agreements were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy". The Appellate Body further noted that the language of the WTO preamble

> demonstrates a recognition by WTO negotiators that optimal use of the world's resources should be made in accordance with the objective of sustainable development. As this preambular language reflects the intentions of negotiators of the *WTO Agreement,* we believe that it must add colour, texture and shading to our interpretation of the agreements annexed to the *WTO Agreement,* in this case the GATT 1994.[53]

(b) Arrangements with non-governmental organizations (NGOs)

79. Article V:2 of the Marrakesh Agreement Establishing the World Trade Organization enables the General Council to "make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO". Pursuant to this provision, the General Council adopted, on 18 July 1996, a decision entitled "Guidelines for arrangements on relations with non-governmental organizations", where Members recognize the rôle NGOs can play in increasing the awareness of the public in respect of WTO activities and agree to improve transparency and develop communication with NGOs. Members also agree to ensure that more information about WTO activities is made available, in particular by derestricting documents more promptly than in the past, and direct the Secretariat to play a more active rôle in its direct contacts with NGOs, for instance by organizing symposia on specific WTO-related issues. Pointing to the "special character of the WTO, which is both a legally binding intergovernmental treaty of rights and obligations among its Members and a forum for negotiations", the General Council states that "there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings"

and notes that the primary responsibility for interacting with NGOs lies at the national level.[54]

80. At the same time, the General Council adopted new rules to facilitate the derestriction of WTO documents. It agreed that working documents, background notes by the Secretariat and minutes of meetings of all WTO bodies shall be considered for derestriction six months after the date of their circulation. Notwithstanding the six months rule, any Member may, at the time it submits any document for circulation to WTO Members, indicate to the Secretariat that the document be issued as unrestricted. Panel and Appellate Body reports are derestricted at the same time they are circulated to WTO Members.[55]

81. These decisions apply to all WTO bodies but are particularly relevant for the work of the CTE and other environment-related issues in the WTO, which have generally attracted most of the public attention.

2. The General Agreement on Tariffs and Trade

82. Article XX of the GATT allows a government to depart, under certain conditions, from its obligations under the Agreement. The relevant part of Article XX reads as follows:

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
>
> *(b)* necessary to protect human, animal or plant life or health;
>
> *(g)* relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

83. During the Uruguay Round, at the last formal meeting of the Negotiating Group on GATT Articles, Austria proposed that Article XX should be amended by adding the term "environment" in paragraph (b) in order to appropriately reflect the increasingly important relationship between trade and the environment. Austria noted that "[t]he inclusion of the notion [of environment] in Article XX(b) might just be one possibility worth exploring" but recognized it was too late to start

working on it in the Negotiating Group. No effect was given to this proposal.[56]

84. GATT/WTO panels and the Appellate Body have examined Article XX in various disputes which are presented in Section IV of this Note.[57]

3. The Agreement on Technical Barriers to Trade

(a) Main features of the Agreement

85. The WTO Agreement on Technical Barriers to Trade ("TBT Agreement"), which governs the preparation, adoption and application of product technical requirements, and of procedures used for the assessment of compliance with them, was finalized during the Uruguay Round. It builds upon and strengthens the 1979 Standards Code that was negotiated during the Tokyo Round. This Agreement is particularly relevant for the trade aspects of environmental policy-making.

86. The TBT Agreement divides product technical requirements into two categories, technical regulations and standards. The main distinction which the Agreement establishes between the two is that compliance with the former is mandatory, while compliance with the latter is voluntary. The Agreement recognizes that countries should not be prevented from taking measures necessary to pursue various policy purposes, such as the protection of public health or the environment, and that each country has the right to set the level of protection it deems appropriate. Governments are, however, required to apply technical regulations and standards in a non-discriminatory way (which means meeting the requirements of the most-favoured-nation and national treatments). Governments must also ensure that technical regulations and standards do not create unnecessary obstacles to trade. This means that mandatory technical regulations must not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks non-fulfilment of that legitimate objective would create. In an illustrative list of legitimate objectives, the Agreement mentions national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or the environment.

