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**Environmental Requirements and Market Access
for Developing Countries**

Note by the UNCTAD secretariat

Executive summary

This note provides background information and analysis for the pre-UNCTAD XI workshop on Environmental Requirements and Market Access for Developing Countries, organized jointly by the UNCTAD secretariat and the National Institute of Metrology, Standardization and Industrial Quality (Inmetro), Ministry of Development, Industry and Foreign Trade, Brazil. The main aim of the workshop, which brings together experts from national Governments, institutions active in standards issues, the private sector, non-governmental organizations (NGOs) and intergovernmental organizations, is to examine the concept and explore the development of a Consultative Task Force (CTF) on Environmental Requirements and Market Access for Developing Countries.

The paper argues that environmental requirements are becoming more frequent, stringent and complex, including in sectors of export interest to developing countries. Two aspects are highlighted: (a) There are few international standards on environmental requirements; the large majority of standards are set by individual Governments and private entities. (b) Governmental standards and regulations, which fall under the discipline of the WTO Agreement on Technical Barriers to Trade (the TBT Agreement), represent only a relatively small part of environmental requirements; private-sector standards, eco-labelling schemes and voluntary codes of practice, including those of NGOs, constitute the majority of environmental measures. Work in UNCTAD and other forums has emphasized the need to (a) more effectively involve developing countries in the process of developing new regulations and standards for products of key export interest to them; (b) improve the collection and dissemination of information on environmental requirements, including standards and other measures not covered by the TBT Agreement; and (c) strengthen developing countries' capacities to respond to environmental requirements by promoting proactive adjustment policies in these countries, supported by international cooperation (e.g. in the areas of technical cooperation and capacity building).

The proposed CTF could play a constructive role in this context through analysis and policy discussions, through its possible role for coordinating technical assistance and capacity-building activities, and through the identification of supporting activities such as the collection and dissemination of information.

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Introduction

Background

1. UNCTAD's Commission on Trade in Goods and Services, and Commodities, at its seventh session in February 2003, recommended that the secretariat "explore the possibility of creating 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".
2. The UNCTAD secretariat and the National Institute of Metrology, Standardization and Industrial Quality (Inmetro), Ministry of Development, Industry and Foreign Trade, Brazil are jointly organizing a workshop to explore the development of a consultative task force (CTF).
3. The workshop is part of a project funded by the Government of the Netherlands. A number of studies commissioned under this project will be made available to the workshop.¹ These will be complemented by studies carried out in the context of the project on "Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues", funded by the UK Department for International Development (DFID),² as well as a study prepared by Inmetro.

Exploring the creation of a Consultative Task Force

4. One of the workshop's main objectives is to discuss the concept, objectives and thrust that the activities of a CTF might have. Exploratory activities are being coordinated with the secretariats of the UN Industrial Development Organization (UNIDO), the UN Environment Programme (UNEP), the UNCTAD/WTO International Trade Centre (ITC), the Organisation for Economic Co-operation and Development (OECD), the World Trade Organization (WTO), the World Bank and others with a view to avoiding duplication. The CTF is envisaged as an open-ended multi-stakeholder forum for representatives of Governments, relevant intergovernmental organizations, the private sector and relevant non-governmental organizations (NGOs) from developed and developing countries. It is proposed to launch the CTF as a project-based activity.
5. The CTF would focus on mandatory technical requirements and voluntary environmental standards set by the private sector, including buyers' requirements throughout the supply chain. The CTF would not aim to second-guess the legitimacy of environmental standards and regulations. Rather, it could act as a "think tank" on issues related to environmental and health-related requirements and market access for developing countries; promote constructive dialogue; and make recommendations on policy and capacity-building issues, particularly concerning the following:

¹ This concerns a paper on best practice in involving developing countries in pre-regulation- and pre-standard-setting consultations and a feasibility study on a clearing house for environmental and health requirements in international trade.

² UNCTAD will circulate a synthesis paper on experience with proactive adjustment measures to environmental requirements derived from country case studies in Asia for leather and footwear as well as electrical and electronic products.

- Examining ways to improve the collection and dissemination of information on environmental requirements,³ notably on voluntary standards, and analysing key underlying trends.
- Reviewing experiences with pre-regulation- and pre-standard-setting consultations to identify ways to enhance the participation of developing countries with a key export interest in products that may be affected by such standards and regulations.
- Exploring and exchanging national experiences on proactive adjustment policies and measures in developing countries, with a special focus on improving information management, including early-warning mechanisms and identifying measures and strategies to address the specific needs of small and medium-sized enterprises (SMEs).

