

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**UNCTAD/INMETRO WORKSHOP ON
ENVIRONMENTAL REQUIREMENTS AND MARKET ACCESS FOR
DEVELOPING COUNTRIES¹**

RIO DE JANEIRO, 7–8 JUNE 2004

Executive summary

This report summarizes discussions held at the pre-UNCTAD XI Workshop on Environmental Requirements and Market Access for Developing Countries, jointly organized by the UNCTAD secretariat and the National Institute of Metrology, Standardization and Industrial Quality (Inmetro) of Brazil (Rio de Janeiro, 7 and 8 June 2004). The main objective of the workshop was to review the results of exploratory activities and examine the concept and modalities of a Consultative Task Force (CTF) on Environmental Requirements and Market Access for Developing Countries. The annex to this report briefly summarizes discussions in three break-out groups on options for (a) involving developing countries in pre-regulation and pre-standard-setting consultations; (b) an exchange of national experiences in proactive adjustment policies in developing countries; and (c) an international clearing-house mechanism for environmental and health requirements.

The workshop was organized to implement a recommendation made by the UNCTAD Commission on Trade in Goods and Services, and Commodities, at its seventh session in February 2003, namely to “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”. The Government of the Netherlands provided funding support for exploratory work, including this workshop, as well as for the CTF workshop, scheduled to take place in Geneva on 5 and 6 November 2004.

UNCTAD/DITC/TED/2004/7

¹ This report has been prepared under the responsibility of the UNCTAD secretariat. A preliminary version was discussed at the final session of the workshop and was reflected in document TD/L.395 (Report on the Rio Trade Week Preparatory to UNCTAD XI). The present report includes an annex on the discussions in break-out groups and incorporates further comments received from participants as at the end of July 2004. Nevertheless, it does not attempt to exhaustively reflect all points made in the discussions.

CONTENTS

I.	Background.....	4
II.	Need for a CTF.....	5
III.	Objectives and nature of CTF activities.....	6
IV.	Annex: Break-out groups	7
A.	Involving developing countries in pre-standard-setting consultations	7
B.	Proactive adjustment strategies and measures in developing countries	8
C.	Feasibility of an international clearing-house mechanism	9
V.	List of participants.....	10

I. Background

1. The UNCTAD secretariat and Inmetro (the National Institute of Metrology, Standardization and Industrial Quality, Ministry of Development, Industry and Foreign Trade of Brazil) jointly held a pre-UNCTAD XI workshop in Rio de Janeiro on 7 and 8 June 2004 to review the results of exploratory activities and to examine the concept and modalities of a Consultative Task Force (CTF) on Environmental Requirements and Market Access for Developing Countries.² Some 75 experts from a range of developed and developing countries, representing trade, environment and industry ministries, governmental, private-sector and NGO standardization organizations, intergovernmental organizations, and large and small-sized companies, participated in the workshop. The Secretary-General of UNCTAD, Mr. Rubens Ricupero, and the President of Inmetro, Mr. Armando Mariante, shared their views with delegates at a special session.

2. They discussed the findings of analytical and capacity-building work by UNCTAD, various intergovernmental organizations and other relevant initiatives, as well as sector- and country-specific experiences. Participants also discussed the findings of draft studies on consultations with developing country stakeholders in the preparation and adoption of regulations and standards regarding environmental requirements in selected developed countries,³ as well as on the feasibility of an international clearing house for environmental requirements and international trade.⁴ Experts had a more in-depth dialogue in three break-out groups on (a) involving developing countries in pre-regulation and pre-standard-setting consultations; (b) an exchange of national experiences in proactive adjustment policies in developing countries; and (c) the concept of an international clearing-house mechanism for environmental and health requirements (see annex).

3. On the basis of this discussion, participants aimed at conceptualizing the main policy and capacity constraints issues as well as identifying the key problems encountered by developing countries at the interface of environmental requirements and market access. Against this background, they discussed the specific contribution that the CTF could make to address some of the problems identified. This included the objectives, nature and modalities of CTF activities.