87. The Agreement encourages—but does not require—countries to use international standards whenever possible, in order to limit the proliferation of different domestic technical requirements. When a WTO

Member considers that the relevant international standard would not appropriately fulfil the objective pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems, this Member can use the technical regulation or standard which suits its needs.

88. One of the key features of the TBT Agreement is that it provides a high degree of transparency, which allows economic operators to adjust to technical requirements in export markets. Notification obligations include, *inter alia,* notifying draft technical regulations, conformity assessment procedures and standards, and providing other Members with sufficient time to comment on them, and notifying more generally the domestic measures taken to implement the provisions of the TBT Agreement. Notification requirements are complemented by the establishment of national "enquiry points" which provide, on request, further information about technical regulations, standards and conformity assessment procedures. Regular meetings of the TBT Committee further contribute to ensuring the transparent implementation of the Agreement.

89. In the WTO, the majority of trade-related environmental measures have been notified under the TBT Agreement. Since the entry into force of the Agreement, on 1 January 1995, about 2300 notifications have been received, of which some 11 per cent are environment-related. In this category, we find measures for pollution abatement, waste management, energy conservation; standards and labelling (including eco-labels); handling requirements; economic instruments and regulations; measures for the preservation of natural resources, and measures taken for the implementation of multilateral environmental agreements.[58]

90. Finally, the TBT Agreement provides that a panel called to examine a dispute between Members may establish, at its own initiative or at the request of a party to the dispute, a technical expert group. Participation in such a group will include persons of professional standing and experience in the field of question.

(b) Eco-labelling in the TBT Committee

91. Eco-labelling is the main environment-related issue which has been raised in the TBT Committee where discussions took place in parallel with those held on the same subject in the CTE. The two Committees held a joint informal meeting on this subject matter.

92. The issues raised in the TBT Committee with respect to eco-labelling are generally similar to those discussed in the CTE.[59] They include the applicability of the TBT Code of Good Practice to voluntary eco-labelling programmes, the extent to which eco-labelling programmes based on non-product related processes and production methods (PPMs) are covered by the TBT Agreement, the effects of eco-labelling programmes on international trade, and questions linked to the implementation and management of those programmes (selection of criteria, transparency, etc). As in the CTE, no conclusion has been reached on these issues, which are, therefore, still open.

93. At the first triennial review of the TBT Agreement, in 1997, the Committee agreed on some measures which should be taken to improve the transparency of, and compliance with, the Code of Good Practice. Among those measures, it was agreed that "without prejudice to the views of Members concerning the coverage and application of the Agreement, the obligation to publish notices of draft standards containing voluntary labelling requirements under paragraph L of the Code is not dependent upon the kind of information provided on the label." [60] This statement is directly relevant to eco-labelling programmes.

4. The Agreement on Sanitary and Phytosanitary Measures

94. The Agreement on Sanitary and Phytosanitary Measures ("SPS Agreement") was negotiated during the Uruguay Round. Before its entry into force, national food safety, animal and plant health measures affecting trade were subject to GATT rules, such as Article I (most-favoured-nation treatment), Article III (national treatment) and Article XX (general exceptions). The 1979 Agreement on Technical Barriers to Trade also covered technical requirements resulting from food safety and animal and plant health measures. However, it was considered that these provisions did not adequately address the potential problems posed by SPS measures.

95. Governments enforce sanitary and phytosanitary measures to ensure that food is free from risks arising from additives, contaminants, toxins or disease-causing organisms, to prevent the spread of plant-, animal- or other disease-causing organisms; and to prevent or control pests. They are applied to domestically produced food or local animal and plant diseases, as well as to products coming from other countries.

The SPS Agreement recognizes the legitimate right of governments to maintain the level of health protection they deem appropriate but ensures at the same time that this right is not abused and does not result in unnecessary barriers to international trade.

96. Governments are encouraged to harmonize their SPS requirements, i.e. to base them on international standards, guidelines or recommendations developed by international organizations, such as the joint FAO/WHO Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention. Governments are, nevertheless, entitled to set more stringent national standards in case the relevant international norms do not suit their needs; however, the SPS measures must be based on a scientific justification or on an assessment of the risks to human, animal or plant life or health. The procedures and decisions used by a country in a risk assessment will be made available upon request by other countries. The Agreement explicitly recognizes the right of governments to take precautionary provisional measures when scientific evidence is lacking, while seeking further information.