Possible outcome of the workshop

6. The workshop is expected to:
- Make recommendations on the objectives, concept and nature of activities of a CTF.
 - Constitute a core group of experts to act as a steering group for ultimately launching the activities of the CTF.
 - Explore the feasibility of improving and expanding Inmetro's existing early warning system (Alerta Exportador) to also cover certain private-sector standards and make initial cooperative arrangements with the UNCTAD secretariat, particularly concerning the collection and dissemination of information.
7. The outcome of the workshop will be reported to UNCTAD XI, in particular the interactive thematic session on Assuring Development Gains from the International Trading System and Trade Negotiations (São Paulo, 16 June) and the Round Table on Promoting Trade for Sustainable Development (São Paulo, 17 June)

Key Issues

Environmental requirements: Definition, types and trends

Types of environmental requirements

8. Environmental requirements with potential effects on market access include regulations (which are mandatory) and standards (which are voluntary and can be implemented by the private sector or NGOs); labelling requirements (either mandatory or voluntary, such as eco-labelling); packaging regulations; and certain sanitary and phytosanitary (SPS) measures.⁴ Standards and regulations refer, for example, to product content (e.g. limit values or maximum residue levels for certain substances); recycled content; energy efficiency and recyclability; degradability; and other product characteristics. Many of these require proof of compliance – for example, through conformity assessment, including certification. Standards and regulations are also being implemented to achieve

³ The CTF will not be restricted to environmental requirements, because in practice it is often difficult to distinguish between environmental and health requirements. The excessive use of agro-chemicals, for instance, is a health concern for consumers, but also an environmental concern for producers. Therefore, cases in which environment- and health-related requirements are linked will also be covered by CTF activities.

⁴ In the context of the Environmental Database (EDB), the WTO secretariat has taken the view that only some 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.

the objectives of multilateral environmental agreements such as the Montreal Protocol and the Basel Convention. In some countries, increasing emphasis is being placed on *integrated product policies* and *producer responsibility*, based on instruments such as take-back obligations, non-regulatory measures (including information-based instruments and self-regulation) and life-cycle analysis.⁵ Such policies have emerged in particular in Europe, but their use in non-European countries is also growing.⁶

Box 1

Key waste management and reduction legislation and related material selection legislation in the European Union and Japan significantly affecting developing-country exports*

EU legislation

WEEE Directive (2002/96/EC)

Member States' implementation of directive	August 2004
Producer responsibility	August 2005
Collection target of 4 kg on average per head of population	End 2006
Recovery targets of 80%, 75% or 70% (depending on category of WEEE)	End 2006
Revised collection and recovery targets	2008

Restrictions on Hazardous Substances Directive (RoHS) (2002/95/EC)

Member States' implementation of directive	August 2004
New electrical and electronic equipment will not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers.	July 2006

End of Life Vehicles Directive (ELV) (2000/96/EC)

Member States' implementation	2003
Recycle 85% of all end-of-life vehicles	January 2006
Able to return vehicles free of charge into system	January 2007
Recycle 95% of all end-of-life vehicles	January 2015

Japanese legislation (all laws below are already in force)

- Basic Law for Promoting the Creation of a Recycling-Oriented Society
- Waste Management Law
- Law for the Promotion of the Effective Utilization of Resources (promotes the “three Rs” – reduce, re-use and recycle waste)
- Containers and Packaging Recycling Law
- Home Appliances Recycling Law
- Automotive Recycling Law
- Green Purchasing Law (which is *inter alia* a law for promoting greater use of recycled material)

* For a more detailed overview of upcoming or recent environmental requirements in several developed countries and some developing countries, see UNCTAD (2002), “Environmental Requirements and International Trade: Background Note by the UNCTAD Secretariat” (TD/B/COM.1/EM.19/2), accessible at www.unctad.org; and “Environmental Requirements, Market Access and Export Competitiveness: What Is the Problem for Developing Countries and What Can Be the Answers? Background Note by the UNCTAD Secretariat”, accessible at www.unctad.org/trade_env/test1/meetings/homin.htm.

⁵ For example, with regard to automobiles, batteries, electrical and electronic equipment, and packaging.

