Sub-Regional Workshop on Environmental requirements, Market access/entry and Export Competitiveness of Electrical and Electronic Products from China, Philippines and Thailand

Project on Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues

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Environmental/Health Requirements, Market Access and Export Competitiveness – What is the Problem for Developing Countries and what can be the Answers?

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1. Introduction

Since the early 1990s, UNCTAD has consistently undertaken analytical work on examining the relationship between environmental and health requirements[3] in developed country markets and their effects on market access and market entry[4] of developing country exports. Under the joint UNCTAD/UNDP project on Reconciling Trade and Environment, a series of country case studies on trade and environment linkages were carried out (1993-1996) by local research institutes in developing countries.[5] UNCTAD/UNDP country projects in India and Viet Nam also addressed the trade and competitiveness effects of environmental requirements in international markets, as have a number of interregional projects, such as the recently concluded project on Standards and Trade.[6]

Issues related to the implications of environmental requirements for market access and trading opportunities for environmentally preferable products (EPPs) also played an important role in the project on *Strengthening Research and Policy-Making Capacity on Trade and Environment in Developing Countries*, funded by the UK Department for International Development (DFID), which was implemented between June 1999 and April

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[3] Although environmental and health requirements are differently treated in the WTO context and at national level in many countries, in practice it is often difficult to distinguish them. For example, what appears as a health or food safety issue for a consumer (e.g. excessive use of agro-chemicals), is a health and environmental issue for the producer.

[4] The possibility of *entering* foreign markets depends on market access conditions (determined by legal, administrative and technical, including health/environmental conditions imposed by the importing countries under internationally agreed trade rules), the ability to *enter* a market is a function both of the competitiveness of the exporter (determined by the relative cost and quality of the product), and the characteristics of supply chains and the structure of markets. It is important to make a conceptual distinction between competitiveness, on the one hand, and market access and entry, on the other; while the exporting side can do a lot *by itself* to improve its competitiveness, market access conditions, market exigencies (including voluntary environmental requirements or codes) and the characteristics of supply chains are to a large extent exogenous to developing-country exporters, which are often small and wield little power. Thus, market access would be a pre-requisite for market entry to occur, but would not be sufficient; developing country exporters (especially those from LDCs), as well as their Governments, need to go beyond market access concerns and also focus upon the conditions governing actual market entry. For more information, see: UNCTAD, Market entry conditions affecting competitiveness and export of goods and services of developing countries: large distribution networks, taking into account the special needs of LDCs (TD/B/COM.1/EM.23/2), accessible at: www.unctad.org//Templates/meeting.asp?intItemID=2286&lang=1&m= 6036&info=doc

[5] Veena Jha, Anil Markandya and René Vossenaar, *Reconciling Trade and the Environment: Lessons from Case Studies in Developing Countries*, Edward Elgar, Cheltenham (United Kingdom), Northampton (United States), 1999.

[6] Studies were undertaken in three developing regions, i.e. South Asia, Eastern and Southern Africa and Central America. A workshop on the key findings of all sector-specific case studies was held in Geneva on 16 and 17 May 2002. Papers and presentations are available on: http://www.unctad.org/trade_env/ The papers and other results of the project will be published by Edward Elgar and IDRC (forthcoming).

2001 by UNCTAD and the Foundation for International Environmental Law and Development (FIELD). The project included a number of sector-specific country-case studies on environmental/health requirements and market access and resulted in a book on *trading opportunities for organic food products from developing countries* (forthcoming), which contains papers on standards and other issues prepared by experts from Cuba, Costa Rica, the Philippines, the United Republic of Tanzania and Uganda as well as from the UNCTAD secretariat.[7]

Currently, UNCTAD is implementing the project on "Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues" that assists beneficiary developing countries in national policy-making and co-ordination as well as in their participation in the Doha work programme on trade and environment issues, with special focus on the interface between environmental requirements, market access/entry and export competitiveness. Activities under the Asian cluster center on (i) improving the management of gathering and dissemination of information on new environmental requirements in key export markets, and (ii) contributing to building institutional capacity on designing and implementing effective pro-active adjustment strategies, both at national and sub-regional level, to (a) assess the potential impact of environmental measures taken by developed countries; (b) reduce adjustment costs and harness developmental benefits of higher environmental requirements, including for improving export competitiveness; and (c) become much more active in pre-standard setting consultations in key export markets. Case studies are being carried out in a number of countries, focusing on electronics (China, Philippines and Thailand); horticulture (Bangladesh, Cambodia, China, Philippines, Viet Nam); and leather and footwear (Bangladesh, Cambodia, China, Philippines, Thailand and Viet Nam).[8] The Central American cluster of the project (involving Costa Rica, Cuba, Dominican Republic, Guatemala, Honduras, Nicaragua, and Panama) covers a small number of agricultural products, with a focus on voluntary standards and certification issues.

UNCTAD also held an Expert Meeting on Environmental Requirements and International Trade (Geneva, 2-4 October 2002). The discussion confirmed that many developing countries are adopting pro-active strategies with a view to strengthening the capacities of producers to respond to health and environmental requirements. In fact several developing countries expressed the need to convert their role from standard taking to standard setting, especially for products for which they are major producers and exporters.[9]

This article gives an overview of the key findings of the above outlined UNCTAD activities and makes some recommendations on follow-up activities.

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7 The papers of this project are accessible at http://www.unctad.org/trade_env/projects.

8 The conclusions of the sub-regional workshop on environmental requirements and market access for leather and footwear exports from Bangladesh, Cambodia, China, Philippines, Thailand and Vietnam, held at the end of November 2003 in Bangkok, accessible at www.unctad.org/trade_env/test1/meetings/bangkok5.htm

9 The report of the Expert Meeting is available as http://www.unctad.org/en/docs//c1em19d3_en.pdf. Subsequently, the Trade Commission of UNCTAD, in February 2003, reached agreed recommendations, based on the outcome of the Expert Meeting. The report of the Commission is accessible at http://www.unctad.org/en/docs/c1d58_en.pdf

2. Definition, Types and Trends of Environmental Requirements

Environmental characteristics of products and production processes are increasingly becoming a factor influencing product quality and international competitiveness. To be able to compete successfully in international markets, developing country producers must examine and, to the extent possible, anticipate developments in international markets for products of key export interest to them. They must also be able to meet health and environment-related regulations to gain market access. Where voluntary environmental (and sanitary) requirements have become an integral part of product quality, developing country producers need to be able to meet such requirements to realize customary market prices; meeting such requirements leads neither to price premiums nor to higher market shares. Thus, environmental requirements are increasingly seen as one of the key tools in the international competitiveness race. In the future, they need to be dealt with as an integral part of business strategies in companies and of economic strategies in developing countries (i.e., eco-positioning in addition to price, quality and brand positioning), to defend and expand international market shares.

