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**Report of the Commission on Trade in Goods and  
Services, and Commodities  
on its fifth session**

held at the Palais des Nations, Geneva,  
from 19 to 23 February 2001 and 23 March 2001



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## **I. RECOMMENDATIONS ADOPTED BY THE COMMISSION AT ITS FIFTH SESSION**

### **Major agricultural concerns of developing countries: Impact of the reform process in agriculture on LDCs and net food importing developing countries and ways to address their concerns in multilateral trade negotiations**

#### *Agreed recommendations*

1. The Commission recognizes that the outcome was drawn up specifically with a view to reflecting the technical views of experts which could be useful in supporting LDCs and net food-importing developing countries (NFIDCs) in formulating their negotiating proposals before the end of the first phase of the WTO negotiations on agriculture. At the current stage of these negotiations, many of the elements listed in the outcome have been reflected in negotiating proposals, and have been extensively discussed at WTO. With concern that the interests of LDCs and NFIDCs would be fully reflected in these negotiations, the Commission recommended the following areas of analytical and technical support from UNCTAD and the other members of the international community.

#### **Recommendations to Governments**

2. With regard to enhancing the implementation of the Marrakesh Decision, LDCs and NFIDCs should identify specific areas where technical cooperation is required from development partners, in particular as regards ways to enhance agricultural productivity, infrastructure building, market information dissemination and export market development. UNCTAD and the international community should assist their efforts.

#### **Recommendations to the international community**

3. Multilateral financial institutions are encouraged to ensure coherence between their programmes and WTO reform commitments in LDCs and NFIDCs, taking into account the capacity of adjustment of those countries.

4. Multilateral financial institutions and bilateral donors are invited to examine the establishment of a special fund for technical and financial assistance under the framework of the Marrakesh Decision. The fund should be able to trigger financial assistance in accordance with future price increases above a certain threshold.

5. International organizations including WTO, the World Bank, IMF, FAO and UNCTAD, are invited to examine the long-term impact of food aid upon domestic production and trading opportunities of agricultural products in LDCs and NFIDCs.

6. Continued priority should be given to the provision of financial and technical assistance to developing countries, especially for meeting the costs of compliance with sanitary and phytosanitary measures and technical standards.

## **Recommendations to UNCTAD**

7. Within the mandate given in the UNCTAD X Bangkok Plan of Action (TD/390), in particular its paragraphs 132 and 133, the Commission recommends that UNCTAD provide analysis and technical assistance to developing countries with a view to facilitating their effective participation in the WTO negotiations on agriculture. In this regard attention should be given to the special concerns of LDCs and NFIDCs.

- (a) Technical assistance from UNCTAD and other international organizations is required in analysing information on agricultural trade policies of other countries to support developing countries, particularly LDCs and NFIDCs, in the current WTO negotiations on agriculture and in negotiations on accession to the WTO.
- (b) Based on the available documentation and quantification of domestic and export support measures and market access conditions, UNCTAD, working with FAO and other international organizations, should provide the statistical and analytical background needed to support developing countries in the negotiations, and should assess the impact of support measures and market access restrictions on the competitiveness of exports of interest to developing countries, particularly to LDCs and NFIDCs, at the commodity and country levels.
- (c) UNCTAD should analyse the impact of the Agreement on Agriculture on LDCs, NFIDCs and small island developing countries in agricultural trade and should develop a specific action plan.
- (d) UNCTAD should analyse the impact of the erosion of preferences and the process of adjustment from dependence on preferential market access in the light of MFN tariff liberalization.
- (e) UNCTAD should identify, in accordance with Article 20 of the Agreement on Agriculture, concrete measures to be included under the concept of special and differential (S&D) treatment, which could be a comprehensive way to help developing countries to meet their development objectives using, among others, trade policy measures.
- (f) UNCTAD is requested to provide technical assistance to enhance the negotiating capacity of developing countries, with a particular view to improving: analytical capacity to evaluate the likely implications of existing proposals on their economies; and effective coordination between the private sector stakeholders and the trade negotiators.
- (g) UNCTAD should analyse the impact of the provision of tariff-free and quota-free market access to agricultural exports from LDCs and its impact in international trade flows.

8. With a view to supporting developing countries, in particular LDCs and NFIDCs, in identifying policy options in the WTO negotiations on agriculture, the Commission

recommends that UNCTAD, in close coordination with other international organizations, should undertake the following:

- (a) Analyse the possible impact of new developments in world agricultural trade, such as new production technology, world agricultural supply chains, consumer preferences and concerns over food safety in developed country markets;
- (b) Analyse the impact of the reform process on key staples of developing countries, with particular attention to policy measures that are required to enhance agricultural productivity, food security, and rural poverty alleviation; and
- (c) Analyse ways to reduce the cost disadvantages in agricultural trade (due particularly to the transport cost) faced by the land-locked developing countries and small island developing States.

9. In light of the ongoing examination at WTO of possible means of improving the effectiveness of the implementation of the Marrakesh Decision (WT/L/384), Governments will provide substantive inputs to facilitate this examination. UNCTAD is requested to provide technical and analytical material to developing country Governments to assist them in their participation in this exercise.

**Analysis of ways to enhance the contribution of specific services sectors to the development perspectives of developing countries: National experiences with regulations and liberalization: Examples in the construction services sector and its contribution to the development of developing countries**

*Agreed recommendations*

1. The Commission recognizes that the outcome of the Expert Meeting reflected the technical views of experts which could be useful in supporting developing countries in the process of regulatory adjustment and progressive liberalization in the construction services sector with a view to achieving economic development objectives.

2. The Commission underlined the importance of the current GATS negotiations in addressing problems faced by developing country construction and engineering firms in competing in the world markets. Problems identified by experts included restrictions on temporary movement of personnel, discriminatory and non-transparent licensing and standards and anti-competitive practices, discriminatory government procurement practices, non-recognition of professional qualifications, problems of access to networks for the supply of construction services, subsidies, tied aid and discriminatory tax policies. The problems facing developing countries should be addressed, including through the effective implementation of GATS Article IV.

3. The construction services sector is a fundamental economic activity which permeates all sectors of the economy: it is an instrument for employment creation and a tool for

upgrading welfare; it has a major role to play in providing basic and safe infrastructure achieving social and economic development objectives in developing countries; and local firms and professionals should be fully involved in this process.

### **Recommendations to Governments**

4. Considering the important role of the construction services sector in the developing countries, there is a need for development of their comparative and competitive strength in their architectural, engineering, design and construction sectors through, *inter alia*, appropriate regulatory frameworks, human resources development, and research and development policies. Appropriate measures should also be taken for local firms and professionals to be fully involved in this process.
5. Consideration should be given to the promotion of regional and subregional trade and cooperation among developing countries in the construction services sector.
6. Governments should design policies consistent with the commitments in trade and investment agreements encouraging the transfer of technology to domestic firms through various forms and adopt export promotion policies aimed at the specific needs of the construction services sector.

### **Recommendations to the international community**

7. International funding agencies and bilateral donors are invited to address as a matter of priority the measures that impede the ability of local firms, in particular SMEs, to participate in their projects. They are also invited to take positive measures to actively promote the participation of developing country firms in the design and execution of construction projects, including of criteria in international tendering which would favour a commitment to transfer of technology and voluntary association agreements between foreign and domestic firms in developing countries aimed at promoting learning-by-doing processes.
8. International funding agencies and other international organizations are invited to provide technical assistance aimed at stimulating the growth in developing countries of their architectural, engineering, design and construction firms, as well as their technological capabilities.

### **Recommendations to UNCTAD**

9. UNCTAD should promote establishment of linkages among all the stakeholders in the international market for construction services through continued dialogue between the relevant professional associations, multilateral financial institutions and bilateral and regional funding agencies, and development agencies from developed countries.
10. UNCTAD should work with the United Nations Commission on International Trade Law (UNCITRAL) to assess the feasibility of drafting a model law/model laws which would support the development and efficient functioning of domestic construction services sectors.

11. UNCTAD should include legislation and regulations affecting trade in construction services in its Measures Affecting Service Trade (MAST) information database and disseminate the information through the Internet.

12. UNCTAD should also make available statistics through the Internet on trade in construction services and related sectors so as to help negotiators of developing countries to make an assessment of trade in services and use its results in negotiations.

13. UNCTAD should continue supporting the participation of the developing countries in the area of multilateral trade negotiations on trade in services by assisting them to identify and address barriers to their exports of construction services. UNCTAD should further provide the analytical background to developing countries to assess the negotiating proposals presented to the WTO process on the liberalization of services.

14. Through the CAPAS programme, UNCTAD should assist African countries in identifying the scope and likely impact of further liberalization in this sector and the potential for increase of trade among developing countries taking into account their GATS commitments and their development objectives.

**The sustainable use of biological resources:  
Systems and national experiences for the protection of traditional knowledge,  
innovations and practices**

*Agreed recommendations*

1. The Commission notes with satisfaction the interest generated by the Expert Meeting, as witnessed by the participation of a large number of experts, including representatives from indigenous communities, the richness of the debate and the useful exchange of national experiences. The Commission takes note of the outcome of the Expert Meeting, as contained in document TD/B/COM.1/33 – TD/B/COM.1/EM.13/3, reflecting the diversity of views expressed and the experts' conclusions and recommendations. It also welcomes the large number of papers submitted by experts. These provide useful information for member States. After consideration of the outcome of the Expert Meeting and document TD/B/COM.1/38, the Commission makes the following agreed recommendations.

Recommendations to Governments

2. Governments, at the national and local levels and in cooperation with local and indigenous communities (LICs), are encouraged to:

- (a) Raise awareness of the role and value of traditional knowledge (TK), promote the sustainable use of genetic resources, support the innovation potential of LICs, facilitate research on TK-based products and services, provide training to LICs including women and facilitate the documentation of TK.



- (b) Promote, where appropriate, the commercialization of TK-based products and services with an emphasis on equitable benefit sharing with LICs, and implement national legislation for the protection of TK.

### **Recommendations to the international community**

3. The issue of protection of TK has many aspects and is being discussed in several forums, in particular the CBD Working Group on the Implementation of Article 8(j) and Related Provisions, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and the WTO (both the TRIPS Council and the Committee on Trade and Environment). Therefore, continued coordination and cooperation between intergovernmental organizations working in the field of protection of TK should be promoted. The Commission makes the following recommendations at the international level :

- (a) Promote training and capacity-building to effectively implement protection regimes for TK in developing countries, in particular in the least developed among them;
- (b) Promote fair and equitable sharing of benefits derived from TK in favour of local and traditional communities;
- (c) Encourage the WTO to continue the discussions, on the protection of TK;
- (d) Exchange information on national systems to protect TK and to explore minimum standards for internationally recognized *sui generis* system for TK protection.