⁶ 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.

More frequent, stringent and complex requirements

9. Environmental regulations are proliferating. According to the WTO Environmental Database (EDB), which contains information on governmental environment-related measures, the share of environment-related notifications under the WTO Agreement on Technical Barriers to Trade has increased from 10 per cent in the early 1990s to 15–16 per cent in recent years.⁷

10. Environmental (and health-related) requirements are also becoming more stringent and complex. For example, standards and regulations concerning maximum residue levels (MRLs) for pesticides⁸ 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. 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.⁹ Such requirements may be difficult for developing countries to meet, as these countries face major difficulties in implementing sophisticated traceability systems.

11. To be able to meet various product-content-related standards and regulations, changes in processes and production methods are required. This concerns, for instance, thresholds for heavy metal or hazardous chemicals use or residues in products. In some cases, specific product characteristics (e.g. mandatory recycling) are supplemented by product content requirements (e.g. restriction of the use of certain hazardous substances in the final product).¹⁰

Standards and codes of practice used by the private sector and NGOs

12. 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 or risk management initiatives. Some 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, 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.¹¹ Such measures may affect companies in developing countries – for example, through the need to collect information to respond to questionnaires and meet traceability and audit requirements.

Box 2

⁷ WTO, WT/CTE/EDB/131/corr.1, June 2002. Environmental Database for 2001.

⁸ 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; and 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.

⁹ Article 4 of Council Regulation (EC) 104/2000, OJ L17.

¹⁰ 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.), to ease recycling from a technical and economic point of view.

¹¹ Vorley B, Roe D and Bass D (2002), *Sustainable Development and Trade: A Sectoral Study for the Proposed Sustainable Trade and Innovation Centre*. London, International Institute for Environment and Development.

The Standard on Good Agricultural Practice of the Euro Retailer Produce Working Group (EUREPGAP)

The current EUREPGAP checklist for fruits and vegetables requires a long list of checkpoints, many of which have to be complied with rigorously. The key clusters are:

- Traceability of the product back to the producing farm
- Record keeping and internal self-inspection
- Varieties and rootstocks accounting and management
- Documentation of site history and site management
- Documentation of soil and substrate management
- Recording of fertilizer use
- Documentation of irrigation and fertigation practices
- Recording of crop protection practices
- Documentation of harvesting methods
- Records on produce handling
- Records on waste/pollution management, re-use and recycling
- Documentation of worker health, safety and welfare
- Records on environmental issues
- Documentation of complaints

Source: EUREPGAP checklist for fruit and vegetables, Version 2.0 (January 2004), accessible at www.eurep.org.

13. There are also a growing number of environmental, health and social requirements incorporated in several schemes run by NGOs. These concerns initiatives in the area of eco-labelling through the Forest Stewardship and Marine Stewardship Councils and the promotion of clean products, such as freon-free refrigerators.

Implications

14. 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.¹² To gain or preserve market access, they must be able to meet mandatory health and environment-related regulations. 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. Fulfilling such requirements will, however, rarely lead to price premiums or to higher market shares in the short term.¹³ Rather, from a dynamic

¹² 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, while market access is a prerequisite for market entry, it does not guarantee it. Developing-country exporters (especially those from least developed countries), as well as their Governments, need to go beyond market access concerns and also focus on the conditions governing actual market entry. For more information, see UNCTAD (2003), “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.

¹³ For more information, see Berdegue JA et al. (2003), *Food Safety in Food Security and Food Trade: Case Study: Supermarkets and Quality and Safety Standards for Produce in Latin America*, Focus 10, Brief 12 (September), International Food Policy Research Institute, accessible at www.ifpri.org.

perspective, it increases opportunities for consolidating and expanding market shares. In the future, these requirements need to be considered an integral part of business strategies in companies and of economic strategies in developing countries (i.e. eco-positioning in addition to price and brand positioning or incorporated into the latter), to defend and expand international market shares.

15. 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 requirements¹⁴ or envisage a faster phasing out of harmful substances or processes and production methods.¹⁵

Key problems for developing countries

16. 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 fishery¹⁶ and forestry products, leather, textiles, and certain consumer products. Second, SMEs, which may find it relatively more difficult to respond to stringent environmental requirements, often play an important role in these sectors.

17. 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 material- and 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 from pollution-intensive industries.