97. SPS measures must be applied in a non-discriminatory manner, although adapted to the health situations of both the area from which a product comes and the area to which it is destined. When governments have at their disposal various alternative measures, which are economically and technically feasible, they should choose measures which are not more trade restrictive than necessary to achieve the desired level of protection.

98. In order to increase transparency of SPS measures, governments are required to notify other countries of those measures which restrict trade and to set up so-called "enquiry points" to respond to requests for more information. The SPS Committee provides WTO Members with a forum to exchange information on all aspects of the implementation of the SPS Agreement, review compliance with it and maintain cooperation with the appropriate technical organizations. When a trade dispute arising over the use of a SPS measure involves scientific or technical issues, the Agreement stipulates that the panel should seek advice from experts.

5. The Agreement on Agriculture

99. In general, reducing domestic supports and export subsidies should lead to less intensive and more sustainable production with

reduced use of agricultural inputs like pesticides and fertilisers, leading to improvements in the environment.

100. The Agreement on Agriculture provides for the long-term reform of trade in agricultural products and domestic policies. It increases market orientation in agricultural trade by providing for commitments in the areas of market access, domestic support and export competition. A significant aspect of the Agreement is the commitment to reduce domestic support for agricultural production, particularly in the form of production-linked agricultural subsidies.

101. Protection of the environment is an integral part of the Agreement on Agriculture. The sixth paragraph of the preamble states that commitments made under the reform programme should have regard for the environment while Article 20 requires that the negotiations on the continuation of the reform programme take account of non-trade concerns, which includes the environment.

102. More specifically, Annex 2 of the Agreement, which lists the different types of subsidies which are not subject to reduction commitments, covers a number of different types of measures relevant to the environment. These include direct payments to producers and government service programmes for research and infrastructural works under environmental programmes. Eligibility for the direct payments must be based on clearly-defined government environmental or conservation programmes and the amount of payments are limited to the extra costs or loss of income involved in complying with the programme.

103. It should be noted that Members are free to introduce new, or amend existing, Annex 2 measures subject only to the general requirement that they have no, or at most minimal, trade-distorting effect and that they come under publicly funded government programmes.

6. The Agreement on Subsidies and Countervailing Measures

104. The Agreement on Subsidies and Countervailing Measures ("SCM Agreement") identifies three categories of subsidies, depending on their effect on international trade, and provides for different types of remedy for each category: (i) prohibited subsidies are subject to an accelerated dispute settlement procedure and a Member found to grant or maintain such a subsidy must withdraw it without delay; (ii) actionable subsidies, i.e. subsidies other than prohibited and non-actionable subsidies, can in

principle be granted or maintained, but may be challenged in WTO dispute settlement or subject to countervailing action if they cause adverse effects to the interests of other Members; (iii) non-actionable subsidies (i.e. non-specific subsidies and defined specific subsidies) are not subject to countervailing action nor to dispute settlement challenge.

105. Subsidies to promote adaptation of existing facilities to new environmental requirements fall into the third category. Subject to certain conditions, up to 20 per cent of the cost of adaptation would be considered a non-actionable subsidy.

7. *The Agreement on Trade-Related Aspects of Intellectual Property Rights*

106. The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") provides a common set of rules for the protection and enforcement of intellectual property rights. Article 27 of the TRIPS Agreement defines "patentable subject matter". Specific reference to the environment is made in Article 27.2 which allows Members to exclude from patentability inventions, the prevention of whose commercial exploitation within their territory is necessary to protect, *inter alia,* human, animal or plant life or health or to avoid serious prejudice to the environment. Paragraph 3 of Article 27 further provides that Members may exclude from patentability plants and animals other than micro-organisms, as well as essentially biological processes, other than microbiological processes, for the production of plants or animals. Members must, however, provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by a combination thereof.