### **Recommendations to UNCTAD**

4. UNCTAD, within its mandate, as defined in paragraphs 147 and 106 of the Bangkok Plan of Action (TD/390), should in the area of traditional knowledge:

- (a) Conduct analytical work and organize regional workshops to exchange national experiences and examine strategies on TK-related issues, in cooperation with WIPO, CBD and regional organizations. In this context, the Commission noted the special references made to cooperation with the OAU;
- (b) Develop further the TrainforTrade module on Traditional Knowledge, Trade and Development;
- (c) Support, in cooperation with WHO and other pertinent organizations, initiatives taken by interested developing countries for capacity-building to identify means to protect and promote the further development of traditional medicine, taking into account environment and biodiversity fields;

- (d) Assist on request, member States and indigenous and local communities in exploring policies to harness traditional knowledge for trade and development, including through the UNEP-UNCTAD Capacity Building Task Force (CBTF) on Trade, Environment and Development and the Biotrade Initiative;
- (e) Assist, in cooperation with relevant international organizations, including the ITC, developing countries, where appropriate, with the commercialization of TK-based products, including the creation of niche markets for such products;
- (f) Assist interested developing countries in exploring ways for the protection of TK, recognizing and supporting the ongoing activities at WIPO;
- (g) Publish the papers submitted to the Expert Meeting, including on the Internet.

5. The UNCTAD secretariat is also encouraged to support, as appropriate, the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and the CBD Working Group on the Implementation of Article 8(j) and Related Provisions. The Commission welcomes cooperation between UNCTAD and UNCCD.

**Analysis of market access issues facing developing countries:  
Impact of anti-dumping and countervailing actions**

*Agreed recommendations*

1. The Commission notes that anti-dumping and countervailing duty actions are legitimate measures permitted under the WTO. The Commission also notes that they are now being used with increasing frequency and by a larger number of countries. In the experts' discussions, a series of issues were identified and concerns were expressed as documented in the report (TD/B/COM.1/34) and subsequent notes (TD/B/COM.1/39, and Add.1 and Add.2).

2. These issues and concerns cover substantive or procedural rules governing anti-dumping and countervailing duty proceedings, which include five per cent viability tests, exclusion of sales below cost, floor on normal value, fair and symmetrical comparisons, credit cost, duty drawback, exchange rate fluctuations, exchange gains or offsets, zeroing or exceptions, basis of negligibility, negligible import volumes, cumulation, lesser duty rule, back-to-back complaints, standing, price undertakings, specifying rule changes applicable to developing country exports, countervailing duties, WTO dispute settlement, constructed normal value, level of trade, non-market-economy treatment, *de minimis* dumping, the particular economic realities of certain cyclical industries, captive production/definition of industry, questionnaires, language and independent bodies. In view of their sensitivity and complexity, divergence of views existed. Many of these issues are being addressed in the WTO.

3. It was recognized that anti-dumping actions could have a serious impact on developing countries' exports and economies and that their SMEs face particular problems as

defendants in anti-dumping investigations. Certain developing countries find the anti-dumping and countervailing rules complex to administer and the proceedings costly. Many developing countries, particularly African countries and small economies, are particularly vulnerable to injury from dumped and subsidized imports and lack the necessary administrative resources to take action against such imports in compliance with their multilateral obligations. In this context, continued technical assistance by the international community, including UNCTAD, to these developing countries and small developing economies is required.

### **Recommendations to Governments**

4. Governments should assist developing country Governments through the exchange of the national experiences, in cooperation with international organizations, in their pursuit of better understanding of dumping issues, in particular regard to the problems of SMEs, so as to build the capacity to defend their interests in anti-dumping actions and to minimize the risk of such actions being taken.

### **Recommendations to the international community**

5. The international community should provide technical assistance to developing countries with a view to strengthening their administrations in relation to the WTO-consistent application of anti-dumping actions against injurious imports. In this context, the particular difficulties faced by many African countries of perceived increases in dumped imports should be examined closely.

6. The international community should also assist the small developing economies to overcome their constraints, such as lack of financial, technical and human resources, in applying WTO-consistent anti-dumping actions against injurious imports, including through institutional capacity-building, assistance in the elaboration of legislation and the setting up of investigation authorities.

### **Recommendations to UNCTAD**

7. UNCTAD, within its mandate, as defined in paragraphs 132 and 106 of the Bangkok Plan of Action (TD/390) should design and implement upon request and within available resources, a technical assistance programme with a view to supporting developing countries to develop improved understanding of anti-dumping and countervailing duty rules and procedures and capacity to administer anti-dumping and countervailing remedies.

## II. INTRODUCTION

1. The **Secretary-General** of UNCTAD noted that the expert meetings had addressed issues identified in the Bangkok Plan of Action, in particular agriculture, construction services, the protection of traditional knowledge and the impact of anti-dumping. He hoped that, by bringing the experts' perspectives to the attention of trade negotiators and national policy makers, the findings of these meetings would enhance the ability of developing countries to have their views and interests taken into account in current and future negotiations.

2. The realities identified by the experts were of great concern, particularly the challenges and concerns faced by least developed countries (LDCs) and net food-importing developing countries (NFIDCs) resulting from the agricultural reforms stemming out of the Uruguay Round, as outlined in the first Expert Meeting. After the lowering of trade barriers in developing countries, it was the rural poor – over 70 per cent of the population in those countries – who were most affected by exposure to cheap, often subsidized imports. They were also the first to suffer from the autonomous freeze of domestic support measures, including subsidies, which were locked in as multilateral commitments under the WTO Agreement on Agriculture. Moreover, the food import burden had increased. The outcome of the Expert Meetings had helped form the basis of negotiating proposals submitted by several least developed and net food-importing developing countries. The challenge faced by the international community was to ensure that those concerns became an integral part not only of the negotiations but of their results.

3. Turning to the second Expert Meeting on Construction Services, he noted that major barriers, as identified by experts, were: stringent technical and financial criteria, tied aid, restrictions on the movement of persons, non-recognition of professional qualifications and technical requirements at various levels. Another important factor undermining the competitiveness of developing-country firms was the use of subsidies and Government procurement in international bidding procedures. The importance of participation in such projects resulting in an effective transfer of technology and assistance of multilateral financial institutions and bilateral donors was stressed. Since the meeting had been held at a particularly important juncture and trade negotiations on services were about to take up specific sectors, he took note of the specific proposal recently tabled by the European Communities and of several other proposals which made good use of ideas discussed in the Meeting for consideration at WTO negotiations.

4. With regard to the third Expert Meeting on Traditional Knowledge, he pointed out that traditional knowledge was often undervalued and underutilized. Problems examined by the experts were not only about how to preserve traditional knowledge but also how to make better use of it in the development process and how to prevent its inappropriate use. Different protection options were considered, including the applicability of classic intellectual property rights instruments. He noticed that at the national level, experts recommended strengthening customary laws and developing *sui generis* systems for the protection of traditional knowledge. The experts also called for exploring minimum standards of an international *sui generis* system for traditional knowledge protection. These issues should be further discussed

in the relevant forums at WIPO. It was also recommended that these issues should be taken up in the WTO. UNCTAD, in cooperation with these intergovernmental organizations, was asked to promote follow-up actions, strengthen the traditional knowledge dimension in its capacity-building programmes and organize regional workshops – all of which it was already doing. UNCTAD was also encouraged to assist interested developing countries in exploring *sui generis* systems for the protection of traditional knowledge, including possible multilateral aspects of such systems.

5. On the fourth Expert Meeting on analysing the impact of anti-dumping and countervailing duties, he noted that a number of suggestions had been made as to dumping and injury determinations and how they could affect developing countries. The thrust of these suggestions was to alleviate the unnecessary adverse impact on these countries' trade by ensuring two things: first, that they would not be subject to anti-dumping duties unless there were firms engaged in dumping and clearly responsible for injury in the importing countries and second, that when such duties were applied, they would be no higher than necessary to alleviate such injury. Another reality described by experts, from African countries in particular, was the perceived influx into their markets of dumped imports and their inability to defend themselves effectively against injury, due to inadequate administrative and financial resources. This aspect would certainly require further study.

6. Speaking about UNCTAD's work in assisting developing countries in the field of trade, he felt that UNCTAD would need to meet two different kinds of concerns that would be difficult to reconcile. On the one hand, it would be required to assist developing countries to participate productively in trade negotiations, while on the other hand it must ensure that the interests and views of all member States and groups of States would be duly taken into account in its policy suggestions. In order to help developing countries, UNCTAD would need to suggest initiatives to change the status quo, but to do so might upset certain well-established interest groups. In such cases, it was important to identify the best approach for promoting the improvement of the trading system in the sense of making it more responsive to development aspirations. For this, UNCTAD and its member States must avoid being paralysed by the status quo.

7. UNCTAD's efforts to help weaker countries participate fully in the global economy would be founded on good faith and on an ethical commitment to making the multilateral trading system more development-oriented. During the years since the establishment of the WTO, the UNCTAD secretariat and member States alike were fully aware of the fact that in performing this task and in fulfilling this commitment, the role of UNCTAD and that of the WTO could not be the same.

8. In his view, to define the frontiers between UNCTAD's work and that of the WTO should not lead to any misunderstanding, provided UNCTAD and its member States recognized that the WTO was basically a rule-making body with a dispute settlement mechanism. UNCTAD's contribution should be geared towards actively bringing the development perspective as a paramount concern into issues on the multilateral trade agenda.

9. The representative of **Cuba**, speaking on behalf of **the Group of 77 and China**, considered this session of the Commission of crucial importance to UNCTAD. In his view,

the outcomes from the four expert meetings dealt with items which were both central elements of UNCTAD's mandate as set out in the Bangkok Plan of Action, as well as constituting key issues on the international trade agenda and subject to intensive multilateral negotiation or review in the WTO. He felt that success in dealing with these matters would be a test of the political will of the members to effectively implement this mandate.

10. The Expert Meetings had been very successful and produced expert advice on matters which were subject to, or affected by negotiations in multilateral trade fora. The transmission of the findings of the experts, including real problems and opportunities, as incorporated in the outcomes of the meetings, had assisted many delegations in designing more effective and realistic negotiating proposals. These proposals, if accepted, would provide greatly improved export opportunities for the exporters of developing countries, as well as dealing with a variety of other social and economic issues.

11. In making general comments applicable to the four expert meetings, he pointed out that: (i) each of the outcomes contained a set of recommendations to UNCTAD to carry out further work on these issues. The G77 and China endorsed all such recommendations in the text of the outcomes, as they all fitted within the Bangkok Plan of Action; (ii) many of the outcomes contained recommendations to the international community, particularly the Bretton Woods institutions. The G77 and China subscribed to the normal formula that these institutions were "invited" to carry out the actions identified; and (iii) there were some recommendations directed to Governments, most of which should be acceptable for all members of the Commission.

12. However, he noted that there were a series of recommendations by experts which touched directly upon matters currently the subject of review or negotiation in the WTO. The G77 and China would be realistic enough to recognize that these recommendations could not be endorsed at this session of the Commission. Therefore, he strongly urged all members of the Commission to exercise restraint, and not to indulge in restatements of negotiating positions that they had already presented, often and in detail, in the WTO. He felt this Commission should consider whether there was any additional work that UNCTAD could carry out that would support these negotiations, with the objective of ensuring that the development aspects of these various issues were effectively included on the international trade agenda.

13. Finally, he urged all members of the Commission to adopt a constructive, but realistic approach toward reaching agreed recommendations on these issues. The G77 and China considered that the expert meetings had already made an important impact by bringing the real problems faced by traders and producers to the attention of the trade negotiators.