Environmental requirements with potential effects on market access include standards (which are voluntary) and technical regulations (which are mandatory), labelling requirements (either mandatory or voluntary, such as eco-labelling), packaging regulations and certain sanitary and phytosanitary (SPS) measures.[10] Most of these require proof of compliance, i.e. through conformity assessment, including certification. In fact, an important "certification service sector" has emerged in many developed countries in recent years.[11]

Standards and regulations refer, for example, to product content (e.g. limit values for certain substances); banned substances; recycled content; energy efficiency and recyclability; degradability; and other product characteristics. Environmental product taxes and charges can be based on some characteristics of the product (e.g. on the sulphur content in mineral oil) or on the product itself (e.g. mineral oil). Take-back obligations are aimed at encouraging re-use and recycling, and related compliance costs may induce more environmentally conscious product development.

Although mandatory environmental requirements are important,[12] informal (non-government) requirements are far more numerous and, in some sectors, play a key role. Voluntary requirements include, for example, buyers' requirements, including supply-chain management by transnational corporations (TNCs) and supermarket chains, as well as actions by non-governmental organizations (NGOs).

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[10] In the context of the Environmental Database (EDB), the WTO secretariat has taken the view that only part of the SPS measures are directly related to the environment. Most measures for environmental protection are addressed by the TBT Agreement or Article XX of GATT.

[11] The activities of testing laboratories in the United States, which carry out conformity assessment evaluations, have been expanding by 13.5 per cent a year. See National Research Council, *Standards, Conformity Assessment, and Trade*, Washington D.C., National Academy Press, 1995.

[12] A recent study by the International Trade Centre (a joint body of UNCTAD and the WTO) found that no less than 4,000 of the 5,000 goods that are internationally traded and reflected in trade statistics are subject to mandatory environmental or health requirements part of regulation. Lionel Fontagné and Friedrich von Kirchback, A first assessment of environment-related trade barriers, International Trade Centre, Geneva, November 2001, accessible at: www.intracen.org/mas/pdfs/pubs/etb_english.pdf

Environmental requirements affecting international trade are also applied in the context of certain multilateral environmental agreements (MEAs), such as the Montreal Protocol, the Convention on Trade in Endangered Species or the Basel Convention. In the WTO context, such measures have been notified as import prohibitions, quantitative restrictions or non-automatic licensing.

As regards the trend in environmental requirements, such measures have become more frequent. According to the WTO Environmental Database (EDB), which contains information on governmental, environment-related measures or provisions notified under the TBT or SPS agreements, the share of environment-related notifications under the WTO Agreement on Technical Barriers to Trade increased from 10 per cent in the early 1990s to 15-16 per cent in recent years.[13]

Environmental (and health-related) requirements are also becoming more stringent and complex. For example, threshold limits for certain substances may become so tight that they are no longer detectable with equipment available in developing countries (some maximum residue levels are already expressed in parts per billion, rather than parts per million). Standards and regulations concerning maximum residue levels (MRLs) for pesticides[14] and other chemicals are an issue of concern to developing countries. An increasing number of hazardous substances are banned, for example in the food, textiles and electronics sectors. An example can be found in mercury regulations in the United States,[15] which have also influenced mercury programmes in Canada.[16] New legislation is also emerging concerning traceability. For example, EU legislation on the Common Organisation of the Markets in Fishery and Aquaculture Products, effective as of 1 January 2002, requires exporters of fish and fishery products to label consignments (or accompany them by a document) identifying the species name, production method and catch area.[17] Such requirements may be difficult to meet for developing countries, as these countries face major difficulties in implementing sophisticated traceability systems.

Meeting an increasing number of product-content-related standards and regulations often requires changes in processes and production methods. This concerns, for instance, thresholds for heavy metal or hazardous chemicals use or residues in products. In some cases, specific product characteristics, for instance mandatory recycling, are supplemented by product-

[13] WTO, WT/CTE/EDB/131/corr.1, June 2002. Environmental Database for 2001.

[14] European Commission Directive 2002/42/EC on fixing of maximum levels for pesticide residues (bentazone and pyridate) in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables, OJ L134, pp. 29-39, 17 May 2002, and Commission Directive 2002/63/EC on establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin, OJ L 187, pp. 30-43.

[15] Restrictions on mercury-containing products, once used sparingly by the federal government, are increasing rapidly at the state level. States are beginning to move beyond strictly health-based concerns associated with particular products, and are looking instead to the waste disposal problems associated with mercury-containing products and their impact on the environment. See United States Environmental Protection Agency, mercury website: http://www.epa.gov/mercury/index.html

[16] Under its Canada Wide Standards (CWS) programme, Canada has selected a number of products and industry sectors for targeted mercury reduction.

[17] Article 4 of Council Regulation (EC) 104/2000, OJ L17, 21.1.2000.

content requirements, for example the restriction of certain hazardous substances in the final product.[18]

There appears to be a move towards shifting emphasis from risk *management* to risk *minimization* or *avoidance*. In several countries, consumers and NGOs are increasingly pushing for zero-tolerance levels for environmental and health risks. For instance, besides producers of chemicals, anyone producing or importing metals, metal compounds and alloys in the European Union after 2005 will be required to provide the European authorities with a proper assessment of these materials, following the adoption of tougher chemicals safety rules in 2001. These imply a reversal of the burden of proof, requiring industry (producers, users and importers) to test, assess and take responsibility for risk management of all chemicals on the European market in order to ensure their safe use.[19]

Increasing emphasis is now also being placed on promoting *integrated product policies* and *producer responsibility*,[20] based on instruments such as take-back obligations; non-regulatory measures, including information-based instruments and self-regulation; and life-cycle analysis. Such policies are being implemented, for example, with regard to automobiles, batteries,[21] electrical and electronic equipment[22] and packaging.[23] A properly designed extended-producer-responsibility (EPR) policy can be a driving force for waste avoidance

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[18] Such an approach has been taken for the proposed EU Directive on Restrictions on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment, which was tabled in tandem with the Directive on (sound collection and recycling of) Waste Electrical and Electronic Equipment (WEEE) (COM(2000)347 fin., 13.6.2000), to ease recycling from a technical and economic point of view.

[19] The new system for assessing hazardous chemicals and metals is known as the "REACH" system (Registration, Evaluation and Authorization of Chemicals). For more information, see: European Commission, White Paper on a Strategy for a Future Chemicals Policy, COM(2001) 88 final, and Stakeholders' conference on the Commission's White Paper, accessible at www.europa.eu.int/comm/environment/chemicals/index.htm.

[20] It has been observed that Producer Responsibility, also known as *Extended Producer Responsibility (EPR), Product Take-Back* or *Product Stewardship*, is one of the fastest growing areas of business concern over environmental risk, legal compliance and corporate responsibility (http://www.cfsd.org.uk/seeba/). See also: http://www.cfsd.org.uk/ipp-epd/. EPR has been defined as "An environmental policy approach in which a producer's responsibility, physical and/or financial, for a product is extended to the post-consumer stage of a product's life cycle. There are two key features of EPR policy: (1) the shifting of responsibility (physically and/or economically, fully or partially) upstream to the producer and away from municipalities, and (2) providing incentives to producers to introduce environmental considerations into the design of the product. Organization for Economic and Cooperative Development. Working Party on Pollution Prevention and Control. *Extended Producer Responsibility: A Guidance Manual for Governments.* October 2000.