18. 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 interrelated 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. If one attempts to conceptualize the key market access issues, one can conclude that they seem to fall into two related clusters: policy issues and capacity issues. Both can be addressed at three distinct intervention levels: (a) at the national level in developing countries; (b) in the WTO; and (c) outside the WTO at the international level.

¹⁴ 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, and so on. For more information, see www.eurep.org and EUREPGAP (forthcoming), *Introduction among Small-Scale Producers of Fresh Fruit and Vegetables in Developing Countries*, a study for the Dutch Ministry of Foreign Affairs.

¹⁵ A number of globally operating electrical and electronic companies, such as Sony, have issued environmental requirements that provide for a faster phasing out of heavy metal use in electrical and electronics manufacturing than is envisaged under the European Union's Removal of Hazardous Substances Directive or Japanese legislation enacted in the context of the recycling-oriented policy framework.

¹⁶ For example, bans on certain substances and (eco-)labelling. Management systems primarily aimed at controlling food safety risks (such as the HACCP) may also refer to certain environmental issues.

Box 3

Conceptualization of market access: Policy and capacity issues at various intervention levels

At the national level in developing countries

Policy issues

- Maximizing benefits/minimizing costs of adjustment to external environmental/health requirements and managing the associated adjustment process
- Developing national or export standards that are close to requirements in export markets
- Use of (mandatory) eco-labelling schemes
- Effective domestic coordination and cooperation, including with local governments and with non-governmental parties

Capacity issues

- Enhancing response and supply capacity
- Making efforts or assisting with information gathering
- Providing opportunities for training and exchange of experience (between companies)
- Use of (voluntary) eco-labelling and environmental management schemes

In the WTO

Policy issues

- Are current disciplines on the “proportionality” of a measure on technical barriers to trade (TBT) sufficient?
- Effective use of existing WTO mechanisms to limit undesirable impact (notification discussions; monitoring implementation; using S&D provisions; using DSB)
- Review of good regulatory practice and transparency procedures^{*} (e.g. information on and possibility to participate in pre-regulation-setting consultations)

Capacity issues

- Using the WTO as a source of information and breathing more life into TBT/SPS inquiry points
- Active participation in pre-regulation-setting consultations^{**}

At the international level, outside the WTO

Policy issues

- Lack of international standards, harmonization/equivalence of national standards and mutual recognition of inspection and conformity assessment results
- Avoiding a situation in which voluntary standards become significant TBT and market entry hurdles
- Creating conditions for effective participation in pre-standard-setting consultations

Capacity issues

- Information gathering and dissemination
- Review of trends in environmental/health requirements in international markets
- Effective participation in pre-standard-setting consultations

Only the policy issues in the WTO and outside the WTO framework appear to fall under current international discussions on market access issues. A more holistic approach to market access issues would, however, require an integrated analysis of policy and capacity issues at all three levels, thus including supply-capacity constraints. The complexity of intermingling policy and capacity-building measures requires a strategic and proactive response by exporting developing countries, rather than a piecemeal and merely reactive approach. It also requires active collaboration by Governments and business associations in developed countries and a more coherent and coordinated approach by donors.

^{*} The Third Triennial Review of the Operation and Implementation of the TBT Agreement (WTO document G/TBT/13 of 11 November 2003) has made a number of recommendations on good regulatory practice and on enhancing transparency procedures.

^{**} The difference between policy and capacity issues at the WTO level is not entirely clear-cut. The desire to tighten disciplines on the implementation of some specific TBT and SPS provisions might lead to policy decisions (e.g. on seeking or assuring the active participation of developing-country exporters that might be particularly affected by a specific environmental/health requirement in pre-regulation-setting consultations) that address or overcome lack of capacity.

19. The most frequently advanced problems for developing countries in meeting environmental requirements in export markets are:

- Insufficient disciplines on environmental requirements and related transparency procedures in the WTO Agreements on TBT and the use of SPS measures¹⁷
- Inadequate technical and institutional capacity to participate actively in pre-regulation- and pre-standard-setting consultations and to comply with requirements
- Lack of international standards and technical equivalence of national standards
- Supply-chain-driven nature of environmental/health requirements
- Maximizing the gains and minimizing the costs of adjustment measures in developing countries (including enhancing competitiveness)
- Piecemeal approach to technical assistance to and capacity building in favour of developing countries

Capacity constraints

20. 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 identify relevant requirements; implement the necessary technical, institutional and procedural changes; or demonstrate compliance in a credible way.¹⁸

21. 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 infrastructure, the dominance of SMEs in the export sector, lack of finance, and insufficient access to technology.