² The UNCTAD Commission on Trade in Goods and Services, and Commodities, at its seventh session in February 2003, recommended exploring “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”. The UNCTAD secretariat has conducted a series of analytical and capacity-building activities as well as consultations with other relevant initiatives. The Government of the Netherlands provided funding support for exploratory work. The exploratory phase also benefited from activities carried out under a project funded by the United Kingdom Department for International Development (DFID).

³ Jane Earley, Dimensions of transparency: Participation of developing countries in pre-regulation and pre-standard-setting consultations in key export markets.

⁴ Maaïke Schouten, A clearing house for environmental requirements and international trade.

II. Need for a CTF

4. As countries seek to enhance environmental protection and promote sustainable development, environmental requirements are expected to become more frequent, including in sectors of key export interest to developing countries. Growing evidence of the harmful environmental and/or environment-related health effects of certain substances, changes in consumer preferences and other factors may result in more specific and rigorous environmental requirements. While it is recognized that governmental and non-governmental requirements need to be differentiated, many voluntary requirements developed by the private sector or NGOs are de facto mandatory and tend to be globalized through international supply chains. They are largely outside WTO disciplines on TBT measures, yet some of them may be the precursor of future regulation. This contrasts with the lack of capacity in many developing countries to raise awareness about new environmental requirements in key export markets, gather and disseminate much-needed information on them, and encourage effective public-private partnerships to adjust to the new requirements in a developmentally beneficial way. Participants also stressed that there was not enough consistent and credible information on the types of problems that existed; that the interplay between policy issues and capacity constraints was not well understood; and that not all problems could be addressed through WTO discussions and disciplines. It was also mentioned that there was an insufficient exchange of information among international organizations and other bodies on activities implemented by them and that a strategic partnership would be required.

5. Many participants were of the view that a more holistic and development-oriented approach, consistent with environmental objectives, to the interface of environmental requirements and market access for developing countries was required. This should include an integrated analysis of policy issues and capacity constraints at three levels: at the international level outside the WTO, at the WTO level and at the national and local levels in developing countries. The complexity of the interplay between policy and capacity-building measures required a strategic and proactive response by exporting developing countries, rather than a merely reactive, “fire-fighting” approach, and more efficient public-private dialogue and cooperation. It also necessitated active collaboration by Governments and business associations in developed countries and a more coherent approach by donors in terms of technical assistance and capacity building. In this connection, enhanced efforts are needed to help developing countries not only comply with export market requirements but also to develop their own set of environmental measures at the national level. Additionally, the role and contribution of the private sector, acting as a standard setter, should be further considered. The CTF could make specific contributions in this regard.

6. There was broad agreement that exploratory activities had been very helpful in guiding the discussion on the possible added value and focus of CTF activities. Representatives of a number of Governments, intergovernmental organizations, the private sector and NGOs expressed their willingness to actively participate in relevant activities of the CTF. This provides a good basis for starting the implementation of a small number of well-focused CTF activities.

III. Objectives and nature of CTF activities

7. The main objective of the CTF would be to assist developing countries in analysing key trends of environmental requirements in export markets and to exchange national experiences in proactive approaches to meeting those requirements with a view to maintaining market access, harnessing developmental gains and safeguarding social welfare, while developing adequate internal legislation to address environmental and environment-related health issues. CTF activities are not intended to “second-guess” the legitimacy and objectives of environmental requirements, nor to develop guidelines for good regulatory practice. Rather, they will analyse and discuss ways of overcoming specific developing country challenges regarding the development and implementation of, as well as adjustment to, such measures.