[21] For example, the US Environmental Protection Agency (USEPA) has reclassified nickel cadmium (Ni-Cd) batteries from a non-hazardous to a regulated hazardous waste. Existing US federal and state regulations require businesses and agencies to manage their used Ni-Cd batteries properly. Industry set up a National Charge Up To Recycle Programme that now also covers Canada. Effective 1 July 2000, Norwegian retailers, importers, and producers of rechargeable batteries are responsible for their take-back, collection, and safe disposal. Although the focus is on Ni-Cd batteries, the regulation covers all rechargeable batteries. Under the agreement, retailers, importers, and producers have agreed to set up and fund a nationwide return and collection system.

[22] The proposed EU WEEE Directive obliges companies to take back several categories of electrical and electronic equipment after use. This provides incentives to domestic and foreign producers exporting to the European Union to modify the design of their products. Recently, there have also been discussions on a so-called *Eco Design* Directive, which focuses on the reduction of environmental impact of electrical and electronic equipment throughout the lifecycle.

[23] See, for example, Environment Canada http://www.ec.gc.ca/epr/en/index.cfm and United States Environmental Protection Agency http://www.epa.gov/epr/.

and associated pollution reduction.[24] However differences in approaches across countries have been an issue of some concern.[25] EPR policies have emerged in particular in Europe, but their use in non-European countries is growing. For example, the state of Rio de Janeiro, Brazil, has enacted a stringent plastic packaging take-back law. A similar, more stringent bill is progressing through the Brazilian federal legislature. In Canada (Quebec), Bill 90, adopted in December 1999, creates the legal authority for Quebec regulators to order manufacturers and suppliers to pay for recycling programs.[26] In the United States, product stewardship approaches, led by the private sector, are becoming more important, for example in the battery and electronics sector.[27] Australia has also been considering a product stewardship strategy in the electrical and electronics sector.[28] In Japan, manufacturers must, since April 2001, recycle appliances, televisions, refrigerators, and air conditioners. Several laws and many voluntary industry initiatives have been adopted in the context of Japan's drive for a recycling-oriented society.[29]

3. Problems for Developing Countries – a Question that is Easier to Pose than to Answer

A priori, there are grounds for concern for many developing countries. First, environmental regulations in the developed countries are emerging in a number of sectors where developing countries have become particularly competitive, such as fishery[32] and forestry products,[33] leather,[34] textiles,[35] and certain consumer products.[36] Second, SMEs,

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[24] Environment Canada. See http://www.ec.gc.ca/epr/en/benefits.cfm, including for further potential benefits.

[25] Different approaches amongst Member States have led to a call for harmonized measures across the EU in order to avoid market distortions and other problems that might arise from different policy approaches. As a result, the EU Environment Directorate is proposing an Integrated Product Policy (IPP) as a basis for a common framework.

[26] The paint industry has already taken steps toward establishing a paint take-back programme, and negotiations for take-back of used oil and batteries are ongoing.

[27] A National Electronics Product Stewardship Initiative (NEPSI) was launched in San Francisco in June 2001, with representatives from electronics manufacturers, government agencies, environmental groups and others to develop a joint plan in the United States for managing used electronics. Private sector representatives have been discussing possibilities for a national take-back programme

[28] Environmental Australia, Industrial Ecology Unit, Sustainable Industries Branch, "Developing a Product Stewardship Strategy for Electrical and Electronic Appliances in Australia". Discussion Paper. March 2001. http://www.ea.gov.au/industry/waste/ieu/pubs/discussion.pdf.

[29] For more information in this regards, see: Martin Charter, Eric Billet, Joy Boyce, Clive Grinyer, John Simmonds, The 'state of the art' in eco-design in the Japanese electronics sector, final mission report, Centre for Sustainable Design, Surrey Institute of Art and Design, Surrey, November 2002.

[30] Bill Vorley, Dilys Roe and Steve Bass, *Sustainable Development and Trade: A Sectoral Study for the Proposed Sustainable Trade and Innovation Centre*. International Institute for Environment and Development (IIED), London. April 2002.

[31] On the adjustment problems of SMS and the enhanced concentration of suppliers in Thailand's fruit export sector, see: Dave Boselie and Jan Buurma, Grades and standards in the Thai horticultural sector, in: Sietze Vellema and Dave Boselie (edit.) Cooperation and competence in global food chains – perspectives on food quality and safety, Shaker Publishing, Maastricht, 2003, pp. 123-155.

[32] For example, bans on certain substances and (eco-)labelling. Management systems primarily aimed at controlling food safety risks (such as the Hazard Analysis Critical Control Point, HACCP) may also refer to certain environmental issues.

[33] Environmental requirements in the area of forestry products (including paper) comprise environment-related technical regulations (e.g. restricting the use of bleach in paper, the use of formaldehyde glues in wood

which may find it relatively more difficult to respond to stringent environmental requirements, often play an important role in these sectors. Third, developing countries often sell standardized mass-produced goods at low prices, for which the introduction of additional production costs significantly erodes competitiveness. A study on Brazil points out that product differentiation is more difficult in the case of homogeneous products, and producers generally find it difficult to recover increased costs required for environmental improvements through price premiums.[37]

What also complicates the situation is that various groups of developing countries are in different phases of industrialization, with a profile of "dynamic" sectors that differs very much from the post-industrialization stage of most developed economies. Several pollution-intensive sectors are among the most dynamic in various developing countries, whereas they are sunset industries in many developed countries. Although technological leapfrogging by developing countries might attenuate some adverse environmental effects, the structurally different environmental requirements in developed countries remain an issue of concern for trade in products coming for pollution-intensive industries.

Furthermore, especially in the commodity sector, which still forms the backbone of many developing countries, in particular the LDCs, it may be more difficult to simultaneously improve environmental performance and international competitiveness because of the declining trend of prices and the relatively high share of environmental management costs in total production costs.

Although environmental (and health) requirements and the related adjustment of developing country producers and exporters are not new phenomena, it is not easy to answer the question of what the exact problems are. The problems fall in various inter-related clusters of issues that are usually addressed by different groups of stakeholders (international organizations, national governments, private standard setting bodies, large buyers, NGOs etc.) and discussed in different national and international forums, which complicates a comprehensive approach to the issue.

There is not enough consistent and credible information on the types of problems that exist; this does not suggest that there are no problems, just that the information is not sufficient to the task of understanding and addressing them. The most frequently advanced problems related to the setting and implementation of standards and regulations are:

- Transparency and market access issues in the context of the WTO;
- Supply-chain-driven nature of environmental/health requirements;

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panels), recycled content in pulp and paper products, and regulations on recycling and recovery of packaging waste. There are also voluntary instruments such as eco-labelling and timber certification.

34 Such as product content requirements and bans on certain substances.

35 Such as bans on the use of certain substances and packaging requirements. Voluntary measures include eco-labelling. In certain cases buyer requirements and private sector initiatives focus on environmental impacts throughout the supply chain

36 See examples on electrical appliances and electronic equipment mentioned in the previous section.

37 De Motta Veiga, P., M. Resis Castilho and G. Ferraz Filho, “Relationships between trade and the environment: the Brazilian case”, July 1995. In: Veena Jha, Anil Markandya and René Vossenaar, *Reconciling Trade and the Environment: Lessons from Case Studies in Developing Countries*, Edward Elgar, Cheltenham/Northampton, 1999.