107. Article 27.3(b) of the TRIPS Agreement will be reviewed in 1999. In this context, the TRIPS Council agreed, at its December 1998 meeting, that, in order to initiate the review, those Members which are already under an obligation to apply Article 27.3[61] shall provide, by 1 February 1999, information on how the matters addressed in this provision are presently treated in their national law; other Members are invited to provide this information on a best endeavour basis. An illustrative list of questions to be drawn up by the Secretariat will help Members in preparing their contributions. The Secretariat will also contact the FAO, the Secretariat of the Convention on Biological Diver-

sity and UPOV [Union for the Protection of New Varieties of Plants] to request factual information on their activities of relevance.

8. The General Agreement on Trade in Services

(a) Article XIV of the GATS

108. The General Agreement on Trade in Services ("GATS") contains in Article XIV a general exceptions clause which is modelled on Article XX of the GATT. The chapeau of that provision is basically identical to that of GATT Article XX and environmental concerns are addressed in a paragraph (b) which is similar to paragraph (b) of Article XX.

109. Anticipating interpretative questions regarding the scope of Article XIV of the GATS, the Council for Trade in Services adopted at its first meeting a Ministerial Decision on Trade in Services. The Decision acknowledges that measures necessary to protect the environment may conflict with the provisions of the Agreement and notes that it is not clear that there is a need to provide for more than is contained in Article XIV(b). In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, the Council for Trade in Services consequently decided to request the Committee on Trade and Environment "to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Committee shall also examine the relevance of intergovernmental agreements on the environment and their relationship to the Agreement".[62]

110. Discussion to date in the CTE on this item has not led to the identification of any environmental measure applied to services trade that would not be covered adequately by GATS provisions, in particular Article XIV(b). This item remains under examination in the CTE and WTO Members are invited to submit any relevant information in that regard.[63]

(b) Environmental services[64]

111. The Services Sectoral Classification List annexed to the GATS was developed during the Uruguay Round[65] and was largely based on the United Nations Central Product Classification (CPC) system. The environmental services sector contained in the List includes four categories:

—A. Sewage services (CPC 9401)
—B. Refuse disposal services (CPC 9402)
—C. Sanitation and similar services (CPC 9403)
—D. Other

112. The fourth category ("other") can be understood to include the environmental services of the CPC which are not specifically referred to in the List, i.e. cleaning of exhaust gases (CPC 9404); noise abatement services (CPC 9405); nature and landscape protection services (CPC 9406) and other environmental protection services (9409). In discussing environmental services in GATS Council, some WTO Members suggested that it may be necessary to rethink the existing classification contained in the Services Sectoral Classification List.[66]

113. So far, some fifty WTO Members (counting the EC Member States individually) have made commitments under at least one of the four sub-sectors. The number of commitments is nearly equal for each of the individual four sub-sectors. Limitations on market access and national treatment with respect to the four modes of supply must however be kept in mind in order to assess the liberalizing content of those commitments. It must also be kept in mind that other services sectors may be directly relevant for the environment (research, engineering, construction, etc.).

114. In 1998, the Council for Trade in Services initiated an exchange of information exercise on various services sectors, the purpose of which was to facilitate the access of all Members, in particular developing country Members, to information regarding laws, regulations and administrative guidelines and policies affecting trade in services. The sectoral discussions focused in particular on the manner in which the services in question are traded and regulated, in order to enable Members to identify negotiating issues and priorities, in preparation for the further negotiations foreseen in Article XIX (Negotiation of Specific Commitments) of the GATS.

115. In discussing trade liberalization in environmental services, delegations noted that the environmental industry was playing a significant role in their economies and that trade in the area was growing from previously low levels; however, only a limited number of Members had made commitments in this sector. Members also described their own

regimes, stressing liberalizing trends. Nevertheless, public sector production and public procurement remain important in this sector. They also pointed to different types of market access restrictions, such as discriminatory taxes, subsidies and non-recognition of foreign qualification, restrictions on trade in complementary sectors like construction, inadequate protection of intellectual property rights, restrictions on investment and movement of natural persons. The characteristics of regulatory mechanisms, including environmental regulations, and their effects on trade in environmental services were also addressed.[67]

9. The Understanding on Rules and Procedures Governing the Settlement of Disputes

(a) Expert advice and public disclosure of submissions

116. The Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") lays down detailed procedures WTO Members have to follow to settle trade disputes arising out of the implementation of any WTO agreement.