22. Many developing countries, for example, have insufficient technical capacity to efficiently manage health and environmental requirements. Typically, essential facilities like laboratories are not adequately staffed, scientific equipment is obsolete for the required tests, and there is no systematic collection or recording of information. The high cost of conformity assessment, including testing for thresholds of residues, is also a serious problem. Furthermore, in many developing countries, there are an inadequate number and quality of engineers for designing and implementing process changes. In addition, the fact that developing countries are often “standard takers” rather than “standard setters” puts them at a competitive disadvantage. This includes products of which developing countries are the exclusive or predominant producers, such as tropical beverages, spices and leather.

23. Rotherham identifies three general problems: (a) 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 true for SMEs. (b) The required equipment or management expertise may simply not be available locally, and local companies may not have the capacity to conduct international searches for suitable suppliers. (c) Even where equipment or consulting services are available locally, they are most likely to be produced externally and may therefore be more expensive than in developed countries. Thus, even when companies in

¹⁷ For example, the recent Third Triennial Review of the TBT Agreement (WTO document G/TBT/13) stresses that “improvements are needed in complying with notification obligations, in particular with respect to the timing of notifications, so that these are made early enough for other Members to comment on”. The document makes a number of recommendations, many of them, however, only resulting in “best endeavour” measures.

¹⁸ It is important to note that technical barriers to trade are encountered in all three pillars of the “environmental quality assurance system”. This concerns (a) rule making (in the form of mandatory technical regulations or voluntary standards); (b) conformity assessment (i.e. certification); and (c) accreditation of certification bodies. For more information, see Rotherham T (2003), *Implementing Environmental, Health and Safety Standards, and Technical Regulations: The Developing Country Experience*, Trade Knowledge Network Thematic Paper, Winnipeg and Geneva, IISD/ICTSD, accessible through www.iisd.org.

developing countries are able to implement standards, the costs of compliance are likely to be higher than for competitors in developed countries.¹⁹

Lack of international standards and technical equivalence

24. Article 2.4 of the TBT Agreement states that “where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, 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 fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems”. Evidence, however, suggests 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. Today there are still many regulations, especially relating to chemical residues in consumer items (e.g. leather and fabrics), that are not based on any international standard – usually because only a small group of countries have decided to regulate that substance.²⁰

25. Even where international standards exist, they are often crafted by large companies in developed countries.²¹ According to Rotherham, this has two important implications: (a) The kinds of international standards that are developed are often those that respond to developed-country priorities; and (b) even where international standards respond to developing-country needs, their specifications are more likely to be suited to large, capital-rich companies than to labour-intensive SMEs.²²

26. According to Article 2.7. of the TBT Agreement, “Members shall give positive consideration to accepting 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 at or success in negotiating technical equivalence agreements. Most existing agreements are bilateral. There are only a 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).²³

Approaches to overcoming key problems

Information

27. Effective gathering and dissemination of information on new environmental and health requirements in key export markets is very important for (a) influencing pre-regulation- and pre-

¹⁹ Rotherham (2003), p. 15.

²⁰ For more information, see OECD document COM/ENV/TD(2002)86/FINAL.

²¹ 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, frequently the proposal must 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 Henson S, Preibisch K and Masakure O (2001), *Review of Developing Country Needs and Involvement in International Standards-Setting Bodies*, Centre for Food Economics Research of the University of Reading, London, DFID.

²² Rotherham (2003), p. 17.

²³ 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 countries can follow in crafting their own locally defined specifications. For more information, see Westermayer C and Geier B (eds.) (2003), *The Organic Guarantee System: The Need and Strategy for Harmonisation and Equivalence*, study for FAO, IFOAM and UNCTAD, accessible at www.unctad.org/trade_env/test1/projects/ifoam2.htm.

standard-setting consultations in external markets;²⁴ (b) facilitating the national adjustment process, both at the enterprise and macro-economic levels; and (c) seeking technical assistance and capacity-building support from bilateral and multilateral donors. This requires effective utilization of the information tools available through the TBT Agreement, through commercial channels (in the case of voluntary standards, buyers' requirements and codes) or through Internet consultations (e.g. on the EU draft chemicals legislation), which have recently emerged as a new consultative tool.²⁵

28. Inmetro operates two online information services for exporters: Solicitação de Informações and Alerta Exportador. Using the first service, exporters can obtain information about technical requirements their products have to comply with in foreign markets. Alerta Exportador is an early warning system on new draft technical regulations and conformity assessment procedures issued by WTO Member countries. As a cooperative effort with equivalent standard institutions in other Mercosur member countries, this service is available, free of charge, to exporters in all four Mercosur countries. For the time being, Alerta Exportador provides no information on voluntary standards, buyers' requirements or codes.