- Inadequate technical and institutional capacity to actively participate in pre-standard-setting consultations and to comply with requirements;
- Maximizing the gains and minimizing the costs of adjustment measures in DCs (including enhancing competitiveness);
- Lack of international standards and technical equivalence of national standards; and
- Piecemeal approach towards technical assistance to and capacity building in developing countries.

This list of problems raises both policy issues and capacity constraints (i.e. institutional, technical, infra-structural and human-resource constraints), which often overlap in practice, but need to be addressed in different ways.

(a) Transparency and market access issues in the context of the WTO

There are two issues that play a key role in implementing the WTO TBT and SPS Agreements. First, there is a real risk that environmental and health requirements can be turned into technical barriers to trade, but how can these be identified as such. This risk arises in a two-fold manner: on the one hand, it might be created in crafting the environmental and health requirements. On the other hand, the risk might arise from the way in which otherwise well-crafted requirements are implemented.[39] Although both risks cannot be completely removed, the effective implementation of the transparency provisions in the TBT and SPS Agreements can limit the risk to a certain extent.

As tariff barriers and quantitative restrictions become dismantled in multilateral, regional, sub-regional or bilateral trade liberalization agreements, there is concern that product- and process-related requirements, including environmental and health requirements, are being unwittingly or intentionally used as technical barriers to trade, complicating market access and entry for developing country exporters. This suspicion is being reinforced by the fact that (i) there are only few international standards on environmental requirements; the lion's share of such requirements is set by individual countries, both governments and the private sector; (ii) that such requirements are particularly frequent or stringent in sectors, in which developing countries are internationally competitive, such as agriculture, textiles, clothing, leather and footwear, or electrical and electronic goods; and (iii) that subsidies are provided to developed country companies in various sectors to facilitate adjustment to environmental requirements and that such subsidies are often not subject to WTO disciplines.

How can such requirements however be identified as technical barriers seriously hampering trade, and in particular exports of developing countries?

Neither the TBT nor the SPS Agreement are very helpful in this regard. Article 2.2. of the TBT Agreement contains a non-exhaustive list of *legitimate* objectives, on the basis of which technical regulations can be used. They contain the protection of human health or safety, animal life or health and the environment. Article 2.2. also stipulates that such technical regulations should not be more trade restrictive than necessary to achieve these policy goals. This language is consistent with that in Article XX (on general exceptions) of the GATT

[38] It remains the case today that there are many regulations, especially relating to chemical residues in consumer items that are not based on any international standard – usually because only a small group of countries has decided to regulate that substance. See: OECD, COM/ENV/TD(2003)33.

[39] This includes the areas of conformity assessment and accreditation of conformity assessment bodies.

1994. The box below gives an overview of recent dispute panel judgments on the interpretation of the term "least trade restrictive".

The key dilemma is that the TBT, SPS and GATT Agreements do not contain specific benchmarks or criteria for the legitimacy of environmental requirements. In short, a specific environmental requirement is considered appropriate pursuant to TBT Article 2.2. and GATT Article XX, unless a dispute panel decides otherwise. There is, however, a significant difference between the TBT and SPS Agreement: Article 5.1. of the SPS Agreement requires a prior risk assessment to provide evidence of the *necessity* of the measure taken for food safety. Furthermore, Article 5.7. of the SPS Agreement stipulates that in cases where relevant scientific evidence is insufficient, a country may provisionally adopt SPS measures. In such circumstances, however, the country must seek additional information for a more objective assessment of the risk and review its necessity within a reasonable time period.

SOME GENERAL CONCLUSIONS FROM THE WTO DISPUTE SETTLEMENT PRACTICE

A. Related to GATT Article XX

Article XX contains limited exceptions from obligations under certain other provisions of the GATT 1994, not positive rules establishing obligations in themselves. Therefore, a Party invoking an exception under Article XX has to prove that, first, the inconsistent measure has a provisional justification under one of the explicit exceptions figuring in Article XX; and second that further appraisal of the same is required under the introductory clause of Article XX.

There has been some evolution in the interpretation of the necessity requirement of Article XX (b) – protection of human, animal or plant life or health – and (d) – securing compliance with laws or regulations that are not inconsistent with the provisions of the GATT 1994. The interpretation has evolved from a least trade-restrictive approach to a less trade-restrictive one, supplemented with a proportionality test (i.e., a process of weighing and balancing a series of factors).

The chapeau of Article XX contains three standards to be tested: (i) arbitrary discrimination, (ii) unjustifiable discrimination, and (iii) a disguised restriction on international trade. Several panels confirmed that it was the application of the measure and not the measure itself that needed to be examined.[1] In regard to the arbitrary and unjustifiable discrimination of a measure, panels have accorded special attention to the flexibility in the application of the concerned measure. The more rigid and inflexible the application, the higher the likelihood that the measure is regarded arbitrary and unjustifiable. Regarding a disguised restriction of a measure, three criteria have been progressively introduced by panels and the Appellate Body in order to determine whether a measure is a disguised restriction on trade: (i) the publicity test; (ii) the consideration of whether the application of a measure also amounts to arbitrary or unjustifiable discrimination, and (iii) the examination of the design and architecture of the measure at issue.

Compiled from: WTO document WT/CTE/W/203 of 8 March 2002.

1) The recent shrimp-turtle case, for instance, suggests two conclusions on the extraterritorial application of environmental regulation. First, such application is permissible if it is implemented in the context of an international agreement such as an MEA. Second, such measures need to be applied in a transparent, predictable and uniform way to all WTO members.

Various developing countries are dissatisfied with the legitimacy provisions of the TBT Agreement as regards scientific justification of environmental requirements. It is not rare that the level of stringency diverges between key markets, even among EU member countries.

What is more, the level of stringency seems to correlate with the level of protection a particular government wants to give to national producers in specific sectors.[40]

Evidence also suggests that there is an increasing number of regulations or standards that are hazard-based rather than risk-based. This approach favors processes and production methods (PPMs) over product characteristics, and the precautionary approach over science-based risk assessment.[41]

There have been various proposals to address this problem.