14. The representative of **Sweden**, speaking on behalf of the **European Union (EU)**, said that the EU supported the proposals by the Secretary-General of UNCTAD, presented shortly before the Tenth Conference of UNCTAD in Bangkok, on improving the functioning of the intergovernmental machinery. These proposals had been endorsed at UNCTAD X and a formal decision had been taken at the Board in March last year. The EU believed that there was a need to ensure consistency throughout the three commissions and their expert meetings in terms of procedure and format of documents. The tone had been set in that respect in the

two recently held Commission meetings in January and February. The EU fully supported the new approach to expert meetings, e.g. that the outcome reflected the fact that experts participated in their personal capacity. Moreover, conclusions were not agreed, but instead comprised an outcome which was a summary of all positions. The Expert Meetings represented an occasion for a free and frank exchange of views on issues that might be controversial. In that light, it was important that all positions expressed be properly reflected in the outcome. She stressed the need to have agreed conclusions at the intergovernmental Commission level where the discussions were about policy choices and recommendations to be considered by the Board. She emphasized that the agreed conclusions should be short and action-oriented, distinguishing between actions to be carried out by member States, by the international community, and by UNCTAD. She also reiterated that the EU looked forward to participating actively in the discussions when a full cycle of expert meetings, Commission meetings and Board had been completed, to taking stock of the implementation of the reform decision of March last year and to deciding on possible modifications for the next year's cycle. Referring to the work of the Commission on Trade, the member States of the European Union had decided to exercise their competence in common through the European Community. As such, the European Commission representative would act as the EU's spokesperson on many of the items covered by the agenda of this Commission on Trade.

15. The representative of the **European Community**, speaking on behalf of the **European Union** (EU), said that the debates in the expert meetings provided a useful opportunity of dialogue with all its partners. He believed that a number of developing countries' concerns would be better met in the framework of a new, comprehensive, round of WTO negotiations, both balanced and inclusive. Work in UNCTAD and within WTO could prove to be complementary.

16. He agreed that the impact of the reform process in agriculture on LDCs and on net food importing countries would be of major concern. It would be essential that all countries, in particular developing countries, benefit from the expansion of world trade consequent to the reform process. Nevertheless, the reform process might have negative effects for a number of developing countries. Noting market access was of crucial importance for LDCs, he said that the EU had launched an important initiative to secure tariff/quota-free access for LDC exports, including agriculture. The EU was fully committed to the continuation of the reform process on agriculture and believed that further liberalization and extension of trade in agricultural products would make an important contribution in sustaining and continuing economic growth. Opportunities must be created to increase market access for developing countries. The EU was by far the largest market for exports of agriculture products from developing countries. It was convinced that the reform process should be pursued by further reduction of market support measures. Domestic support measures that promoted the vitality of rural areas and the food security concerns of developing countries were of great importance, and appropriate measures in these should be exempted from any reduction commitments. In the EU's view, developing countries should retain the flexibility to address these concerns, including the revision of the *de minimis* clause.

17. Turning to construction services, he noted that this was a fundamental economic activity that permeated all sectors of the economy. This was reflected in the fact that many

WTO Members had already made commitments in this sector. However, substantial barriers continued to exist. The EU had submitted a proposal in WTO, as part of the GATS 2000 negotiations, in order to stimulate debate on these barriers, with a view to promoting the interests of all participants through progressive liberalization. In order for this sector to develop and to contribute to development, he felt that there was a clear need for policy decisions across a broad range of areas with implications for regulatory action.

18. On agenda item 5, the EU was prepared to address developing countries' demands to closely examine the issue of traditional knowledge with a view to achieving effective and adequate protection of potential right holders. In his view, the first step must be a thorough examination of existing, or emerging, national regimes regulating access to, protection of and rewarding the use of traditional knowledge. The EU might come to the conclusion that there was a need to adapt existing systems and to consider *sui generis* forms of protection and at the same time that it was essential to preserve a well functioning system of intellectual property protection. Any possible adaptation of present regimes should not affect negatively the processing of patent applications or the validity of rights arising from granted patents. In his view, this should not, of course, preclude exploring the establishment of systems that guaranteed the preservation of cultural and biological diversity, as well as the sharing of benefits arising from the use of traditional knowledge and folklore. He felt that WIPO as the specialized UN organization would be the proper forum to study intellectual-property-related aspects of the protection of traditional knowledge.

19. Referring to the agenda item on the impact of anti-dumping and countervailing actions, he said that many EU members supported attempts to improve special and differential treatment for developing countries in the field of anti-dumping although the whole issue seemed far more complex than it might appear. The world was not simply divided between developing and developed countries. In this context, he raised two questions. He said that first, a number of companies in developing countries often possessed similar resources and could be as large, technologically sophisticated and productive as in developed countries. A recent case in which the EU had imposed definitive anti-dumping measures included a company from a developing country with an annual turnover of nearly US\$2 billion. He felt that it would not be fair to create a framework where such companies could undermine the application of international trade law and the EU shared the views of those who would like to tighten up the "minimum benchmark rules" which the WTO Anti-dumping Agreement represented. Second, it should also be kept in mind that developing countries increasingly found themselves subject to anti-dumping investigations by other developing countries, as shown by the statistics of the last three years. He questioned that making it easier for developing countries to take action would address developing countries' concerns about the increased use of anti-dumping actions globally. In this regard, he recalled that the EU had been providing technical assistance to developing countries in this area and would continue to do so. A rules-based international trading system could provide security to all countries, and anti-dumping measures could provide a safety blanket against unfair practices.

20. Finally, the EU was always ready to engage in open and constructive dialogue with all its partners. Dialogue could take place in different formats and fora. But the negotiation of international legally binding commitments should be kept in the competent organizations. As



a member of the international community, the EU had the obligation to provide clarity and to avoid unnecessary confusion.

21. Referring to the Secretary-General's earlier statement, that an overriding objective of UNCTAD was making the multilateral trading system more development-oriented, the EU was of the opinion that a new round of trade negotiations should draw a strong development component. He was sure UNCTAD and the work of the Commission could make an important input in this respect.

22. The representative of **South Africa**, speaking on behalf of the **African group**, said that the African group had benefited greatly from the Expert Meetings and had already incorporated some of the outcomes of the expert meetings in their proposals tabled at the WTO. He agreed that Members be realistic in the Commission's work, especially with regard to those issues currently under negotiation.

23. The representative of **Mexico**, speaking on behalf of the **Latin American and Caribbean Group**, said that the fifth session of the Commission provided an opportunity to reflect on the task of constructing a fair and equitable multilateral trading system that contributed to the strengthening of economic and social processes in countries. The dialogue in UNCTAD would help to find an answer to many fundamental problems related to development. In the particular case of goods, services and commodities, it posed the challenge of finding imaginative and intelligent means of making ongoing global and social processes and the distribution of income compatible.

24. The development efforts of States had been restricted or even annulled by the prevailing distortions and imbalances in the economic trading system. There was an urgent need to remove obstacles to development and to create a favourable international environment to allow trade to flow. One basic obstacle was the gap between the most urgent economic and social needs of States and the priorities of the international agenda. In order to bridge this gap, what was required was greater and more effective participation of developing countries in the international economic decision-making process. Multilateral trade negotiations should consolidate an open multilateral trading system that took account of the needs of all developing countries.

25. The development process required international economic growth that was sustainable in a global economy. That in turn required clear rules of trade that contributed to development and reflected coherence between the conditions and obligations of developing countries.

### **III. MAJOR AGRICULTURAL CONCERNS OF DEVELOPING COUNTRIES: IMPACT OF THE REFORM PROCESS IN AGRICULTURE ON LDCS AND NET FOOD IMPORTING DEVELOPING COUNTRIES AND WAYS TO ADDRESS THEIR CONCERNS IN MULTILATERAL TRADE NEGOTIATIONS**

26. For its consideration of this item the Commission had before it the following documentation:

“Report of the Expert Meeting on the Impact of the Reform Process in Agriculture on LDCs and Net Food-Importing Developing Countries as Ways to Address Their Concerns in Multilateral Trade Negotiations” (TD/B/COM.1/31);  
“Note by the UNCTAD secretariat” (TD/B/COM.1/36).

27. The **Chairman of the Expert Meeting on the Impact of the Reform Process in Agriculture on LDCs and Net Food Importing Countries and Ways to Address their Concern in Multilateral Trade Negotiations**, reported on the outcome of the Expert Meeting. He said that the Meeting had been held against the background of the ongoing WTO negotiations on agriculture with two major objectives: (i) to clearly delineate those challenges and concerns that LDCs and NFIDCs faced during the Uruguay Round reform process in agriculture, and (ii) to examine how those concerns could be best addressed in the ongoing multilateral trade negotiations on agriculture. The experts had exchanged country experiences and illustrated the factors that could have aggravated negative impacts from the reform process in agriculture on LDCs and NFIDCs. Those factors included: continued high dependence on food imports; a direct linkage between rural agricultural viability and poverty reduction; difficulties in balancing the short-term benefits of food aid and its long-term impact; severe adjustment costs arising from unilateral liberalization of the agricultural sector; non-competitiveness of agricultural exports in the world market; and high dependence of foreign exchange earnings on exports of one or two agricultural commodity under preferential market access. Experts’ discussions had focussed on the following areas: (i) actions under the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Process on Least-Developed Countries and Net Food-Importing Developing Countries that required implementation and improvement; (ii) elements to be reflected in negotiations on the continuation of the reform process in agriculture; (iii) issues concerning coherence between Bretton Woods conditionality and the WTO commitments and negotiations on accession to WTO; and (iv) recommendations to UNCTAD and other international organizations. Firstly, the sentiment among LDCs and NFIDCs was that the Marrakesh Decision failed to meet food security and other developmental concerns arising from the implementation of the UR commitments. Secondly, the reform process raised two distinct types of concerns, namely socio-economic concerns and commercial concerns. As to the former concern, it was pointed out that the policy options available to LDCs and NFIDCs had come to be limited as a result of unilateral and multilateral obligations to liberalize their agricultural sector, precluding certain policy measures that were necessary to address developmental concerns such as food security and rural poverty alleviation. As to the latter, commercial concerns were also highlighted, as many of those countries were highly dependent on foreign exchange earnings from agricultural exports. It was noted that the implementation of UR Agreements had not visibly improved their countries’ market access

opportunities largely due to: high trade barriers remaining in the developed country markets; increasing stringency of sanitary and phytosanitary measures and technical standards and erosion of preferential tariff margins, be it actual or the threat thereof. Against the backdrop of ongoing negotiations on agriculture, it was suggested that the Commission might wish to come up with pragmatic policy recommendations, bearing in mind the outcome of the Expert Meeting, with a view to supporting developing countries in their efforts to ensure that their interests and concerns were effectively addressed in the negotiations. Suggested areas included: recommendations to UNCTAD; “other issues” such as policy coherence between Bretton Woods conditionality and WTO commitments as well as accession of LDCs and NFIDCs to WTO; the aforementioned Marrakesh Decision; and concrete negotiation issues.