Active participation in pre-regulation- and pre-standard-setting consultations

29. Based on a more effective strategy for managing information about new and emerging environmental requirements, developing-country representatives need to participate actively in pre-standard and pre-regulation-setting consultations. Such consultations should lead to ex ante reviews of the impact of the planned regulation or standards on developing-country exporters. The consultations should also give Governments of developing countries an opportunity to proactively represent the interest of SMEs. Furthermore, the consultations could identify technical assistance and capacity-building needs and the specific forms this assistance should take, as well as technology transfer needs.

30. The complexity of environmental/health requirements includes the trend towards multi-sectoral effects, such as the draft REACH Directive²⁶ and the Recycling-Oriented Economy Framework in Japan. The complexity of these measures requires a strategic and proactive response by exporting countries, rather than a piecemeal, reactive and short-term approach. Governments need to form partnerships with large, multi-sectoral industry associations and academia to analyse such requirements in export markets and their impact on developing-country exports, and to devise response strategies.²⁷

31. The reality is that many environmental standards and labelling programmes are being spread through supply chains, not through trade policy. Apart from the Code of Good Practice annexed to the

²⁴ From mid-May to mid-July 2003, for example, the European Commission organized an online consultation on the "White Paper – Strategy for a Future Chemicals Policy". The results of this consultation are accessible at www.europa.eu.int/yourvoice/consultations/index_en.htm. Of the 968 comments received, none came from a developing country.

²⁵ See, for instance, www.europa.eu.int/yourvoice/consultations/index_en.htm.

²⁶ 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 – Strategy for a Future Chemicals Policy" (COM(2001) 88 final), and the stakeholders' conference on the Commission's White Paper, accessible at www.europa.eu.int/comm/environment/chemicals/index.htm.

²⁷ For example, in Brazil various institutions will undertake a project to identify products potentially affected by REACH and develop a mechanism for disseminating relevant information to the industries concerned. The project involves the Escola Superior de Agricultura Luis de Queiroz (ESALQ) at the University of São Paulo, the Escola de Química at the Federal University of Rio de Janeiro, the Brazilian Association of Chemical Industries (ABIQUIM) and Inmetro. In Thailand, a subcommittee of the National Committee on International Economic Policy has been formed to review possible adjustment policies to environmental and health requirements; it most recently reviewed the cases of the WEEE and RoHS Directives.

TBT Agreement, 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 or implemented. In addition to initiatives by NGOs²⁸ and the private sector,²⁹ there is also a need to give more attention to the pertinent question of how these requirements could be analysed and discussed in an intergovernmental setting, including through the Consultative Task Force.

Harmonization and equivalence

32. An enhanced dialogue on specific environmental situations and related environmental policies and a more intensive exchange of national experiences with harmonizing environmental requirements, the technical equivalence of regulations and standards and mutual recognition of conformity assessment procedures are highly desirable. It has also been suggested that an enabling international framework (including through the UN Economic Commission for Europe (UNECE) International Model for Technical Harmonization) could be a tool for facilitating technical equivalence agreements.

33. In February 2003, the Food and Agriculture Organization (FAO), UNCTAD and IFOAM jointly created the International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF-Organic). The main tasks of ITF-Organic are (a) to review the trade and production implications of lack of harmonization and equivalence of standards; (b) 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 (c) to inform the intergovernmental bodies of FAO, UNCTAD and the WTO of appropriate harmonization and equivalence initiatives.³⁰ Initial analysis for ITF-Organic confirms that additional direct and indirect costs for multiple certification against an array of public and private standards are significant.³¹

Proactive adjustment policies in developing countries

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

35. More stringent process standards and regulations demanded in external markets may generate economic and health benefits and more efficient use of resources at the 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. 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 cost savings over the long term. This suggests that trade effects

²⁸ For instance, through the Sustainable Trade and Innovation Center. For more information, see www.epe.be.