117. The DSU provides that, in its examination of the case, a panel may seek information and technical advice from any individual or body which it deems appropriate. Panels may seek information from any relevant source and may consult individual experts, or a group of experts, on certain aspects of the matter under dispute. This possibility was used, for instance, by the panel in the *Shrimp* case to consult biologists and fishery experts on certain questions related to sea turtle biology and conservation.[68]

118. Documents submitted to a panel in the course of dispute settlement proceedings are in principle confidential. Nothing in the DSU, however, precludes a party to a dispute from disclosing statements of its own position to the public. Moreover, in order to increase transparency, a party to a dispute which submits a confidential submission to the panel must, upon request of another Member to the dispute, provide a non-confidential summary of this text that could be disclosed to the public.

(b) Panel proceedings and non-requested information

119. In the *Shrimp* case, the Appellate Body had to decide whether the right to seek information under Article 13 of the DSU included the right for a panel to accept non-requested information from non-governmental sources. In the first instance, the Panel, which had received

two *amicus briefs* from two non-governmental organizations, had considered that accepting non-requested information from non-governmental sources would be incompatible with the provisions of the DSU as currently applied.[69] The Panel, however, gave the parties to the dispute the opportunity to endorse the *amicus briefs,* or part of them, as part of their own submissions.

120. The Appellate Body disagreed with the interpretation given by the Panel to Article 13. It considered that the DSU accords a panel "ample and extensive authority to undertake and to control the process by which it informs itself both of the relevant facts of the dispute and of the legal norms and principles applicable to such facts." The Appellate Body reproached the Panel for reading the word "seek" in too literal a manner, and specified

> [i]n the present context, authority to *seek* information is not properly equated with a *prohibition* on accepting information which has been submitted without having been requested by a panel. A panel has the discretionary authority either to accept and consider or to reject information and advice submitted to it, *whether requested by a panel or not.* The fact that a panel may *motu proprio* have initiated the request for information does not, by itself, bind the panel to accept and consider the information which is actually submitted. The amplitude of the authority vested in panels to shape the processes of fact-finding and legal interpretation make [*sic*] clear that a panel will *not* be deluged, as it were, with non-requested material, *unless that panel allows itself to be so deluged.*[70]

121. The Appellate Body nevertheless considered that the actual disposition of the briefs by the panel in this case (i.e. giving the parties to the dispute the possibility to endorse them as part of their own submissions) did not constitute either legal error or abuse of the Panel's discretionary authority.[71]

IV. SECRETARIAT'S ACTIVITIES

A. Trade and Environment Bulletins

122. Since April 1993, the Secretariat regularly issues the *Trade and Environment Bulletin.* So far, more than thirty bulletins have kept readers regularly informed about the work of the EMIT Group, the SCTE and

the CTE. The Bulletins have also provided information on GATT/WTO's follow-up to the UN Conference on Environment and Development, environmental issues emerging from the Uruguay Round, environment-related trade disputes and any other relevant news. These publications aim at facilitating public understanding and awareness of the trade and environment policy agenda.

123. The *Trade and Environment Bulletin* is available on request at the Information and Media Relations Division of the WTO, or can be consulted on the WTO homepage at http://www.wto.org.

B. Symposia with Non-Governmental Organizations

124. Since 1994, the WTO Secretariat has organized yearly (with the exception of 1995) a Symposium on Trade, Environment and Sustainable Development. These symposia, which are held under the Secretariat's own responsibility, are generally attended by participants representing environment, development, consumer NGOs, industry interests, academics, as well as WTO Member governments. Voluntary financial assistance provided by some WTO Member countries or by private institutions has facilitated the participation of developing country NGOs.