28. The representative of **Cuba**, speaking on behalf of **the Group of 77 and China**, stated that the Expert Meeting on the Impact of Reform Process in Agriculture had been highly useful, thus successful, as it had facilitated developing countries efforts in the preparation for ongoing WTO negotiations on agriculture and for concrete negotiating proposals that had to be tabled at the time of the Expert Meeting. He noted that discussions in the Expert Meeting had helped many countries to elucidate how agricultural and developmental objectives specific to their own countries should be addressed in the continuation of the reform process in agriculture. The G77 and China were therefore in a position to endorse the recommendation for UNCTAD to carry out specific studies under its mandate given by the UNCTAD X Plan of Action on agriculture and to invite Bretton Woods institutions to undertake actions contained in the outcome of the Expert Meeting. However, it was recalled, that given the ongoing negotiations in WTO, the Commission might wish to concentrate on the current and immediate needs of developing countries with respect to the ongoing negotiations on agriculture and on accession to WTO. He was of the view that developing countries needed to increase their negotiating capacity and that the Commission might wish to focus on identifying areas of analytical and technical support with a view to this objective.

29. The representative of **Singapore**, speaking on behalf of the **Asian Group and China**, stressed the appropriateness and timeliness of the Expert Meeting. Balancing the development objective and the commitment to pursue agricultural liberalization had been a major concern. Paramount importance had been attached to the ongoing WTO negotiations on agriculture. Agriculture remained an essential sector for the economic development of Asian countries. Therefore the issue of food security was not only of economic importance but also of socio-political concern. Agricultural trade barriers had been radically and in some instances unilaterally reduced, while those in major developed countries persisted to impede trade expansion of Asian agricultural exports. The Expert Meeting had been most timely as discussions therein had served as inputs to efforts to formulate negotiating proposals, as well as to evaluate developed country proposals. The exchange of country experiences had led to the recognition of the common problems and concerns faced by many LDCs and NFIDCs. The Asian Group and China endorsed, in particular, the following findings of the Expert Meeting: (i) there was a need to differentiate agricultural activities in LDCs and NFIDCs in terms of commercial activity and social necessity and a need for countries concerned to formulate a long-term development strategy that might include a flexible use of trade policy measures; (ii) while the Agreement on Agriculture brought agricultural trade under

multilateral disciplines, it did not effectively address the problems of poverty and rural development; and (iii) subsidized exports from major developed countries of key staples including wheat, maize, pork and poultry had been especially damaging to the production capacity of rural poor farmers in LDCs and NFIDCs due to their price disadvantages in the production of those products. Moreover, export subsidies eroded the export potential of LDCs and NFIDCs not only in international markets but also in their traditional regional and sub-regional markets. Under the mandate given by paragraph 133 of the UNCTAD X Plan of Action, UNCTAD should undertake analytical work on major agricultural concerns of developing countries in specific areas. These areas included: (a) delineating agricultural products of particular interest to developing countries, and analysing ways and means to improve market access for those products; (b) analysing on a product-specific basis the impact of the reform process on key staples of developing countries, with particular attention to domestic support measures that were required to enhance agricultural productivity, food security and rural poverty alleviation; and (c) identifying and examining possible impacts on agricultural export opportunities that might arise from new developments in the world agricultural trade, such as new developments in production technology, world agricultural supply chains, consumer preferences and concerns over food safety.

30. The representative of **Mexico**, speaking on behalf of the **Latin American and Caribbean Group**, said that the Expert Meeting offered the opportunity to have a fruitful debate concerning the main policies pertaining to multilateral trade in agricultural products. In this context, experts had identified various relevant aspects of the agricultural reform process that were of utmost importance for some developing countries. These included: the worsening of the food security problem; the structural difficulty of achieving competitiveness within the current international agricultural markets; and the strong dependency on exports from this sector for the acquisition of hard currency. An endeavour should be made to eliminate tariff peaks and tariff escalation, as well as to reduce the obstacles which developing country exports faced in developed country markets. With regard to developing countries' market access, it would be desirable for further studies to be carried out to identify any existing tariff and non-tariff barriers. In addition, concerning export competence, the final aim should be for export subsidies to be eliminated. He agreed with proposals of the experts that UNCTAD, in coordination with other international organizations, should continue to provide technical assistance that analysed agricultural trade policies and supported developing countries in WTO negotiations and in WTO accession. In this regard, UNCTAD's contribution could be to provide statistical data, studies and analyses, without duplicating the work of other organizations to support developing countries in carrying out multilateral negotiations and to evaluate the restrictions on market access and export competitiveness of products of importance to developing countries. In this sense, it was desirable to address the main concerns of developing countries in the agricultural sector, such as those relating to the Marrakesh Decision. In addition, the adjustment process in preferential trade agreements vis-à-vis multilateral trade liberalization and the factors that determined export competitiveness of agricultural products from developing countries should be studied. Finally, another relevant issue for analysis on the part of UNCTAD should be the study of the structural disadvantages of least developed and small developing countries.

31. The representative of **Zambia**, speaking on behalf of the **African Group**, highlighted the difficulties encountered by African countries in their efforts with respect to agricultural development, given that the majority of them, being NFIDCs if not LDCs, were heavily dependent on agriculture for their basic livelihood. The discussions in the report of the Expert Meeting accurately described the policy dilemma faced by African countries, namely the conflict between the objectives and the actual short-term impacts of agricultural policy reform. The major objective of agricultural policy reform in Africa had been to increase production and exports and to diversify exports so as to achieve the major developmental policy goal of poverty alleviation. He stressed, however, that reforms in a number of low-income developing African countries had led to shrinkage and in some instances to the total collapse of the agricultural sector. The current multilateral rules under the WTO Agreement on Agriculture were unlikely to reduce the adjustment costs resulting from the agricultural reform process, as in his view the Agreement on Agriculture was focused on curbing agricultural production by eliminating policy distortions rather than serving the general purpose of poverty alleviation. As to the outcome of the Expert Meeting, the African Group would like to see the elements contained therein serve as useful inputs in formulating proposals for the ongoing negotiations on agriculture under WTO. He highlighted the following major issues of concern to African countries in the context of the WTO negotiations: (i) converting the Marrakesh Decision into dividends, including solving the long-term food security problem; (ii) addressing possible effects of reductions or elimination of export subsidies and establishing an internationally agreed discipline on export credits; (iii) establishing a predictable and effective mechanism for financial and technical assistance to improve technical standards and SPS; (iv) reducing tariff peaks and tariff escalation and imbalance in the level of actual tariff barriers in developed countries; (v) implementing duty-free and quota-free market access for LDC exports; and (vi) improving and operationalizing S&D treatment for developing countries. While recognizing the above issues of importance to African countries in the WTO negotiations, he suggested the Commission adopt the following recommendations: (a) practical proposals to assist African countries in enhancing their negotiating capacity through the analytical capacity to evaluate the likely implication of existing proposals on Africa, effective coordination between the private sector stakeholders and trade negotiators, effective coordination among different Ministries within a negotiating machinery and effective coordination of negotiating positions with other WTO Members; (b) practical proposals to invite international organizations, including WTO, the World Bank, UNCTAD, FAO and IMF, to deal with some issues such as the long-term impact of food aid upon domestic production and trading opportunities in Africa, and ways to redress policy incoherence between unilateral reform in agriculture and the WTO commitments; and (c) practical proposals with regard to the examination by the international community of economic and political aspects concerning early implementation of duty-free and quota-free market access for LDCs.

32. The representative of **Uruguay**, stated that issues relating to LDCs and NFIDCs should be at the centre of WTO negotiations on the continuation of the reform process in agriculture. At the same time, he also stressed the importance of trade-distorting export subsidies applied by developed countries in the ongoing negotiations on agriculture.

33. The representative of **Lesotho**, said that agriculture occupied a central place in the national economy. Lesotho continued to face a major policy dilemma in its continuous efforts to maximize the potential of this sector due largely to under-capitalization, low levels of productivity and weak linkages with other parts of economy, and as well as to the failure to operationalize S&D provisions in the Agreement on Agriculture as well as in the Marrakesh Decision. He enumerated a set of elements for recommendations of the Commission, which included: (i) UNCTAD and other international organizations should immediately undertake analysis of agricultural policies of developing countries, in particular LDCs, with the aim of enhancing support aimed at identifying policy options within the negotiating process; (ii) UNCTAD should assist LDCs and NFIDCs in identifying specific areas where technical cooperation was required from development partners, in particular as regards ways to enhance agricultural productivity, infrastructure building, market information dissemination and export market development; (iii) a special fund for technical and financial assistance should be established so as to enable financial assistance to be triggered according to price fluctuations in the world markets; and (iv) a commitment was to be achieved to address the issue of policy coherence among all development partners, including international financial institutions. He also stressed the importance attached to the proposal to request UNCTAD and the international community to undertake an examination of economic and political aspects of the early implementation of duty-free and quota-free market access for LDC exports.

34. The representative of **Morocco** said his country's situation as a net food-importing developing country was characterized by the existence of two distinct sectors. For those products that were exclusively consumed by the domestic market, Morocco was a net importer. For other products like fresh and processed food and vegetables, Morocco had some export potential. As the implementation of the UR had not been satisfactory to Morocco's interests, it considered that the trade and support measures adopted by developed countries should be significantly reduced, particularly as agriculture constituted the principal economic activity of a large number of developing countries. He proposed that in order to institute solidarity between developed and developing countries, the creation of a "world food fund" by developed countries should be established by which the interests of developing countries would be assured.

35. The representative of **Jamaica** said that small island developing countries had very limited capacity for exports and for enhancing production, and the net food-importers amongst them had a vital interest in the effective implementation of the Marrakesh Decision in favour of LDCs and NFIDCs. She urged that appropriate steps should be taken for the rapid implementation of the Marrakesh Decision. It was time for these measures to be converted into meaningful programmes, and within the framework of the ongoing mandated negotiations on agriculture tangible results were foreseeable. She found it paradoxical that LDCs and NFIDCs depended more on the agricultural sector and had implemented more far-reaching trade liberalization in their agricultural sectors than some developed members of the WTO which were less dependent on the sector. It was with this paradox in mind and the inherent imbalances in the multilateral trading system that the concerns of NFIDCs and LDCs must be taken into account in order to integrate all developing countries into the multilateral trading system. Her country welcomed the outcome of the Expert Meeting and fully endorsed

the proposals in section one, as it contained many elements that were already reflected in CARICOM's proposal to the WTO. With regard to section two, she was in favour of most of the recommendations. Sections three and four were in keeping with her country's concerns. In this regard, the proposals made by the experts should be converted into recommendations by the Commission.

36. The representative of **Norway** said that his country fully endorsed the report of the Expert Meeting and in the continuation of the reform process in agriculture, special attention should be paid to the interests of developing countries, in particular LDCs. Improved market access for agricultural products was of vital importance to many developing countries as a vehicle for economic growth and poverty alleviation. The challenges faced by developing countries in terms of acute food insecurity should be carefully addressed to ensure adequate flexibility in national policy design to foster domestic agricultural production. In its recent proposal to the WTO negotiations on agriculture, Norway recognized that S&D for developing countries should be an integral part of the Agreement on Agriculture and was important for LDCs. Norway was of the view that it could agree with several of the points listed in the report from the Expert Meeting and that it was important that the preparation of statistical and analytical background be undertaken in cooperation between UNCTAD and relevant organizations such as WTO, FAO and OECD.