8. Participants agreed that the functions of the CTF should be well defined, targeted, pragmatic and not duplicative, with a view to adding value in areas of mutual interest to the parties concerned. In this context, the CTF could provide the “missing link” between existing mechanisms and initiatives to address specific policy and capacity gaps. It should facilitate constructive dialogue, fully coordinated with concerned stakeholders, on (a) sector-specific experiences in the preparation, adoption and implementation of regulations and standards and the related examination of possible trade implications for developing countries; (b) the development of holistic, proactive strategies in developing countries that effectively respond to environmental requirements in key export markets; (c) improved access to and dissemination of information on environmental requirements, including private-sector requirements; and (d) a regular exchange of information as well as cooperation among international organizations, bilateral donors, private-sector associations and NGOs on those of their activities that are relevant for the CTF.

9. The CTF will thus provide a forum for well-structured and focused dialogue and networking on relevant issues at the interface of environmental requirements and market access for developing countries. Under its umbrella, the CTF may consider launching some specific, well-defined and time-limited project activities, whose results will aid the substantive debate in the CTF. Initially, this would include work on themes (a) to (c), mentioned in the previous paragraph. As regards studying the feasibility of better linking existing international information systems on environmental requirements and improving collection of and access to information on voluntary requirements set by the private sector or NGOs, Inmetro’s experience in disseminating information on TBT notifications through its early warning system was considered a useful point of departure. The CTF will regularly review the efficiency of project activities and decide on their continuation or termination, or on a change in the course of action.

10. The CTF will be a collaborative effort among a core group of supportive partners, including Governments, relevant intergovernmental organizations, the private sector and concerned NGOs from developed and developing countries, but will be open to other interested stakeholders. The CTF and time-limited thematic activities under its umbrella will be implemented as a project-based activity.

IV. Annex: Break-out groups

11. This annex summarizes the main points raised in more technical discussions held (on 8 June 2004) in three break-out groups, covering the following subjects:

- Involving developing countries in pre-regulation and pre-standard-setting consultations in key export markets;
- Exchanging national experiences on proactive adjustment strategies and measures in developing countries with respect to environmental requirements in key export markets; and
- Studying the feasibility of an international clearing-house mechanism on environmental requirements and international trade, with special emphasis on voluntary requirements.

A. Involving developing countries in pre-standard-setting consultations

12. The following points were raised:

- A distinction has to be made between mandatory regulations and voluntary standards (and between voluntary standards with some governmental involvement and purely non-governmental voluntary ones), on the basis of the recognition that the mechanisms for enforcing or supporting transparency and consultation may differ.
- Concerning regulations, the WTO TBT Agreement has mechanisms for early notice of draft proposals in preparation and, in a second stage, for notification of draft proposals and work programmes (Article J of Annex 3 of the TBT Agreement), but their implementation at the national level needs improvement. The CTF has a role to play in strengthening countries' ability to take advantage of these TBT information mechanisms and, in particular, to engage in consultation procedures in due time.
- While countries can improve notification of regulatory developments to ensure early involvement of interested parties from third countries, it is still necessary for the national enquiry points to be more effective in disseminating information and engaging in a consultative process. The break-out group recognized that even the few enquiry points that functioned well were overburdened. There is a role for the CTF to increase the effectiveness of enquiry points through exchange of national experiences and facilitating South-South technical capacity building and information exchange.
- On the appropriate methodology for consultations, it was noted that effective consultation would differ depending on who was the target audience. There is a role for the CTF to document best practices in consultation (but not with a view to drafting guidelines) and to explore what types of consultative mechanisms are most appropriate for specific circumstances, depending on scope and sector.
- In the area of voluntary environmental requirements, and in particular those of the private sector, there are even fewer mechanisms to ensure adequate notification and meaningful participation than in the case of regulations. The ISEAL (International Social and Environmental Accreditation and Labelling Alliance) Code of Good Practice for Setting Social and Environmental Standards aims to respond to this need by proposing consistent criteria for good standard-setting practices. There is a role for the CTF to analyze how some of the credibility principles, such as stakeholder participation, are implemented in practice.