125. The main objectives of the symposia are to keep civil society informed of the work underway in GATT/WTO on trade and environment, and to allow experts in the field to examine and debate the inter-linkages between trade, environment and sustainable development. The symposia were all organized on the same pattern: presentations from invited panellists on specific topics were followed by an informal debate among all participants. Various themes, covering the different facets of the trade and environment relationship, were on the agenda of each symposium, for instance, the synergies between trade liberalization and the environment, the relationship between multilateral environmental instruments and the WTO, the work of the CTE, WTO relations with civil society, etc. No attempt was made to summarize views or to identify consensus positions.

C. New Initiatives Taken by the Director-General

126. The WTO Secretariat receives every day a large number of requests for information from NGOs, including environmental organizations,

which are promptly responded to. Moreover, the Secretariat staff meets with NGOs on a regular basis—both individually or as part of organized events.

127. During the General Council on 15 July 1998, the Director-General informed Members of certain new steps he was taking to enhance the transparency of the WTO and improve the dialogue with civil society. These initiatives were implemented by October 1998. They include (i) regular briefings by the Secretariat on WTO activities, along the lines of the briefings already offered to the media, but tailored to the particular interests and perspectives of the NGO community; (ii) the creation of a NGO section on the WTO web site, containing information of particular interest to civil society;[72] (iii) a monthly list of NGO position papers received by the Secretariat is circulated for the information of Members who can receive them upon request; (iv) the Director-General has initiated a process of regular informal meetings with different NGO representatives, with the goal of improving and enhancing mutual understanding.

D. Trade and Environment Regional Seminars

128. In 1998 and early 1999, the Secretariat held six regional seminars on trade and environment for government officials from developing and least-developed countries, and economies in transition. These seminars were organized in the Asia/Pacific region, the Caribbean, South America, Central Europe and Central Asia, and Africa (French-speaking and English-speaking). A seventh seminar will be held for the Middle East in the spring.

129. The objective of those seminars is to raise awareness on the links between trade, environment and sustainable development, and to enhance the dialogue between trade and environment policymakers. Participating countries were represented by officials from Ministries of either Trade or Foreign Affairs (whichever is responsible for WTO matters) and from Ministries of Environment.

130. Presentations made by WTO Secretariat officials during three days addressed the various aspects of the trade and environment interrelationship, the relevant rules of the WTO, as well as specific concerns arising in each region.

131. These seminars were funded by the governments of Hong Kong, China; the Netherlands; and Norway.

Notes

1. This document was prepared by the World Trade Organization Secretariat to provide participants to the High Level Symposium on Trade and Environment held in March 1999 with an overview of the various environment-related activities in GATT 1947 and in the WTO. Prepared under the Secretariat's own responsibility, this Note is not meant to reflect WTO members' views or to interpret WTO agreements.
2. Doc. L/3538.
3. Doc. C/M/73.
4. Ibid.
5. Doc. C/M/74.
6. Ibid.
7. Doc. C/M/75.
8. Austria, Finland, Iceland, Norway, Sweden, Switzerland.
9. Doc. MTN.TNC/W/47, 3 December 1990.
10. Doc. SR.46/2.
11. GATT Council meeting of 6 February 1991, Doc. C/M/247. The issue was also on the agenda of the 12 March 1991 Council meeting, Doc. C/M/248.
12. GATT Council meeting of 6 February 1991, Doc. C/M/247.
13. Council meeting of 24 April 1991, Doc. C/M/249, 22 May 1991.
14. *Outline of Points for Structured Debate on Environmental Measures and Trade,* Doc. Spec (91) 21, 29 April 1991.
15. The structured debate took place during the Council meeting of 29–30 May 1991. A summary of the interventions made during the meeting is contained in C/M/250. The statements have been issued *in extenso* in the series Spec (91) 27 to Spec (91) 56.
16. Communication by Malaysia on behalf of the ASEAN contracting parties (Indonesia, Singapore, Thailand, and the Philippines), Doc. L/6859, 29 May 1991.
17. Council meeting of 11 July 1991, Doc. C/M/251.
18. Council meeting of 8 October 1991, Doc. C/M/252, 4 November 1991.
19. Council meeting of 12 November 1991, Doc. C/M/253.
20. For an account of the debates held under each agenda item, see the reports of the meetings, contained in the series TRE/1 to TRE/14. See also the Report of the Chairman to the 48th and 49th Sessions of the CONTRACTING PARTIES, respectively contained in Docs. SR.48/2, point 6(b), 5 January 1993, and L/7402, 2 February 1994.
21. *Report by Ambassador H. Ukawa (Japan), Chairman of the Group on Environmental Measures and International Trade, to the 49th Session of the CONTRACTING PARTIES,* L/7402, 2 February 1994. This document provides a detailed summary of the debate under each of the three agenda items.