37. The representative of **Switzerland** stated that negotiations on the reform process would continue as envisaged in article 20 of the WTO Agreement on Agriculture, taking into account non-trade concerns of agriculture such as multifunctionality and its importance for society. For Switzerland, agriculture played an important role in land conservation and in the stabilization of migration, and it contributed in a multifunctional way to the stability of societies, cultures and countries. While examining the possibility of ways to improve market access for LDCs agricultural products, Switzerland was of the view that a special mechanism was necessary to allow for the multifunctional role of agriculture in society, but the mechanism should be applied in the least trade-distorting manner.

38. The representative of **Japan** emphasized the importance of the Marrakesh Decision and stated that food security was extremely important and that it was crucial to solve agricultural problems in developing countries, as was also the case in developed countries. He therefore suggested that certain multilateral rules on border measures and domestic support measures might have to be reexamined. In the long term, the agricultural production base of developing countries should be improved, and in the short term, bilateral and multilateral food aid schemes should be strengthened.

39. The representative of **Mauritius** welcomed the recommendations of the Expert Meeting to the effect that the Marrakesh Decision should be made more operational with a view to solving the long-term food security problems of LDCs and NFIDCs, rather than tackling short-term needs through food aid. A cautious and pragmatic approach should be adopted when dealing with all forms of export competition. Article 20 of the Agreement on Agriculture provides for the long-term objective of substantial progressive reductions in support and protection and not for their elimination. Finally, he suggested that in line with the recommendations of the Expert Meeting and pursuant to paragraph 133 of the Bangkok Plan

of Action, UNCTAD should carry out as soon as possible a study on the impact of the Agreement on small island developing States in agricultural trade and to develop a specific action plan and accompanying budget.

40. The representative of **Chile** considered it essential to establish an equitable and market-oriented multilateral agricultural trading system. The current system penalized various developing countries which had adopted liberalization measures but which could not compete with those countries currently benefitting from substantial and unfair subsidies. He was convinced that for the development of developing countries it would be imperative to create better market access conditions and to remove distorting trade subsidies. He also agreed with the call for the establishment of concrete provisions relating to special and differential treatment and to provide developing countries with technical assistance to allow them to meet their legitimate needs, such as rural development and food security.

41. The representative of **European Community** stated that the interaction between development and trade was an issue that went beyond farm trade. He considered that there were some interesting elements in the outcome of the Expert Meeting. It was essential that all members and in particular developing countries benefited from the expansion of world trade consequent to the reform process. The possible negative effects on LDCs and NFIDCs should however be addressed properly. He highlighted the need to promote the development of genuine food aid in fully grant form in ways which did not damage local food production, which must contribute to food security. Technical and financial assistance should therefore be intensified. As to the continuation of the reform process in agriculture under the WTO, he said that, with reference to its proposal submitted to WTO in December 2000, the European Community was fully committed to the process, while recognizing the specific concerns of developing countries within that process, and had made proposals in that direction. He believed that further liberalization of agricultural trade would make an important contribution to sustained economic growth for all countries. However, it was essential that opportunities be created for increased market access for developing countries. Being the largest market for agricultural exports from developing countries, the EU had proposed duty-free access for essentially all products from LDCs. It also advocated the provision of significant trade preferences to developing countries on the part of other developed and the wealthiest developing countries.

42. The representative of **Argentina** said that he agreed with the interventions made by Uruguay and Chile. He pointed out that developing countries' agricultural trade competitiveness had been worsening due to the increasing use of agricultural subsidies and barriers to market access. In addition, agricultural export subsidies distorted trade, displaced competitive exporters, contributed to the use of production methods that were incompatible from an environmental point of view and perpetuated rural poverty within developing countries. He encouraged UNCTAD to further its studies on all these important issues in order to help developing countries to participate actively in the WTO agricultural negotiations.

43. The representative of **Brazil** highlighted the importance that his country, an active member of the Cairns Group, attached to all aspects of agricultural trade liberalization.



Concerning export subsidies and their linkage to food security programmes in developing countries, he considered that, while urban consumers in importing countries benefited from lower food import prices, subsidies served as a disincentive to development and expansion of domestic food production. The implementation of the Marrakesh Decision would never be effective unless it went hand in hand with the elimination of this practice that hindered the participation of developing countries in world agricultural markets. The elimination of export subsidies would require a more market-oriented framework for world agriculture trade and a set of rules that did not distort international prices or undermine competitive exports of developing countries.

44. The representative of the **International Confederation of Free Trade Unions**, (CISL) highlighted the importance of taking account of social goals in the pursuit of sustainable development, such as reducing poverty and ensuring food security and decent work for all workers. He was of the view that negotiations on agricultural reform should comprise the following elements: (i) a social clause with reference to international labour standards to avoid social dumping so that the impact on food security of liberalization of food products could be taken into account; (ii) elimination of export subsidies for agricultural products; (iii) analysis of the impact of export subsidies on local production, in collaboration with social partners; and (iv) respect of all workers' rights in respect of health and safety.

#### **IV. ANALYSIS OF WAYS TO ENHANCE THE CONTRIBUTION OF SPECIFIC SERVICES SECTORS TO THE DEVELOPMENT PERSPECTIVES OF DEVELOPING COUNTRIES: NATIONAL EXPERIENCES WITH REGULATIONS AND LIBERALIZATION: EXAMPLES IN THE CONSTRUCTION SERVICES SECTOR AND ITS CONTRIBUTION TO THE DEVELOPMENT OF DEVELOPING COUNTRIES**

45. For its consideration of this item, the Commission had before it the following documentation:

“Report of the Expert Meeting on National Experiences with Regulations and Liberalization: Examples in the Construction Services Sector and its Contribution to the Development of Developing Countries” (TD/B.COM.1/32);  
“Note by the UNCTAD secretariat” (TD/B/COM.1/37).

46. The **Chairman of the Expert Meeting on National Experiences with Regulation and Liberalization: Examples in the Construction Services Sector and its Contribution to the Development of Developing Countries** introduced the Outcome of the Expert Meeting. He stressed the positive contribution made by the Expert Meeting in the area of construction services since it had been a completely new experience for the majority of private and public sector participants from developing countries. Discussion had centred on ways and means for developing country Governments to proceed with the regulation and liberalization of their construction services sector. The key concern of developing countries had focused on how to obtain a greater share of their own domestic market for construction, particularly for projects financed by the World Bank and other donors, as well as how to obtain greater access to technology and financing. The recommendations adopted had touched upon four main areas: (i) what actions must be undertaken by Governments themselves; (ii) what international and regional financial organizations and bilateral donors might be invited to do; (iii) what and how issues were to be addressed during the multilateral services negotiations; (iv) and what further work by UNCTAD was necessary in this area. Experts particularly underlined that it was absolutely necessary for their Governments to adopt a leading and proactive role in improving their competitive position. He invited members of the Commission to endorse the expert views contained in the recommendations.

47. The representative of **Cuba**, on behalf of the **Group of 77 and China**, said that the Expert Meeting had satisfactorily contributed to the implementation of the UNCTAD mandate on services. Its outcome served as a good basis for an agreement on recommendations by the Commission. Multilateral financial institutions should be urged by members to upgrade their support to capacity building in construction services in developing countries. He called for the Commission to reach agreement on recommendations to Governments on appropriate policies to be enacted to foster the sector.

48. The representative of **Mauritius**, speaking on behalf of the **African Group** addressed the issue of better access to technology and financing in ensuring the enhancement of competitiveness in the sector. There was a need for transfer of technology and exchange of experiences with foreign partners to increase capacity building so as to utilize domestic capacity by developing human resources and skills as well as addressing macroeconomic

issues such as taxation and fiscal policies. He emphasized the importance of information technology in the construction sector, particularly in project management and design, as well as the importance of Article IV of GATS in enhancing the capacities of developing countries. In line with the provisions of the Bangkok Plan of Action for supporting developing countries in the services sector, UNCTAD should help developing countries to develop a mechanism for effective recognition of qualifications and firms; assist in addressing the problems of market access, discriminatory and non-transparent licensing and standards, as well as anti-competitive practices; and create an appropriate domestic regulation and legal framework to include in the MAST database laws and regulations affecting trade in construction services. Jointly with UNCITRAL, UNCTAD should develop a model law in the area of construction. He also highlighted the need for dialogue between all the stakeholders in the construction services sector in creating employment, developing physical infrastructure and upgrading the welfare of people in developing countries.

49. The representative of **Mexico**, speaking on behalf of the **Latin American and Caribbean Group**, said that to improve the participation of developing countries in international trade in construction services constituted a priority. Therefore, Article IV of GATS should be implemented and trade barriers faced by developing countries in this domain should be eliminated. To support ongoing WTO negotiations, UNCTAD was requested to continue updating its database on trade barriers in services and make it available through the Internet. The main difficulty for developing countries in the field of construction services was their insufficient international and domestic competitiveness, but this could be improved through better domestic policies and technical assistance. Subregional liberalization could be considered as an alternative option to develop export capacity in developing countries. The contribution of UNCTAD was acknowledged in organizing the Expert Meeting, which had addressed problems of construction services from a development perspective. To promote participation of firms from developing countries in domestic and international trade in construction services, UNCTAD should foster further linkages and continued dialogue among all stakeholders, provide technical assistance to developing countries and analyse barriers facing developing countries' exports in this services sector.

50. The representative of **Singapore**, speaking on behalf of the **Asian Group and China**, stated that the Expert Meeting in the area of construction services had been in line with the objectives outlined in the Bangkok Plan of Action. Construction was a cross-sectoral services sector and was viewed as a vehicle for growth in all of the Asian economies, and it had great potential for the growth of their export capacity. He supported the need to invite international funding agencies to actively promote the participation of developing country firms in the design and execution of construction projects, especially in their own countries. The outcome of the Expert Meeting provided a good insight into trade barriers, which limited the ability of developing countries to export and which were likely to be addressed during the ongoing multilateral negotiations on services. Governments of developing countries should take the lead in promoting the competitiveness of their private sector operators, but at the same time greater access to the markets of developed countries should be facilitated for their suppliers of construction services. The main concern of developing countries dealt with how to obtain access to financing and how successful private sector operators would be in obtaining transfer of technology. He invited the Commission to endorse the proposal by the Chairperson of the

Expert Meeting concerning the follow-up work by UNCTAD, including the importance of analysing and identifying problems faced by developing countries in these areas, so that they could be addressed by the international community.

51. The representative of the **European Commission** agreed with the view that the construction services sector had a major role to play in achieving social and economic development objectives in developing countries. To support capacity building in this sector, human resource development, including familiarity with information technology, efficiency in other supporting sectors, such as advertising, marketing, payment services, communications and transport, and policies affecting related equipment and materials were crucial. She acknowledged that participation of local firms should be targeted in development programmes, as well as familiarity with technology of various kinds. Furthermore, specific points raised in the outcome of the Expert Meeting, including aspects related to Government procurement and how to improve domestic regulations, would help stimulate debate in the working parties on domestic regulation and GATS rules in the WTO. Finally, she agreed that UNCTAD should invite UNCITRAL to draft a model law on the construction services sector.