One option would be to strengthen the role of sound science in the TBT Agreement. This could be done in various ways:

- One could replace the current "legitimacy" test in the TBT Agreement by the "necessity" test and link it to a risk assessment in accordance with methodologies developed by relevant international organizations, in analogy to SPS Article 5.1.
- As several food-exporting developing countries are not satisfied with the current SPS safeguards on sound science, there have been proposals to set up expert panels that review the scientific justification of a particular environmental or health requirement, when notified to the WTO TBT and SPS Committees.[42] This, however, is unlikely to be warmly received by various developed countries, which fear that such review panel could second-guess the general justification of the proposed environmental or health requirements. One idea that has not yet been explored is the creation of a "mediator" (including a mediation procedure), or an ombudsman that would examine potential TBT/SPS conflicts as an additional step before full dispute settlement action is launched. The creation of such mediator/ombudsman could go a long way in allying fears of developing countries of protectionist abuse of TBT/SPS measures.[43]

Another way of limiting the potential abuse of environmental and health requirements as technical barriers to trade is the effective implementation of the transparency requirements in the TBT and SPS Agreements. This includes measures such as (i) early notification of such requirements to the WTO secretariat; (ii) assuring effective participation of developing countries in pre-standard setting consultations, both for technical regulations and voluntary standards; and (iii) close monitoring of the implementation of environmental and health requirements and the flagging of related ill-behavior to the TBT and SPS Committees. One of the key shortcomings of the two agreements is that transparency provisions for voluntary standards are only implemented on a best endeavor basis, i.e. based on the Code of Good Practice for the Preparation, Adoption and Application of Standards, which forms Annex 3 of the TBT Agreement.

A third avenue of limiting the misuse of environmental requirements as TBT measures, both at drafting and implementation stage, and/or reduce their adverse impact on developing

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[40] For more empirical evidence in this regards, see: Youfu Xia, Environmental requirements, market access and competitiveness in the leather and footwear sector in China, presentation made at the sub-regional workshop of UNCTAD on environmental requirements, market access and export competitiveness for leather and footwear products from Bangladesh, China, Cambodia, Philippines, Thailand and Vietnam, Bangkok, 19-21 November 2003, accessible at: www.unctad.org/trade_env/test1/meetings/bangkok5.htm

[41] Lawrence A. Kogan, Looking behind the curtain: the growth of trade barriers that ignore sound science, Executive summary of a study prepared for the National Foreign Trade Council in the United States, Washington D.C., May 2003, accessible at: www.nftc.org.

[42] Youfu Xia, op.cit.

[43] This idea arose from various discussions of the author with Tom Rotherham, IISD.

country exporters is the effective use by developing countries of the existing provisions on special and differential treatment in the TBT Agreement (Article 12) and SPS Agreement (Article 10). Also, developing countries need to insist on the effective implementation of Article 11 of the TBT Agreement and Article 9 of the SPS Agreement on technical assistance. A key dilemma in this regard is that financial resources for related technical assistance are usually provided by development assistance departments of donor governments, not their trade ministries. The priorities of the former might differ from those of the latter. At present, most development assistance authorities place particular emphasis on poverty reduction, and TBT and SPS-related technical assistance might therefore clearly have to demonstrate a poverty-reduction link to have a chance of funding. This situation illustrates that there is a need to improve policy coherence between trade and development assistance administrations in developed countries.

(b) Supply-chain-driven nature of environmental standards

The private sector is increasingly imposing environment-related requirements on suppliers. Thus, voluntary standards, codes and benchmarks are proliferating, often as part of Corporate Social Responsibility (CSR) or risk management initiatives. Various initiatives combine environmental issues with social issues. In the food sector, for example, the Euro Retailer Produce Working Group (EUREP), which includes the leading supermarkets in Europe, particularly in the United Kingdom, launched its protocol on Good Agricultural Practice (EUREPGAP) for horticultural products in 1999, originally in response to food safety concerns. EUREPGAP seeks to provide a framework for independent verification of minimum social, environmental and food safety standards throughout the supply chain for the production of fresh fruits, vegetables and flowers.[44] Such measures may affect companies in developing countries, for example on account of the need to collect information to respond to questionnaires, traceability and audit requirements. They may also create a bias towards the operation of large firms, and small firms may be crowded out by large firms and transnational corporations (TNCs).[45] At the same time, supply-chain management can offer opportunities for private sector co-operation.

In practice, supply-chain-driven requirements account for the majority of all environmental and health requirements in international markets. In various cases, supply-chain-driven requirements are de facto mandatory and later often find their way into regulatory requirements. In many cases, supply-chain-driven requirements are more dynamic, stringent and complex than mandatory requirements[46] or envisage a faster phase out of harmful substances or processes and production methods.[47]

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[44] Bill Vorley, Dilys Roe and Steve Bass, *Sustainable Development and Trade: A Sectoral Study for the Proposed Sustainable Trade and Innovation Centre*. International Institute for Environment and Development (IIED), London. April 2002.

[45] On the adjustment problems of SMS and the enhanced concentration of suppliers in Thailand's fruit export sector, see: Dave Boselie and Jan Buurma, Grades and standards in the Thai horticultural sector, in: Sietze Vellema and Dave Boselie (edit.) Cooperation and competence in global food chains – perspectives on food quality and safety, Shaker Publishing, Maastricht, 2003, pp. 123-155.

[46] The EUREPGAP-standard for horticultural products, for instance, goes well beyond the requirements in the mandatory Hazard Analysis of Critical Control Points (HACCP). Producers and exporters have to establish a central crop management system, paying special attention to risk assessment, pesticide residue analysis, correct storage of agro-chemicals etc. For more information, see: www.eurep.org and EUREPGAP-

Therefore, the reality for many environmental standards and labeling programmes is that they are getting spread through supply chains, not through formal trade policy. There is not much that the WTO can do to address these concerns. This heightens the need to consider other mechanisms for ensuring that environmental requirements are not inappropriately prepared, applied and implemented. Apart from initiatives of NGOs and the private sector in this regard,[48] there is also the need to give more attention to the pertinent question of how these requirements could be analyzed and discussed in an inter-governmental setting.[49]

The plethora of supply-chain-driven and buyer requirements confirms the conclusion that environmental and health requirements have become an integral part of product quality in many markets. Eco-positioning of developing country producers is therefore increasingly important and needs to be added to brand- and price-positioning of companies for maintaining and increasing their international competitiveness.

(c) Inadequate technical and institutional capacity to comply with environmental/health requirements

Many companies in developing countries find their export markets restricted, not because of an unwillingness to comply with environmental/health requirements, but because of an inability to either identify relevant requirements, implement the necessary technical, institutional and procedural changes, or demonstrate compliance in a credible way.[50]

Apart from problems related to the complexity, stringency or technical characteristics of certain environmental and health regulations, developing countries face a number of constraints as a result of structural problems. These include lack of awareness and management of information, poor institutional capacity, weak infra-structure, dominance of SMEs in the export sector, lack of finance, and insufficient access to technology.

Most LDCs, for example, have insufficient technical capacity to efficiently manage health and environmental requirements. Typically, essential facilities like laboratories are not

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introduction among small-scale producers of fresh fruit and vegetables in developing countries, study for the Dutch Ministry of Foreign Affairs, forthcoming.

47 A number of globally operations electrical and electronic companies, such as Sony, issued environmental requirements that provide for a faster phase out of heavy-metal use in electrical and electronics manufacturing than envisaged under the EU's Removal of Hazardous Substances Directive or Japanese legislation enacted in the context of the recycling-oriented policy framework.

48 The International Social and Environmental Accrediation and Labelling Alliance (ISEAL), an association of leading international standard-setting, certification and accreditation organizations that focus on social and environmental issues, has just developed a Code of Conduct for Setting Social and Environmental Standards. The Code is mandatory for ISEAL members. The draft of the Code is accessible at: www. isealalliance.org

49 UNCTAD's Expert Meeting on Environmental Requirements and International Trade in October 2002 proposed that the planned Consultative Task Force on Environmental Requirements and Market Access for Developing Countries should pay due heed to this issue (see below).