22. *Trade and Environment,* Factual Note by the Secretariat, L/6896, 18 September 1991.
23. GATT, *International Trade 90-91,* vol. I, pp. 19–47.
24. Council meeting of 14 July 1992, Doc. C/M/258.
25. Forty-Eighth Session of the CONTRACTING PARTIES, 2 December 1992, SR.48/1. See also Docs. C/M/259 and C/M/260.
26. Reports of the EMIT Group discussions on the UNCED follow-up can be found in TRE/12, 30 July 1993, TRE/13, 21 October 1993, TRE/14, 17 February 1994, + TRE/14/Corr. 1 and in the *Report by Ambassador H. Ukawa (Japan), Chairman of the Group on Environmental Measures and International Trade, to the 49th Session of the CONTRACTING PARTIES,* L/7402, 2 February 1994.
27. Council meeting of 22 February 1994, Doc. C/M/269.
28. This section is based on two background notes by the Secretariat: *Trade and Environment,* L/6896, 18 September 1991, and *Exports of Domestically Prohibited Goods,* PC/SCTE/W/7, 22 December 1994.
29. Ministerial Declaration, adopted 28 November 1982, BISD 29S/9.
30. L/5907, 22 November 1985.
31. Ministerial Declaration on the Uruguay Round, Declaration of 20 September 1986, BISD 33S/30.
32. MTN.TNC/8(MIN), 17 January 1988, pp. 11–12.
33. L/6553, 21 July 1989.
34. Ibid.
35. The minutes of the meetings of the Working Group are contained in Docs. Spec (89) 48 and 52; Spec (90) 3, 12, 20, 27, 36, and 39; and Spec (91) 3, 4, 23, 60, and 62.
36. *Technical Note on Domestically Prohibited Goods,* Communication by Cameroon, Côte d'Ivoire, Nigeria, Sri Lanka, and Zaire, MTN.GNG/W/18, 17 November 1998; *Outline of a Possible GATT Framework of Rules in the Area of Domestically Prohibited Goods and Other Hazardous Substances,* Communication by Nigeria and Cameroon, DPG/W/8, 30 March 1990; *Understanding on Trade in Domestically Prohibited Goods and Other Hazardous Substances,* Communication by the European Community, DPG/W/9, 12 April 1990.
37. L/8672, 2 July 1991.
38. MTN.TNC/W/123, 13 December 1993.
39. MTN.TNC/45(MIN), 6 May 1994.
40. See the Ministerial Decision on Trade and Environment (14 April 1994) taken on the occasion of signing the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations at Marrakesh on 15 April 1994.
41. See Docs. PC/SCTE/M/1 to PC/SCTE/M/5. See also Doc. PC/R, 31 December 1994.
42. See document series WT/CTE/M/1 to 13.
43. *Results of the Stocktaking Exercise,* adopted at the 28–29 May 1996 Meeting, WT/CTE/W/33, 4 June 1996.
44. Ibid.
45. *Report of the Meetings Held on 30 October and 6–8 November 1996,* Doc. WT/CTE/M/13, 22 November 1996.
46. Meeting of the General Council held on 7, 8 and 13 November 1996, WT/GC/M/16, 6 December 1996.