²⁹ The International Social and Environmental Accreditation 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.isealliance.org.

³⁰ For more information, see www.unctad.org/trade_env/test1/projects/ifoam2.htm.

³¹ For trade in organic wheat, the direct and indirect costs of a lack of harmonization of standards have been estimated at between 1.5 and 7 per cent of the trade value. Wynen E (forthcoming), *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.

could be small. Win-win situations could arise in cases where increased resource efficiency can be achieved or where price premiums can be obtained.

36. Various regulatory standards but also many private-sector standards and codes may create a bias towards the operations of large firms, and small firms may be crowded out by large firms and transnational corporations (TNCs).³² At the same time, supply chain management can offer opportunities for private sector cooperation. These two factors need to be taken into account in shaping and implementing proactive national adjustment approaches.

Technical assistance to and capacity-building in developing countries

37. There are a large number of technical assistance and capacity-building initiatives 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, very few of these activities are following a holistic and systematic approach; the vast majority are implemented piecemeal. This means that there is a lack of information, coordination and cooperation as well as a lack of institutionalization of such activities. In addition, they are mostly reactive rather than proactive. One notable exception is technical assistance and capacity building within the framework of the Montreal Protocol to phase out 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, the technical assistance and capacity building of the Protocol also include funding of Ozone Offices at the country level, which ensures a systematic and coordinated approach to the phasing out of ODS, including training support, transfer of technology and building of infrastructure. In recent years, emphasis has also shifted from a reactive to a proactive approach.

38. Greater coordination of activities should aim at the transition to (a) a more holistic approach, which combines institutional capacity building with technical assistance for infrastructure and training; and (b) to more proactive policies in developing countries themselves that analyse adverse trade effects of environmental/health requirements in key export markets, improve information management and the level of awareness, and develop versatile adjustment approaches that maintain or improve export competitiveness.

39. Concrete measures are needed to gradually overcome the piecemeal and uncoordinated approach. These include regular exchange of information on ongoing technical assistance and capacity-building activities and gradual attempts to coordinate them.³³

40. There is a need for effective implementation of Article 11 of the TBT Agreement and Article 9 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) on technical assistance. A key problem is that financial resources for related technical assistance are usually provided by the development assistance departments of developed-country Governments, not their trade ministries. The priorities of the former might differ from those of the latter. Currently, most development assistance authorities place particular emphasis on poverty reduction, and TBT- and SPS-related technical assistance might therefore have to clearly demonstrate a poverty reduction link in order to obtain funding. This situation demonstrates that there is a need to

³² On the adjustment problems of SMS and the enhanced concentration of suppliers in Thailand's fruit export sector, see Boselie D and Buurma J (2003), "Grades and Standards in the Thai Horticultural Sector", in Vellema S and Boselie D (ed.), *Cooperation and Competence in Global Food Chains: Perspectives on Food Quality and Safety*, Maastricht, Shaker Publishing.

³³ The report of the recently concluded third triennial review of the TBT Agreement (WTO document G/TBT/13) recommends "the creation of an information coordination mechanism". Currently, informal consultations are being held on the nature and specific functions of such a mechanism.

improve policy coherence between trade, environment and development assistance administration in developed countries.

41. It is also important that the discussion among providers of technical and capacity-building assistance clearly appreciate and take into account the difference between policy measures that should be pursued in the context of the WTO and those that go well beyond the WTO framework. The latter includes required action on notification of voluntary standards, mutual recognition, technical equivalence, active consultation of and participation by developing countries in regulation and standards setting, and proactive adjustment strategies in developing countries, to name some key areas.

Possible role of the consultative task force

Possible functions of the CTF

42. The CTF can address only some of the above-mentioned issues in detail. The CTF could seek to play an important role in particular by (a) promoting a constructive dialogue on good practice in regulation and standard setting and the related examination of possible trade implications for developing countries; (b) promoting holistic approaches to issues at stake, taking into account supply constraints in developing countries and seeking to identify ways to strengthen the capacities of developing countries to respond effectively to environmental requirements; and (c) generating and disseminating information on environmental requirements, including private-sector requirements.