50 It is important to note that technical barriers to trade are encountered in all three pillars of the "environmental quality assurance system". This concerns (i) rule making (either in the form of mandatory technical regulations or voluntary standards); (ii) conformity assessment (i.e. certification); and (iii) accreditation of certification bodies. For more information in this regard, see: Tom Rotherham, Implementing environmental, health and safety standards, and technical regulations – the developing country experience, Trade Knowledge Network Thematic Paper, IISD and ICTSD, Winnipeg/Geneva, January 2003, accessible through: www.iisd.org

adequately staffed, scientific equipment is obsolete for the required tests, and there is no systematic collection and recording of information.[51] In many developing countries this situation is unlikely to improve in the short term, given the declining levels of public expenditure. The high cost of conformity assessment, including testing for thresholds of residues, is also a serious problem. In addition, the fact that developing countries often are "standard-takers" rather than "standard-setters" puts them at a competitive disadvantage. Standards are often set by developed countries for products, in which developing countries are the exclusive or predominant producers, such as tropical beverages, spices or leather.

Rotherham identifies three general problems: (i) in those cases where a company's comparative advantage lies in maintaining low capital costs and high labour inputs, even relatively small additional investments in equipment can overstretch available short-term credit limits and result in substantial increases to marginal costs. This is especially the case for SMEs; (ii) the required equipment or management expertise may just not be available locally, and local companies may not have the capacity to conduct international searches for suitable suppliers; and (iii) even where equipment or consulting services are available locally, they are most likely to be produced externally and can therefore be more expensive than in developed countries. Thus, even when companies in developing countries are able to implement standards, the costs of compliance are likely to be higher than for competitors in developed countries.[52]

(d) Maximizing the benefits and minimizing the costs of adjustment measures in developing countries

When examining the relationship between environmental requirements and competitiveness, a distinction should be made between: (a) effects at the country level versus effects on specific industries; and (b) short-term and long-term effects. Developing country governments need to assure that the benefits of meeting more stringent environmental/health requirements in external markets are higher than the costs and related investment does not crowd out investment in other areas, in particular in social services or infra-structure.

More stringent process standards and regulations demanded in external markets may generate economic and health benefits and more efficient use of resources at national level in developing countries. However, they may also adversely affect competitiveness at the sector or enterprise level. Whereas, on average, such effects may be modest, in some sectors, particularly in pollution-intensive industries, compliance costs can be significant.[53] Even where compliance costs appear significant in a static analysis, a dynamic analysis may show lower costs, since incentives for innovation and the use of "clean technologies" may result in

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[51] In India, for example, it took the Government and local industry four years (1997-2001) to establish the testing facilities necessary to comply with the European standards on limits on aromatic amines in textiles colored with azo dyes.

[52] T. Rotherham, op.cit. p. 15.

[53] In recycling of used lead-acid batteries, for instance, pollution control, water treatment and waste disposal costs account for about 10 per cent of total production costs. However, this figure does not include the depreciation costs of 'clean' capital equipment. For more information, see: Parker, Thomas H., "The economics of secondary lead smelting", paper presented at the 7th International Recycling Conference of ILZSG, Toronto, 25-29 May 1998.

cost savings over the long term[54]. This would suggest that trade effects could be small. Win-win situations could arise in cases where increased resource efficiency can be achieved or where price premiums can be obtained.[55]

Compliance with specific environmental regulations and standards may require specific technologies, which may be protected by intellectual property rights.[56] Standards compliance may therefore require mechanisms for the dissemination of environmentally sound technologies (ESTs).

The complexity of environmental/health requirements includes the trend towards multi-sectoral affects, such as the draft REACH Directive and the Integrated Product Policy in the EU or the Recycling-oriented Economy framework in Japan. The complexity of these measures requires a strategic and pro-active response by exporting developing countries, rather than a piecemeal, reactive and short-term approach. Governments need to form partnerships with large, multi-sectoral industry associations and academia to analyze such requirements in export markets, their impact on developing country exports and devise response strategies.[57] Furthermore, based on a more effective information management strategy, developing country representatives need to actively participate in pre-standard or pre-regulation-setting consultations.

Such consultations should lead to ex-ante reviews of the impact of the planned regulation or standard on developing country exporters. The consultations should also give an opportunity to governments of developing countries to pro-actively represent the interest of SMEs. Furthermore, the consultations can already identify the need and specific forms of technical assistance and capacity building.[58]

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[54] See the "Porter Hypothesis" in Porter, M, *The Competitive Advantage of Nations*, New York: Free Press .(1990), and Porter, M and C. van der Linde, *Green and Competitive*, Harvard Business Review, September-October 1995, 120-34.

[55] Over three years, Philippine Recyclers Inc. (PRI), a battery recycling company, systematically improved its environmental performance and invested some US$ 80,000 (not counting capital equipment) in achieving ISO 14001 certification in 2001. However, the environmental improvements resulted in net economic benefits through significant savings in resource use and environmental management costs, in the following order: Fuel consumption – 17%; power consumption – 21%; waste generation – 19%; environmental management costs – 20%. Irving C. Guerrero, Vice President and General Manager of PRI, "Environmental management systems, such as ISO 14001, and their possible role in assuring environmentally sound management of recoverable materials/resources – the experience of Philippine Recyclers Inc.", presentation at the first UNCTAD Workshop on Building National Capacity in Rapidly Industrializing Countries on Environmentally Sound Management of Recoverable Material/Resources, Bangkok, 20-22 September 2001, accessible at www.unctad.org/trade_env/.

[56] This may also apply to standards set by MEAs, such as the Montreal Protocol. In this case, however, the Multilateral Fund of the Protocol covers costs for technology transfer or domestic development of ODS substitutes; equipment needed and its installation costs; and training. The fund has so far disbursed more than US $ 1 billion to almost 120 developing countries. This investment has supported about 2,000 projects to phase out some 60 per cent of ODS consumption in developing countries.

[57] An inter-agency, multi-stakeholder working group, linked to the Deputy Prime Minister, is currently reviewing the impact of the EU Directives on Electrical and Electronic Waste (WEEE) and the Restriction of Hazardous Substances (RoHS) in Thailand. The working group has held consultations with the European Commission and has made a number of proposals on a pro-active response. Charuek Hengrasmee, National case-study on environmental requirements, market access and export competitiveness for electrical and electronic products of Thailand, study for UNCTAD (forthcoming).

[58] Evidence suggests that developed country governments and companies tend to be more willing to consider back-end issues (such as capacity-building requirements) than front-end issues that influence the content of the regulation/standard. That latter are often seen as additional burden, which might be true at first sight. In the long run, however, they reduce the need for corrective, supportive or flanking measures.