47. *Report (1996) of the Committee on Trade and Environment,* WT/CTE/1, 12 November 1996, Section III of the Report (Conclusions and Recommendations).
48. *Singapore Ministerial Declaration,* adopted on 13 December 1996, WT/MIN(96)/DEC, 18 December 1996, para. 16.
49. WT/CTE/M/14 to WT/CTE/M/18 and PRESS/TE 018 to 027.
50. WT/CTE/W/77, 9 March 1998, and WT/CTE/W/78, 9 March 1998.
51. *Environmental Benefits of Removing Trade Restrictions and Distortions,* Note by the Secretariat, WT/CTE/W/67, 7 November 1997.
52. Document WT/CTE/W/41/Rev.3, 2 December 1998.
53. *United States–Import Prohibition of Certain Shrimp and Shrimp Products,* Appellate Body Report, WT/DS58/AB/R, circulated on 12 October 1998, in particular paras. 129 and 152.
54. *Guidelines for Arrangements on Relations with Non-Governmental Organizations,* WT/L/162, 23 July 1996.
55. *Procedure for the Circulation and Derestriction of WTO Documents,* WT/L/160/Rev.1, 26 July 1996.
56. Paragraph (b) of Article XX, as amended by the Austrian proposal, would read: "necessary to protect the environment, human, animal or plant life or health". MTN.GNG/NG7/W/75, 1 November 1990.
57. For a more detailed account of the dispute settlement practice which has built on this provision, see also Doc. WT/CTE/W/53/Rev.1, 26 October 1998 + Corr.1, 27 November 1998.
58. For more details on this subject, see *Item 4: Provisions of the Multilateral Trading System with Respect to the Transparency of Trade Measures Used for Environmental Purposes and Environmental Measures and Requirements Which Have Significant Trade Effects,* Note by the Secretariat, WT/CTE/W/77, 9 March 1998.
59. *Communication from Canada,* G/TBT/W/9, 5 July 1995; *Negotiating History of the Coverage of the Agreement on Technical Barriers to Trade with Regard to Labelling Requirements, Voluntary Standards, and Processes and Production Methods Unrelated to Product Characteristics,* G/TBT/W/11—WT/CTE/W/10, 29 August 1995; *US Proposal Regarding Further Work on Transparency of Eco-Labelling,* G/TBT/W/29, 18 June 1996; *Draft Decision on Eco-Labelling,* G/TBT/W/30—WT/CTE/W/38, 24 July 1996; *Environmental Labels and Market Access: Case Study on the Colombian Flower-Growing Industry—Document from Colombia,* G/TBT/W/60, 9 March 1998; *Forests: A National Experience—Contribution by Canada,* G/TBT/W/61—WT/CTE/W/81, 11 March 1998. See also G/TBT/M/2, 4 October 1995, G/TBT/M/3, 5 January 1996, G/TBT/M/4, 10 June 1996, G/TBT/M/5, 19 September 1996, G/TBT/M/11, 27 May 1998.
60. *First Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade,* G/TBT/5, 19 November 1998.
61. These are developed countries other than some with economies in transition, as well as developing and transition economy countries which joined the WTO after 1 January 1995.
62. S/L/4, 4 April 1995.
63. See *Report (1996) of the Committee on Trade and Environment,* WT/CTE/1, 12 November 1996, paras. 210–211.

64. For more details, see *Environmental Benefits of Removing Trade Restrictions and Distortions,* Note by the Secretariat, WT/CTE/W/67/Add.1, 13 March 1998, and *Environmental Services,* Background Note by the Secretariat, S/C/W/46, 6 July 1998.
65. MTN.GNS/W/120.
66. Council for Trade in Services, *Report of the Meeting Held on 22 and 23 July 1998,* Note by the Secretariat, S/C/M/29, 24 August 1998.
67. Council for Trade in Services, *Report of the Meeting Held on 22 and 23 July 1998,* Note by the Secretariat, S/C/M/29, 24 August 1998.
68. Panel Report on *United States–Import Prohibition of Certain Shrimp and Shrimp Products,* WT/DS58/R, circulated on 15 May 1998.
69. Ibid., para. 7.8.
70. Appellate Body Report on *United States–Import Prohibition of Certain Shrimp and Shrimp Products,* WT/DS58/AB/R, circulated on 12 October 1998, paras. 106–107 (emphasis in the text).
71. Ibid., para. 109.
72. This section is at <http://www.wto.org/wto/ngo/contact.htm>

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