43. The CTF could carry out or supervise four different tasks:

- *Analysis:* The CTF, with the support of the UNCTAD secretariat and other institutions, could conduct a systematic analysis of key trends in environmental requirements and capacity constraints in developing countries.
- *Policy dialogue:* Aided by the above-mentioned analysis, the CTF could discuss what issues are best dealt with at what intervention level and by what stakeholders. The CTF could also promote an exchange of national experiences in pre-regulation- and pre-standard-setting³⁴ consultations and the involvement, if any, of developing countries with a significant export interest in products that might be affected by the standards concerned. Based on such exchange, the CTF could consider making recommendations on options for the possible development of best practices or guidelines for involving developing countries. Similarly, the CTF could promote an exchange of national experiences on proactive adjustment policies among developing countries and elicit recommendations concerning regional or subregional cooperation.
- *Coordination activities:* The CTF could also promote a regular exchange of information on technical cooperation and capacity-building activities by key multilateral and bilateral donors and other institutions³⁵ and discuss ways of gradually improving their coordination.
- *Support activities:* The CTF could recommend adjusting and linking existing information systems to support its own activities and consider the creation of a clearing-house mechanism as a permanent service to developing countries, placing particular emphasis on

³⁴ In this context, the CTF can also help raise awareness of the impacts of supply chain requirements on developing countries with retailers and other large buyers in developed countries.

³⁵ This concerns activities such as those implemented through the WTO/World Bank Standards and Trade Development Facility, UNIDO, the Centre for the Promotion of Imports from Developing Countries (CBI) in the Netherlands, the Association for Technical Co-operation (GTZ) in Germany, the International Development Research Centre and the International Institute for Sustainable Development in Canada, the Sustainable Trade and Innovation Center, and WWF International's activities on ethical certification and labelling.

standards and other private-sector requirements. The CTF could also facilitate cooperation aimed at strengthening capacities in developing countries to collect and disseminate information on environmental/health requirements in key export markets, including the creation or improvement of early warning systems.

44. As regards the general tasks of the CTF, experts may want to discuss the following questions:
- Do the four clusters of tasks mentioned above sufficiently address some of the key problems encountered by developing countries, as outlined in this paper?
 - In CTF activities, what should be the balance between analytical work, policy dialogue and technical cooperation and capacity-building activities?
 - How do experts see the coverage of regulatory and voluntary requirements in CTF activities?
 - How do experts see the role of the CTF as a thought-provoking discussion forum for dealing with environmental and health requirements from a more holistic point of view?
 - Are there additional issues that the CTF should look at?

Specific issues

45. The workshop could address three specific issues, probably through discussions in breakout groups. The UNCTAD secretariat will make available separate background studies on each of these issues. On each topic, experts may wish to address a number of questions that are important for the conceptualization and implementation of CTF activities.

Involving developing countries in pre-regulation- and pre-standard-setting consultations

46. Experts may wish to address the following issues, *inter alia*:
- What does active involvement in pre-regulation- and pre-standard-setting consultations mean in practice? What are the experiences at the bilateral level?
 - What is the level of use of ex ante reviews of the impact of environmental requirements on key developing-country exporters and discussion of the results with the affected countries and stakeholders?
 - What initiatives have been taken to facilitate active involvement by developing countries?
 - Is it desirable to develop guidelines on enhanced involvement (over and above the current provisions in the TBT and SPS Agreements)?

An international clearing-house mechanism for environmental and health requirements

47. Experts may wish to discuss the following questions:
- What is the experience with currently existing databases and clearing-house mechanisms on environmental and health requirements; are they practically relevant and actively used?
 - What are the major differences between clearing houses on regulatory requirements and voluntary standards? To what extent do they go in tandem?
 - How can the following virtues of an information clearing-house mechanism be achieved: practical, up-to-date, reliable, relevant and easy to access?
 - Should consumer health and safety, eco-labels and environmental management system requirements also be included in the clearing house?
 - What are the practical, financial and technical constraints of a clearing-house mechanism?
 - What are the most suitable sectors for launching an information clearing-house mechanism?

Proactive adjustment policies in developing countries

48. Experts may focus their attention on the following questions:

- What is the experience with public-private partnership approaches to gathering and disseminating information on new or emerging environmental and health requirements in key export markets?
 - Are key trends in emerging environmental/health requirements being analysed and their impact studied?
 - What are the level and efficiency of use of TBT and SPS inquiry points?
 - How are Governments and the private sector responding to complex, multi-sectoral environmental requirements?
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