52. The representative of **Lesotho** highlighted the crucial role of construction services in the economy and stressed the need to undertake coherent policy measures at the national and international levels. He stressed the importance of creating a favourable overall policy framework by removing bureaucratic obstacles in tendering and qualification procedures and encouraging dialogue between the public and private players in the sector. Moreover, it was also necessary to upgrade and maintain high levels of professional capacity and adopt measures that would prevent brain drain and encourage participation by small and medium-size enterprises in the sector. It was important to discuss national policies at the multilateral negotiations in line with the development objectives of developing countries. There was a need to address measures that hindered the participation of local firms in the construction sector such as conditionalities associated with development assistance programmes and discriminatory qualification processes. There was also a need to ensure that developing countries were allowed flexibility to restrict foreign participation in local construction services below a certain threshold. UNCTAD, through the CAPAS programme, should assist African countries to undertake an audit of their commitments in this sector, so as to identify the scope and impact of liberalization and also identify the laws and regulations that served as barriers to trade in services.

53. The representative of **Venezuela** noted that the experts' major emphasis had dealt with how to promote the development of construction services in developing countries so that they could become competitive in their own markets. In relation to the multilateral trade negotiations on services, he underlined the importance of implementation of the provisions of Articles IV and XIX of GATS. To achieve development objectives in the construction services sector in developing countries, comprehensive measures needed to be undertaken by Governments and international funding agencies, examined in multilateral trade negotiations and supported by assistance from UNCTAD. Developing countries should make full use of policy measures available to them, including provisions for the local content requirement and joint ventures, which were GATS-compatible and which could contribute to their capacity building.

54. The representative of **Japan** stressed the importance of the construction services sector in the development of developing countries. In this regard there was a need to strengthen their domestic capacities in the construction services sector. Measures including technology transfer through joint ventures and partnerships, training of professionals and adequate financing for R&D were also crucial for development. In the long term, liberalization in the construction services sector, supported by the negotiations in the WTO, could contribute to improving business opportunities for developing countries. He therefore supported a comprehensive approach to the negotiations aimed at liberalization in this services sector.

55. The representative of the **United States of America** said the narrow and well-defined topic for the Expert Meeting had contributed to its success and raised the possibility of inviting experts from the field to discuss concrete problems from their own experience. He regretted that experts had recommended actions which could lead to import substitution. The Expert Meetings seemed to guide what should be discussed in the Commission instead of the Commission deciding on the topics for Expert Meetings.

56. The representative of **Sri Lanka** noted that the topics for Expert Meetings for 2000 and 2001 had been discussed at the meetings of the Trade and Development Board, which was a higher body and could therefore make binding decisions for the Commission.

57. The representative of the **United States of America** said that he did not approve of the Trade and Development Board taking over this work from the Commission.

58. The representative of **Islamic Republic of Iran** noted that due to the time constraints between UNCTAD X and the meeting of the Trade and Development Board it had been impossible to hold the Commission session, and this had obliged the Trade and Development Board to adopt the topics of the Expert Meetings as a package.

## V. THE SUSTAINABLE USE OF BIOLOGICAL RESOURCES: SYSTEMS AND NATIONAL EXPERIENCES FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES

59. For its consideration of this item, the Commission had before it the following documentation:

“Report of the Expert Meeting on Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices” (TD/B/COM.1/33); “Note by the UNCTAD secretariat” (TD/B/COM.1/38).

60. The representative of **Cuba**, speaking on behalf of the **Group of 77 and China**, said that the outcome of the Expert Meeting accurately reflected, in a balanced manner, the diversity of views expressed by experts and their conclusions and recommendations for Governments to consider in protecting traditional knowledge, innovations and practices. On the basis of the outcome, the Commission should consider action to be taken at the national and multilateral levels, in cooperation with indigenous and local communities.

61. At the national level, his Group and China supported the following recommendations made by the experts: raising awareness of the role and value of traditional knowledge and its contribution to the development process; promoting, where appropriate, the commercialization of traditional knowledge-based products and services, involving indigenous and local communities in that endeavour, consistent with the sustainable use of biological resources; and exploring suitable instruments, including *sui generis* systems for the protection of traditional knowledge.

62. At the multilateral level, his Group and China supported the following recommendations made by the experts: a continued and enhanced coordination between the work programmes of the international organizations concerned, such as the CBT, WIPO, WHO and UNCTAD; and exploitation of minimum standards of an international *sui generis* system for the protection of traditional knowledge.

63. Support was also extended to recommendations made for UNCTAD to continue working in cooperation with other intergovernmental organizations, particularly for: (i) promoting regional workshops with a view to exchanging national experiences; (ii) assisting member States and indigenous and local communities in exploring policies and measures to harness traditional knowledge for trade and development, including through the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF) and UNCTAD’s Biotrade Initiative; and (iii) assisting interested developing countries in exploring *sui generis* systems for the protection of traditional knowledge, including by examining possible multilateral aspects of such systems.

64. The representative of **Singapore**, speaking on behalf of the **Asian Group and China**, pointed out that the Expert Meeting had highlighted several areas of interest to developing countries. These provided guidance for action to be taken at the national and local levels, in cooperation with indigenous and local communities. The Asian Group and China requested the Commission to give careful consideration to the recommendations which had emerged

from the Expert Meeting; to raise awareness of the role and value of traditional knowledge, in particular in sectors such as traditional medicine, agriculture and handicrafts, among policy makers, indigenous and local communities and other stakeholders; to promote the innovation potential of indigenous and local communities; to explore benefits that could be gained from integrating traditional knowledge and other types of knowledge systems, such as interaction between traditional and modern medicine; to promote, where appropriate, the commercialization of traditional knowledge-based products and services, with the full involvement of indigenous and local communities, consistent with the sustainable use of biological resources and respect for the cultural and spiritual values; to coordinate and promote efforts, including at grassroots levels, to promote benefit sharing arising from the commercial use of traditional knowledge-based products and services; to coordinate and promote grassroots efforts to document traditional knowledge; to disseminate information on traditional knowledge in the public domain to patent offices worldwide to facilitate the screening of prior art in traditional knowledge-based patent applications, so as to prevent misuse; and to explore *sui generis* systems for the protection of traditional knowledge.

65. He expressed concern about the patenting of life forms. In this regard, the WTO TRIPS Agreement contained provisions allowing countries to exclude certain life forms from patenting.

66. The Expert Meeting had also made several recommendations at the international/multilateral levels, which included the following issues brought forward by Asian and other developing country experts: there should be appropriate coordination between the work of several international organizations, such as the CBD, WIPO and UNCTAD; and protection of traditional knowledge should also be discussed in the WTO. Experts were of the view that national *sui generis* systems alone would not be sufficient to protect traditional knowledge adequately. Exclusion from patentability of traditional knowledge-based products in one country, for instance, would not prevent others from granting patents. The experts therefore recommended the exploration of “minimum standards of an international *sui generis* system for traditional knowledge protection”, with the full involvement of local and indigenous communities.

67. UNCTAD was called on, within its mandate and in cooperation with WIPO, CBD, WHO and UNCCD and other international and regional institutions, to strengthen its capacity building programme in the area of traditional knowledge. It was noted that UNCTAD, in cooperation with UNDP, had already implemented country projects in India and Viet Nam and should focus its future activities on: promoting regional workshops with a view to exchanging experiences; developing further the TRAINFORTRADE module on traditional knowledge, trade and development; assisting member States and indigenous and local communities in exploring policies and measures to harness traditional knowledge for trade and development; and assisting interested developing countries in exploring *sui generis* systems for the protection of traditional knowledge, including examining possible multilateral aspects of such systems.

68. The representative of **South Africa**, speaking on behalf of the **African Group**, recalled the mandate in this area given to UNCTAD at its tenth conference and stated that the

Expert Meeting had provided further insight into the importance of traditional knowledge, especially for developing countries, and particularly LDCs. For example, over 90 per cent of food in sub-Saharan Africa was produced by means of customary farming practices.

69. Since they possessed considerable biodiversity, African countries had the potential to use traditional knowledge (TK) to promote trade and development. The African Group believed that, where appropriate, the commercialization of TK could contribute to the long-term socioeconomic development of indigenous and local communities, as well as creating new trading opportunities for developing countries. In this regard, equitable benefit sharing was of key importance. It was a cause of concern for many African countries that TK was sometimes appropriated without compensation being paid to the local communities, which were its custodians. The commercialization of TK required capacity building and training at different levels in developing countries, especially in the LDCs.

70. TK played an important role in sectors such as traditional medicine, agriculture and handicrafts. Nevertheless, it was often undervalued and consequently lost. Therefore, support efforts aimed at raising awareness of its role and value were essential.

71. He emphasized the importance of national and international efforts to preserve TK and support the work done by various international organizations in this area. The work of the Organization of African Unity (OAU) was of special importance. In 1998, the OAU Council of Ministers adopted the Draft Model Legislation on the Protection of the Rights of Local Communities, Farmers and Breeders and the Regulation of Access to Biological Resources. Important provisions included: the inalienable rights of communities to their TK; prior informed consent of the State and the local community concerned; and equitable benefit-sharing with the local community. The Model Law was aimed at assisting countries with the development of their national *sui generis* systems.

72. The African Group proposed that the Commission reach agreement on the following recommendations: (i) at the national level, to raise awareness of the role and value of TK; and to promote research on TK; to promote, where appropriate, the commercialization of TK; and to coordinate efforts to document TK; (ii) at the international level, to promote cooperation between international organizations working on TK; to encourage benefit sharing; to explore minimum standards for an international *sui generis* system of community rights for the protection of TK; to promote the sharing of experiences; and to contribute to capacity building in developing countries and LDCs in the area of TK.

73. He supported recommendations for UNCTAD made by experts and emphasized that UNCTAD should organize a regional workshop on TK with the OAU (as had been proposed at the Expert Meeting of African Trade Negotiators on selected WTO issues, held in Mauritius from 4 to 8 December 2000); assist developing countries, where appropriate, with the commercialization of TK-based products and services; assist, together with other international organizations, interested African countries to explore different instruments, including *sui generis* systems, for the protection of TK; and strengthen capacity building in developing countries for TK in the context of UNEP/UNCTAD CBTF and other ongoing programmes.



74. The representative of **Mexico**, speaking on behalf of the **Latin American and Caribbean Group**, said that the protection of TK had attracted the attention of the international community. TK played an important role in the conservation and sustainable use of biodiversity, important sectors of the economy and the cultural values of local and indigenous communities.

75. Concern had been expressed about how the benefits derived from the use of biodiversity and TK were distributed, as these benefits were important sources of income for many local communities. He recognized the need to protect TK and to strive for fair and equitable benefit-sharing. Local communities and groups should participate fully in these efforts, particularly women, who were the principal custodians of TK and played a key role in transmitting it to future generations. His Group supported the Expert Meeting's proposals that TK communities ensure that innovation systems be supported and rewarded, and that they not be locked out of the research agenda of major companies and countries. Therefore, it was necessary to carry out further research on TK and benefit sharing.