(e) Lack of international standards and technical equivalence

Article 2.4. in the TBT Agreement states that "where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use then, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems". However, a recent OECD study comes to the conclusion that "in many of the most notable cases where environmental requirements have created market-access problems for developing-country exporters, an international standard did not exist. It remains the case today that there are many regulations, especially relating to chemical residues in consumer items (such as leather and fabrics), that are not based on any international standard – usually because only a small group of countries had decided to regulate that substance.[59]

Even if international standards exist, they are often crafted by large companies in developed countries.[60] According to Rotherham, this has two important implications: (i) the kinds of international standards that are developed are often those that respond to developed country priorities; and (ii) even where international standards respond to developing country needs, their specifications are more likely to be suited to large, capital-rich companies rather than to labour-intensive SMEs.[61]

In the absence of international standards, Article 2.7. of the TBT Agreement encourages members to accept "as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations". To date, there has been little effort and success in negotiating technical equivalence agreements. Most existing agreements are of bilateral nature. There are only few multilateral approaches, two of which are in the area of organic agriculture (the Codex Alimentarius international standard on organic agriculture and the Basic Standards of the International Federation of Organic Agricultural Movements, IFOAM).[62]

It has been suggested that an enabling international framework could be a tool for facilitating technical equivalence agreements. Against this background, in February 2003, FAO, UNCTAD and IFOAM jointly created the International Task Force on Harmonization and

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[59] OECD, Addressing market-access concerns of developing countries arising from environmental requirements: lessons from national experiences (COM/ENV/TD(2003)33), Paris, June 2003, p. 6.

[60] In many cases, proposals for new international standards must be accompanied by a commitment from a country to provide secretarial support services, which has financial and human resource implications. In addition, the proposal must frequently include initial background information, such as information on existing standards, as well as technical analysis and scientific reports supporting the proposal to develop an international standard. This requires a high degree of technical capacity. For more information, see: S. Henson, K. Preibisch, O. Masakure, Review of developing country needs and involvement in international standards-setting bodies, Study of the Centre For Food Economics Research of the University of Reading for the UK Department for International Development, London, February 2001.

[61] T. Rotherham, op.cit. p. 17.

[62] The Codex standard and the IFOAM Basic Standards provide a framework or template that does not contain a fixed list of specifications, but provides guidelines that different countries can follow in crafting their own, locally-defined, specifications. For more information, see: Christina Westermayer, Bernward Geier, The organic guarantee system – the need and strategy for harmonization and equivalence, study for FAO, IFOAM, UNCTAD, accessible at: www.unctad.org/trade_env/test1/projects/ifoam2.htm

Equivalence in Organic Agriculture (ITF-Organic). The main tasks of the ITF are (i) to review the trade and production implications of lack of harmonization and equivalence of standards; (ii) to devise short- and long-term measures that can foster harmonization and equivalence in standard setting, conformity assessment and inspection as well as accreditation; and (iii) to inform the intergovernmental bodies of FAO, UNCTAD and the WTO of appropriate harmonization and equivalence initiatives.[63] Initial analysis for the ITF-Organic confirms that additional direct and indirect costs for multiple certification against an array of public and private standards are significant.[64]

(f) Piecemeal approach towards technical assistance to and capacity-building in developing countries

There is a large number of technical assistance (TA) and capacity-building initiatives (CB) for developing countries to facilitate the fulfilment of environmental and health requirements in external markets and thus ease market access, both by international, multilateral and regional organizations, NGOs and through bilateral assistance. However, only very few of these TA/CB activities are following a holistic and systematic approach, the vast majority are implemented in a piecemeal way. This means that there is a lack of information, coordination and co-operation as well as institutionalization of such activities. In addition, they are mostly only reactive, rather than pro-active. One notable exception is TA/CB within the framework of the Montreal Protocol to outphase production and consumption of ozone-depleting substances (ODS) in developing countries, financed through the Multilateral Fund of the Protocol. Apart from the significant size of the funding support, [65] the TA/CB of the Protocol also includes the funding of Ozone Offices at country level, which assure a systematic and coordinated approach to ODS out-phasing, including support to training, transfer of technology and building of infra-structure.[66] In recent years, emphasis has also shifted from a mere reactive to a pro-active approach.[67]

It is high time that in particular international organizations overcome the piecemeal and unco-ordinated approach. This would include a regular exchange of information on ongoing TA/CB activities and a gradual attempt to co-ordinate them. Step-by-step, this would also

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63 For more information, see: www.unctad.org/trade_env/test1/projects/ifoam2.htm

64 Els Wynen, Impact of organic guarantee systems on production and trade in organic products, Study for the FAO/UNCTAD/IFOAM International Task Force on Harmonization and Equivalence in Organic Agriculture (forthcoming).

65 The Multilateral Fund has so far disbursed more than US$ 1 billion to almost 120 developing countries. This investment has supported about 2,000 projects to phase out some 60 per cent of ODS consumption in developing countries. The Multilateral Fund therefore disbursed roughly US$ 9 million per developing country in the 1990s or almost US$ 1 million per country per annum.

66 The Multilateral Fund was created to meet the "agreed incremental costs" of ODS phase-out in developing countries on the basis of a specific list of categories of incremental costs. The Multilateral Fund covers costs for technology transfer or domestic development of ODS substitutes, equipment needed and its installation costs, and training. It also covers support for institutional strengthening of projects, which has been very important in practice. For more information, see: U. Hoffmann, Specific trade obligations in multilateral environmental agreements and their relationship with the rules of the multilateral trading system – a developing country perspective, in: UNCTAD Trade and Environment Review 2003 (UNCTAD/ITCD/TED/46), Geneva, 2004, section VI.2.

67 In the early years of its existence, the Multilateral Fund primarily supported the closure of ODS-producing facilities in developing countries. In the recent past, support has also been given to ODS-substitute development. For more information, see: V. Jha and Hoffmann, U., Achieving objective of Multilateral Environmental Agreements: a package of trade and positive measures – elucidated by results of developing country case studies, accessible at: www.unctad.org/trade_env/test1/publications.htm

allow the transition to (i) a more holistic approach, which combines institutional CB, with TA for infra-structure and training; and (ii) to more pro-active policies in developing countries themselves, which analyze adverse trade effects of environmental/health requirements in key export markets, improve information management and the level of awareness, and develop versatile adjustment approaches, which maintain or improve export competitiveness. In addition, such activities also need to be discussed with development assistance departments in key donor countries to assure an adequate funding base.

It is also important that the political and TA/CB discussion among TA/CB providers clearly appreciates and takes into account the difference between measures that should be pursued in the context of the WTO Committees (TBT, SPS and CTE), and those that go well beyond the WTO framework. This includes required action on notification of voluntary standards, mutual recognition, technical equivalence, active consultation and participation of developing countries in regulation and standards setting, pro-active adjustment strategies in developing countries, etc.

4. UNCTAD's proposal for creating a Consultative Task Force on Environmental Requirements and Market Access for Developing Countries

In the light of the above-outlined problems and the recognized need to arrive at a more systematic and holistic approach to supporting developing countries in meeting environmental and health requirements in external markets and, at the same time, reduce the risk that these requirements are intentionally or unwittingly turned into technical barriers to trade, UNCTAD has recently launched exploratory activities for creating a Consultative Task Force (CTF) on Environmental Requirements and Market Access for Developing Countries.