- Some voluntary initiatives have created their own mechanisms for information dissemination and stakeholder engagement. While this is useful, it is also recommended that information be available (or accessible) centrally. The CTF could explore whether it is feasible for (certain) national enquiry points also to address voluntary standards and codes.
- While mandatory and voluntary requirements are usually addressed separately, it is clear that they lie at opposite ends of a continuum. The group noted that some voluntary standards, particularly supply chain requirements, de facto constituted obligations. As such, they may need to be treated differently as regards requirements for consultation.
- Conformity assessment requirements are an important aspect of the access question. They should be addressed alongside standards and regulations.
- Regulatory impact assessments and standards impact assessments should be carried out *ex ante*, and these may need to cover economic, social and environmental issues. Finally, it is important for the CTF to raise awareness of the role that standards play as a public good.

B. Proactive adjustment strategies and measures in developing countries

13. The following points were raised:

- The most common approach to environmental requirements is a reactive, “fire-fighting”, dealing with acute trade interruption or a perceived lingering threat. There is typically no or only a rudimentary strategy for adjustment, except at the micro-economic level. Being pro-active, however, is preferable and less costly than being reactive, regardless of the specifics of the approach. Eco-positioning of products and companies is becoming an integral part of business strategies and should also be integrated into national economic policy.
- To become more proactive at national level in developing countries requires an analysis of the existing weaknesses and capacity gaps, an identification of priorities, and the development of an appropriate toolbox of policies and measures. A number of weaknesses and gaps can be highlighted, such as poor technical and testing infrastructure, lack of access to and effective dissemination of information on new requirements and/or lack of engineering capacity. There are also a number of systemic weaknesses that need to be overcome, requiring the revision of laws and regulations and/or the organization of supportive services. In addition, there is often insufficient public–private dialogue and cooperation.
- In the light of the above, the CTF should facilitate an exchange of national experiences among developing countries on adjustment strategies, policies and measures focusing on important environmental requirements in specific sectors or strategically important cross-sectoral requirements. This exchange of experiences should be based on a comparative analysis, which should include the following elements:
 - The management of gathering and dissemination of information on new environmental requirements, including early notice of draft proposals in preparation and early warning systems;
 - Impact assessment of new draft requirements;
 - Adjustment policies and measures, including quick response measures, good business practices on eco-positioning, effective public–private partnerships, and development of adequate internal legislation to address environmental issues at stake;

- Implications for structural adjustment of the economy, including supportive or flanking measures to be taken by the Government.

C. Feasibility of an international clearing-house mechanism

14. The following points were highlighted:

- A new international clearing-house mechanism should follow a networking concept. This could link databases (e.g. through an Internet portal) that exist at the international level, but also at regional, subregional and national levels.
- The contours of a clearing-house mechanism need to be more clearly defined in order to have a clear view and strategy regarding issues such as:
 - Scope of information (availability of sources, themes, etc.);
 - Possible partners (options for linking information and systems);
 - Scope of activities (building and maintaining a system and required technical capacity and financial resources);
 - Information gaps (relative to existing sources, but also in relation to information needs of target groups);
 - Bottlenecks in building and maintaining a clearing-house with several partners.
- A pilot project could be launched in this regard to ascertain the pros and cons of such an approach for a specific sector. The selection of products or product groups in this regard should be guided by a number of practical criteria, including:
 - Products of key export interest to developing countries;
 - Sectors where small and medium-sized enterprises (SMEs) tend to play a significant role;
 - Sectors where the private sector plays a very important role as a standard setter;
 - Products and sectors in which environmental requirements are indeed relevant and may significantly influence trade flows;
 - Sectors or product groups for which most of the information on environmental requirements is readily available.
- The pilot project should not a priori exclude cases of non-product-related processes and production methods (PPMs) and environmental management systems.
- The pilot project should be carried out in only one language. Some participants recommended the creation of a small steering group to guide further work in implementing the pilot project.
- The objective of the pilot project is to encourage and support brainstorming on the thrust, nature and modalities of any new international clearing-house mechanism, so that specific recommendations on further work can be made by the CTF in due course.

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