76. Access to and use of TK were regulated by different systems of customary law that in general could not be applied outside the communities in question. It was necessary to promote a broad legal framework that combined adequate recognition of customary law with other instruments of modern law, as well as its adequate protection at the international level. Current intellectual property systems could not adequately protect all the different kinds of TK. Consequently, apart from using suitable modern IPR instruments for appropriate cases, a *sui generis* system for the protection of TK could be useful. Such a system could be explored through cooperation between relevant intergovernmental organizations (UNCTAD, WIPO, WTO, FAO, UPOV, UNESCO and CBD).

77. UNCTAD should support interested developing countries, through studies, seminars, workshops or other means, in exploring a *sui generis* system for the protection of TK, including the possible international aspects of such a system, provide capacity-building and raise awareness of the value of TK, its protection, preservation and transmission. He hoped that the present deliberations would be reflected in the programme of activities of the Commission.

78. The representative of **China** emphasized her country's deep interest in the discussions, since TK, particularly in the fields of handicrafts and medicine, was prevalent in China. Although the Chinese Government had promoted the protection of TK, national systems alone were not sufficient to protect TK, and she called upon UNCTAD to help developing countries establish *sui generis* systems for the protection of TK and to explore channels for discussion, including the Internet.

79. The representative of the **European Community** said that it was prepared to address developing countries' concerns and examine closely the issue of TK and folklore. The European Commission had recently commissioned two studies, one on biodiversity and TRIPS and the other on the international protection of expressions of folklore.

80. He expressed concern about the widespread coverage of IP-related issues in various international organizations and welcomed the establishment at WIPO of an

Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore, which was to begin work in April 2001.

81. Further work on TK should focus first and foremost on a thorough examination of existing or emerging national regimes regulating access to, and benefit-sharing in the use of, traditional knowledge and folklore. Such an examination was a necessary precondition for any decisions and measures to be taken at the national or international level regarding new *sui generis* systems of protection, including the possible development of an international framework. To preserve a well-functioning system of intellectual property protection, any new systems of protection should be consistent with existing regimes and should not affect negatively the processing of patent applications or the validity of rights arising from patents already granted.

82. He called for capacity building in developing and least developed countries with a view to ensuring that those countries had the necessary means and resources to effectively implement the protection regimes for traditional knowledge and folklore. The EC was ready to offer capacity building to developing countries and least developed countries, in addition to the assistance that could be provided by international organizations, including UNCTAD, and envisaged holding a workshop, in cooperation with a developing country, in that country.

83. The representative of **Switzerland** endorsed the proposal that UNCTAD, in cooperation with other relevant organizations, explore the possibility of developing trademarks and other labelling that could facilitate the creation of niche markets for TK-derived products.

84. He acknowledged and welcomed the work done in the area of traditional knowledge by the CBD Working Group on Article 8(j) and related provisions, as well as by WIPO's Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore. However, he questioned the need for the creation of an impartial working group to coordinate the work of the various organizations active in TK. It was up to the secretariats of the organizations concerned to coordinate their work, while policy coordination at the national level was available to facilitate that process.

85. The representative of **Peru** said that since TK consisted of innovations, creations and cultural expressions that were generated and conserved by the actual holders of TK both individuals and communities could have rights over TK. TK not only represented cultural values, but also had a value in economic and commercial terms. Therefore, there were valid and legitimate reasons to recognize and protect TK at both the national and the international level.

86. A number of countries, including Peru, were coordinating activities and carrying out studies concerning TK with a view to establishing *sui generis* systems at the national level. However, national efforts needed to be complemented internationally. In fact, international recognition of TK protection would require that legal possibilities exist to enforce rights internationally.

87. It was important to provide assistance to TK holders. In this context, the UNCTAD Biotrade Initiative was a promising avenue. UNCTAD should also carry out studies on TK in the context of its work on national innovation systems as well as science and technology.

88. The representative of **Venezuela** attached great importance to TK and its sustainable use. TK could be used to promote trade. Venezuela was concerned about the loss of TK and in particular the degradation of ecosystems and biodiversity loss. She hoped that in the near future it would be possible to agree on norms and principles to guarantee the privileges of indigenous communities and adequate protection of TK. She considered that priority should be given to finding mechanisms to avoid abuse and improper appropriation, as well as to facilitate the authorized exploitation of TK. This was not easy to achieve, but major efforts should be made in several ways. First, capacity building was very important for her country. In this context, it was important to promote analysis on TK and mechanisms for benefit sharing. Second, it was necessary to explore an international framework for collective rights in the context of intellectual property. At the domestic level, Venezuela had made progress by incorporating the CBD principles in national legislation. Venezuela supported the proposal to link intellectual property rights and the protection of TK through the instrument of Prior Informed Consent. She hoped that studies would be carried out on *sui generis* systems. The idea of creating registers of TK needed to be further analysed as a means of preventing TK from being used without prior informed consent and without adequate compensation.

89. Special mention should be made of the role of women in indigenous, local and farming communities. The role of women should be considered in all studies, plans and projects.

90. There was a need to strengthen UNCTAD's capacity-building programme and to support the Biotrade Initiative. UNCTAD should cooperate closely with the CBD, FAO, WIPO, the WTO and other intergovernmental organizations.

91. The representative of **Lesotho** pointed out that in developing countries, local and farming communities had, over the years, developed knowledge systems for the sustainable use of biodiversity, including the selection and breeding of plant varieties for agricultural purposes. These systems and traditions had in effect been abrogated by the UPOV document of 1991 that was urged upon all WTO members by some members.

92. There was an urgent need to formulate strategies that would enhance the role of TK-based systems in overall socioeconomic development strategies and improve the capacity of developing countries to commercialize TK while ensuring that benefits accrued to the communities involved. There was an urgent need to study the interaction between traditional and modern medicine, for example in relation to the AIDS epidemic in Africa.

93. He endorsed the recommendations made by the Expert Meeting to the international community and UNCTAD, in particular the need: for continued coordination between intergovernmental organizations working on TK issues; to support regional initiatives exploring TK protection and commercialization; for the regional experience to be borne in mind when construing the provisions of a *sui generis* system; for UNCTAD to work with the Organization of African Unity to enhance awareness of traditional knowledge and its role in

economic development; and for UNCTAD to explore the applicability of knowledge management systems for the preservation of TK.

94. The representative of the **United States of America** drew the Commission's attention to the fact that the IP aspects of TK were dealt with by a number of organizations, including OECD and WIPO. In particular, WIPO had developed a TK-related database. While those organizations, including UNCTAD, had a mandate to deal with TK-related issues, they differed in terms of core competencies, relative strengths and approaches. The finite nature of resources available to these organizations dictated the need to avoid duplication in their work and derive maximum benefit from their comparative advantages. In that regard, it was important to take full account of the work that had already been done, or was in progress, in various quarters and draw conclusions for future work. It was also important to bear in mind that work in some areas might have possible implications for work in other areas. For example, a comprehensive database of TK might, to a certain extent, facilitate the protection of related IP rights.

95. The representative of **Brazil** attached great importance to the protection of TK, not only because of its economic value but also because of its social and cultural dimensions. Brazil understood that the protection of TK required a wide range of measures, including protection by intellectual property rights and support to societies that were the custodians and developers of TK systems. By regulating access to TK, local indigenous communities could generate income, build the capacity to develop value-added activities, increase efficiency and empower themselves.

96. The Biotrade Initiative had been launched in 1996, with the objective of stimulating trade and investment in biological resources to further sustainable development. The UN Fund for International Partnerships (UNFIP) had approved a Biotrade project proposal for the Amazon region for the period 2000-2002. A number of Latin America countries had already started to take action aimed at developing Biotrade country programmes in the region. As an outcome of the Partners for Development Conference held in Lyon (November 1998), two projects had been undertaken between UNCTAD and the Biotrade private sector. The first involved UNCTAD and the NGO Poverty and Environment in Amazonia (POEMA). A partnership had been developed in the Brazilian State of Para, involving several private organizations, including Mercedes Benz (MB) and Henkel, to develop the Bolsa Amazonica programme. The objective of this programme was to help local communities seize bio-business opportunities for natural products of the region. The first contract had been signed with MB to replace the synthetic foam normally used to fill the seats of the truck produced by that company in Brazil with natural coco fibre, which was very common in the region. The second project involved UNCTAD and Biotrade and the Axial Bank (XB2). The idea was to improve access to finance for bio-business. UNCTAD collaborated with the Axial Bank and the NGO Bioamazonia established the Amazon Biodiversity Permanent Fund. This fund was established to finance the biotechnology R&D activities of the Brazilian molecular ecology programme, aimed at developing bio-industries and promoting sustainable use of biodiversity.

97. As far as the recommendations of the Expert Meeting at the national level were concerned, it was especially important to promote the innovation potential of indigenous and local communities and to explore *sui generis* systems for protection of TK. At the international level, continued coordination between intergovernmental organizations working in the field of TK was required. UNCTAD should continue to produce analytical studies and contribute to ongoing processes in this field in WTO, WIPO and other relevant organizations.

98. The representative of **Australia** supported the view that the work on TK was focused on examining existing national strategies that had already been or were being put in place. In that regard, exchange of information on how individual countries addressed TK-related issues they had in common could provide the basis for an in-depth, technical and practically focused discussion. Such a discussion was the only way for advancing the collective understanding of the issues and for finding real solutions to the problems, shared by many countries.

99. The logical first step in addressing the protection of traditional knowledge was to examine the applicability of using and if necessary modifying the existing IP system for this purpose and then examining the nature and extent of the gaps in addressing the protection of traditional knowledge. In addressing the protection of traditional knowledge, priority should be given to domestic implementation issues, rather than to the establishment of new international norms. Her country did not oppose *sui generis* proposals at the domestic level per se, but caution should be exercised before rejecting the existing IP system as unable to address the needs of traditional knowledge rights holders.

## **VI. ANALYSIS OF MARKET ACCESS ISSUES FACING DEVELOPING COUNTRIES: IMPACT OF ANTI-DUMPING AND COUNTERVAILING ACTIONS**

100. For its consideration of this item, the Commission had before it the following documentation:

“Report of the Expert Meeting on the Impact of Anti-dumping and Countervailing Actions” (TD/B/COM.1/34);

“Note by the UNCTAD secretariat (TD/B/COM.1/39).