At a recent Expert Meeting on Environmental Requirements and International Trade, which took place in Geneva from 2 – 4 October 2002, experts particularly emphasized the need to improve the involvement of developing countries in the process of developing new standards concerning products of key export interest and to identify policies to address capacity and institutional constraints in developing countries. Experts therefore suggested that UNCTAD should launch a coherent initiative to address developing countries' concerns and identify policies and practices to:

- take account of their conditions and needs in the design and implementation of new environmental standards, and
- assist them in strengthening national capacities to respond to environmental and health-related requirements in international markets and become more pro-active in this regard.

The chairman's summary of the Expert Meeting suggested the creation of a consultative task force to address these issues. The 7th session of UNCTAD's Commission on International Trade in Goods and Services, and Commodities, held in Geneva from 3-6 February 2003, considered the outcome of the Expert Meeting and adopted agreed recommendations for further work of the UNCTAD secretariat (document TD/B/COM.1/L.26), which state that the secretariat should "explore the possibility of the creation of a consultative group on environmental requirements and international trade, which should closely coordinate and collaborate with relevant work and initiatives in other bodies and involve the private sector, as a project-based activity."

(a) Objectives of the Consultative Task Force

The CTF would not duplicate other initiatives and would also not aim at second-guessing the validity of environmental regulations. Rather, the CTF would closely coordinate its activities with other initiatives and pool resources from different organizations. In fact, the CTF would be a major mechanism for avoiding duplication and developing synergies, notably on information gathering and dissemination. The Task Force would place particular emphasis on voluntary environmental requirements set by the private sector and buyers and involve the private sector in its deliberations. The UNCTAD secretariat, with extra-budgetary resources, would provide back-stopping to the CTF. It is envisaged that the work would be supported by co-ordinated efforts to broaden the information base (including the option of setting up an easily accessible data base on environmental requirements[68]) and to review trends in environmental requirements in terms of sectors and types of measures used.[69]

Besides reporting on its activities to UNCTAD's Commission on International Trade in Goods and Services, and Commodities, the CTF would also inform the CTE and TBT Committees of WTO and the Joint Working Party on Trade and Environment of OECD on the results of its work.

The CTF would not replace or substitute for UNCTAD expert meetings. Its operation is rather comparable to a project-related technical assistance/capacity-building activity. The UNCTAD secretariat would set up an open-ended group of experts, including representatives of Governments, the private sector, academia and NGOs. The Group would meet once a year to review information, analyze the issues mentioned above and explore pro-active measures. In the period between meetings, the UNCTAD secretariat would promote group discussions and ensure intensive exchange of information through an inter-active website set up for this purpose.

The objectives of the CTF are:

- Discussing ways of and making a contribution to improving collection and dissemination of information on environmental requirements, notably on voluntary standards, and analyzing key underlying trends. In this regard, the CTF will (i) advise the UNCTAD secretariat on needed data collection, dissemination and analysis; (ii) closely follow the concerned work done by different multilateral, bilateral and private agencies; and (iii) facilitate coordination and co-operation among these agencies with a view to enhancing transparency and facilitating access to such information by developing country exporters.
- Reviewing experience in involving developing countries in pre-standard-setting consultations concerning regulations and standards that may have significant implications for them.

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[68] Which would establish links to other existing information clearing houses, such as ISONET of ISO and IEC or Eco-Track, a database jointly developed by the German testing institute TÜV-Rhineland and CREM in the Netherlands.

[69] A prototype of such approach can be found in the UNCTAD study "Profiting from Green Consumerism in Germany" (UNCTAD/ITCD/TED/3), which analyses trends of mandatory and voluntary environmental requirements in Germany in three sectors (leather and footwear, textiles and clothing, and furniture) and provides related sources of information. The study is accessible at www.unctad.org/trade_env/test1/publications.

- Discussing pro-active adjustment policies and measures in developing countries, with special focus on (i) improving information flow and dissemination on new standards and regulations, including support to setting up national or sub-regional early-warning mechanisms on new requirements and in effectively participating in pre-standard setting consultations in export markets; (ii) assisting developing countries in examining how compliance with environmental requirements can help to improve economic efficiency and export competitiveness; and (iii) identifying measures and strategies to address the specific needs of small and medium-sized enterprises.
- Acting as a "think tank" to give guidance on further analytical and practical work on the issues under consideration from a more systematic and holistic point of view and promote coordination of activities by different institutions.

It is recognized that environmental requirements and SPS measures have different objectives and in general are subject to different WTO Agreements. However, concerns of developing countries generally relate to the whole range of environmental requirements and SPS measures and in many respects adjustment problems (and solutions) are similar. Furthermore, as already mentioned above, health concerns in consuming countries are often tied to environment-related problems in exporting countries. Therefore, the CTF may decide to consider not only environmental requirements, but also SPS measures affecting the same products.

In focusing on the above-mentioned bullets, the CTF could also suggest approaches to WTO-related issues, for example in the area of:

- Special and differential treatment for developing countries, including measures for SMEs;
- effective transparency provisions relating to standards and environmental labelling, including notifications of emerging environmental regulations in early stages of development;
- notification of voluntary standards;
- transfer of technology.

(b) Exploratory activities for the Consultative Task Force

The further exploratory activities for creating the CTF aim at:

- sharpening the thrust and focus of the CTF;
- identifying the specificity of the CTF and its synergies with other initiatives;
- clarifying the composition and modalities of the CTF; and
- conducting some illustrative activities that may help UNCTAD's Commission at its next session to give further guidance to the work of the CTF.

In the light of the above, the following activities are being implemented in 2004:

- A meeting of experts discussing preliminary results of the exploratory activities for the CTF. This meeting will be jointly organized with the Brazilian National Institute of Metrology, Standardization and Industrial Quality (INMETRO), as a pre-UNCTAD XI event.

- Initiation of illustrative activities in the main activity clusters of the CTF, i.e. information gathering and dissemination; analysis of best or good practice in standard setting; and guidance for pro-active adjustment strategies in developing countries.

The illustrative activities would involve the following:

- a study that reviews experience in involving developing countries in pre-standard-setting consultations concerning regulations and standards in key external markets that may have significant implications for developing country exporters (this study will be based on two or three specific product groups);
- a study on the lessons that can be learned from existing early warning systems in developing countries on environmental health standards in external markets, such as the one operated by INMETRO in Brazil;
- a feasibility study on an international clearinghouse mechanism for voluntary environmental and health requirements, its contours and its synergies with comparable existing public and private data basis;
- a synthesis of lessons learned from country-case studies on leather and footwear, electronics, and horticultural products currently being prepared under the UNCTAD project Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues;[70]
- technical assistance to China and Brazil on setting up an information clearing house on environmental/health requirements in some specific sectors (these clearinghouses might also be made accessible to interested countries in Latin America and South- and South-East Asia);
- a study on the trade- and production-related effects of national and private sector standards for organic agricultural products.

[70] For more information in this regard, see: www.unctad.org/trade_env/test1/projects/field.htm