101. The **Chairperson of the Expert Meeting on the Impact of Anti-Dumping and Countervailing Actions** stated that the Meeting had been attended by more than 100 participants, including more than 60 experts from developing countries. Regrettably, not many experts from developed countries had attended. Developing country experts had mainly been government officials in charge of trade policy, trade negotiations, competition protection, trade remedies and anti-dumping investigations; representatives of chambers of commerce and enterprises; and private anti-dumping law practitioners. More than 20 national experiences had been presented at the Meeting by experts from capitals. The outcome of the Meeting, including the summary of discussions and organizational matters, was contained in documents TD/B/COM.1/34 and TD/B/COM.1/EM.14/3. The outcome of the Expert Meeting had not reflected a consensus decision; rather, it had reflected the views of the individual experts. Pursuant to the Trade and Development Board’s decision taken at its twenty-fourth executive session, the outcome of the Meeting had been circulated to member States as note TDO 912(1) in December 2000. Member States had been requested to provide their policy comments on the experts’ suggestions, which would be taken into account in the preparation of the secretariat documentation for discussion at the session of the Commission on Trade in Goods and Services, and Commodities. Policy comments had been received from the Permanent Missions of Mauritius and Pakistan, which had included issues concerning small economies, repeated/back-to-back anti-dumping investigations and the lesser-duty rule. In addition, a communication had been received from the Permanent Mission of Malaysia, which contained policy comments for further action which were reflected in documents TD/B/COM.1/39 and TD/B/COM.1/39/Add.1. Comments had also been received from the United States, which were set out in document TD/B/COM.1/39/Add.2. She hoped this would satisfy the concerns of those delegations that had considered that their experts’ views had not been adequately reflected in the outcome.

102. The Meeting had presented a unique opportunity for public and private actors and trade negotiators and practitioners from both developed and developing countries, as well as WTO members and non-members alike, to express their views and concerns in an international forum. The experts’ discussions as reflected in the above-mentioned documents had identified a wide range of issues with respect to dumping, injury and procedures and areas of special concern to developing countries. The inputs from experts had often drawn attention to the realities of traders and consumers. The issues identified by the experts had addressed matters currently under review by the WTO Committee on Anti-Dumping Practices and its Ad Hoc Group on Implementation, or that were involved in the debate on the implementation of the WTO Agreements currently being held under the auspices of the

WTO General Council. The ideas expressed at the Expert Meeting might have served to identify with greater precision measures which could reduce the impact of anti-dumping and countervailing duty (AD/CVD) actions on the trade of developing countries.

103. Taking into account the experts' discussions and the specific mandate of the UNCTAD X Plan of Action, she expected that the Commission might wish to recommend that UNCTAD, and the international community in general, continue their work in this regard, and particularly that: (i) UNCTAD undertake an empirical study on the practical impact of the increase in the *de minimis* dumping margin; (ii) UNCTAD provide assistance and training to developing countries, and particularly their SMEs, in understanding dumping issues so as to enable them to build the capacity to defend their interests against anti-dumping actions and to minimize the risk of those actions being taken against them; (iii) the international community, including UNCTAD, be invited to provide technical assistance to developing countries with a view to strengthening their administrations in relation to the application of anti-dumping actions against injurious imports; and (iv) the international community, including UNCTAD, be invited to conduct analysis of the special difficulties faced by developing countries with respect to the incidence of excise, sales and other internal taxes for refund and the impact of this being considered as an export subsidy.

104. The representative **Cuba**, speaking on behalf of the **Group of 77 and China**, said that the Expert Meeting had been held against the background of an increase in the application of anti-dumping and countervailing measures by an ever-increasing number of countries, as well as the growing disputes deriving therefrom. He drew attention to the special concerns of the developing countries and to the fact that many experts had noted the devastating effect that anti-dumping actions had on their economies and societies and particularly on their attempts at export diversification. The difficulties that had been encountered by many developing countries in defending the interests of their exporters in anti-dumping cases had been highlighted by the experts. In this regard, studies could be carried out by UNCTAD to identify the positive trade impact of raising thresholds. He also stressed the particular difficulties faced by many developing countries and some small developing economies whose domestic markets were flooded with dumped imports. Although this had a disastrous impact on their domestic producers, they lacked the financial, technical and human resources to conduct investigations. While noting that anti-dumping and countervailing actions were legitimate measures, he said that AD actions had increased owing to the less than stringent implementation of the relevant WTO agreements, because of their somewhat vague and ambiguous provisions, which had permitted domestic complainants to make full use of the flexibility deriving from imprecise and ambiguous provisions. The inadequacy of the special and differential provisions and the fact that they had not been set out in contractual language were also an important factor. The outcome of the Expert Meeting included a long list of specific measures that were thought to reduce the adverse impact of anti-dumping and countervailing actions on the trade of developing countries. These measures could provide useful inputs into the ongoing work of the relevant WTO bodies, such as the WTO Committee on Anti-Dumping Practices and its Ad Hoc Group on Implementation, as well as in future trade negotiations. However, he said that there should be no need for the Commission to address these issues; rather, it should focus on providing direction to future UNCTAD work under paragraph 132 of the Bangkok Plan of Action.

105. The representative of **Egypt**, speaking on behalf of the **African Group**, said that the Expert Meeting had identified a number of problems faced by developing countries in relation to dumping, determination of injury and anti-dumping cases. Moreover, a number of possible solutions had been proposed to these problems which could be included in the WTO Anti-Dumping Committee's work and future multilateral trade negotiations. He stressed that the report of the Expert Meeting had reflected the views of many of the participating experts and reaffirmed the positive contribution by UNCTAD in supporting developing countries in WTO-related activities. While noting that African countries' exports had faced fewer AD/CVD measure challenges in foreign markets, he said that there was still a serious impact on the economies of African countries as many of their exporters were SMEs and were not yet well established in the market. In addition, the possible negative effects of these measures on the attractiveness of their markets to foreign investments could deprive African countries of much-needed resources. To address these problems, he advocated the need to consider proposals to allow for less frequent findings of dumping, reduce the number of actions against small suppliers and reduce the trade impact of anti-dumping actions, as well as operationalize the best-endeavour provisions of Article 15 of the Anti-Dumping Agreement. He had called on UNCTAD to: (i) design and implement a technical assistance programme to enable African countries to institute mechanisms and, where appropriate, to continuously improve technical and human expertise needed to address the problems of dumped imports and anti-dumping actions; (ii) continue to analyse the impact of anti-dumping and countervailing duties and suggest possible actions to address the concerns of developing countries; and (iii) undertake a study to measure the impact of various changes in the *de minimis* thresholds.

106. The representative of **Mexico**, speaking on behalf of the **Latin American and Caribbean Group**, said that the application of anti-dumping and countervailing measures had caused serious problems for various developing countries. Anti-dumping measures had often been arbitrarily used as a protectionism tool which had adversely affected the interests of developing countries' exports. With the aim of reducing this margin of discretion, it would be desirable for UNCTAD to conduct studies to resolve the lack of consensus on the calculation of the normal value and to establish an agreed method to calculate the dumping margin.

107. The representative of **Singapore**, speaking on behalf of the **Asian Group and China**, said the Expert Meeting had provided a unique opportunity for national experts from both developed and developing countries, as well as WTO members and non-members alike, to share their experience and to express their views and concerns in an international forum on the impact of AD/CVD actions. The background note and other related documents prepared by the secretariat contained much useful information which had given rise to stimulating discussions among the experts. Around 30 specific issues had been highlighted at the Meeting with respect to dumping, injury and procedure and areas of concern to developing countries. Substantive exchanges had taken place on the possible ways and means by which the adverse effects of AD/CVD on trade, particularly that of developing countries, could be reduced. Great importance was attached to the analytical work carried out by the international community, including UNCTAD, on the impact of AD/CVD actions as many Asian countries were victims of those actions and some were their primary targets.



108. She noted that while AD/CVD measures were permitted under the WTO rules, they had become the most frequently used trade remedies. Trade was adversely affected, which had created instability and uncertainty in the markets for many Asian developing countries, and had resulted in a negative impact on production and employment levels. With the initiation of AD/CVD actions the associated adverse impacts on developing countries were far greater than the value of the actual trade involved. Even if final duties were not imposed, the initiation of investigations entailed a huge burden for respondents, particularly those in developing countries. In this regard, petitioners had initiated actions or threatened to initiate them only to harass importers.

109. The situation of “double jeopardy” was also of major concern to the Asian Group and China, particularly in the area of textiles and clothing, since many imports of textiles from developing countries were already subject to quota restrictions. In this regard, the so-called back-to-back investigations caused concern to many Asian textile-exporting countries. A tightening of the disciplines in the areas of anti-dumping and countervailing actions was an urgent matter in order to prevent a situation in which the elimination of the Multifibre Agreement (MFA) quota under the WTO Agreement on Textiles and Clothing (ATC) could be followed by a wave of AD/CVD actions against Asian developing countries. Moreover, the globalization of production, which had led to diversified sourcing of many important industrial components, gave AD actions a new significance. This had given rise to the use of “anti-circumvention” measures, to linkages with competition policy and to the use of rules of origin, which might require further study by the secretariat. The experiences of some countries had shown that anti-dumping actions could represent strategic interventions to protect the interests of certain domestic producers through undermining the position of competitors by cutting off lower-cost inputs. The inability of downstream users to have access to the lowest-cost international inputs had a wider ripple effect on their economies. Referring to paragraph 132 of the UNCTAD X Plan of Action (TD/386), she stated that UNCTAD’s work should be related first to analysis and, where appropriate, on the basis of the analysis should contribute to consensus-building. Concerning the impact of anti-dumping and countervailing duty actions, the Asian Group and China reconfirmed UNCTAD’s specific mandate in this regard and requested UNCTAD to continue to conduct analysis on the impact of AD/CVD actions. Although many of these issues and concerns were currently under review in the relevant WTO bodies or would be subject to future negotiations in the WTO, she proposed that UNCTAD could carry out specific studies on key issues such as: (i) the practical impact of the increase in thresholds e.g. the *de minimis* dumping margin, the basis of negligibility, negligible import volumes, the *de minimis* subsidy level and the substantial quantity test; (ii) the impact of anti-dumping on the globalization of production and its implications for developing countries, taking into account issues related to the increasing use of “anti-circumvention” measures, the linkages with competition policy and the use of rules of origin; and (iii) the impact of and solutions to sales below cost, the lesser-duty rule, the problem of cyclical industries, exchange rate fluctuations and accumulation.

110. With regard to the adverse effects that anti-dumping measures might have on developing countries’ economies, and particularly on their ability to diversify their exports, he concurred with the experts that Article 15 of the Agreement on Anti-Dumping should request members to consider constructive alternative solutions before anti-dumping measures

were applied. He also agreed with the experts' proposal that the *de minimis* thresholds for dumping be increased to specific levels, taking into account the special treatment for developing countries. He called on UNCTAD to undertake studies on the impact of increasing the *de minimis* thresholds for dumping to ensure that these levels were high enough to accord meaningful trade advantages to developing countries. In addition, he requested UNCTAD to support developing countries in conducting investigations as well as in strengthening their administrations. Finally, he subscribed to the comments made on behalf of the Group of 77 and China, which he hoped would be reflected in the work programme of the Commission.

111. The representative of **China** said that her country was faced with numerous investigations and had become the principal target of anti-dumping measures. Of the 328 anti-dumping cases that had been initiated in the world in 1999, 39 had been against China, accounting for 12 per cent of the total. From the launching of the first anti-dumping action targeted at China in August 1979 until September 2000, there had been 387 anti-dumping cases against Chinese products, which had affected tens of billions of dollars worth of Chinese exports. The scope of products had been increased to cover almost all major exports from China and thus anti-dumping had become a major barrier for China's export trade. This situation had continued to worsen and many Chinese products were virtually pushed out of the market. This had a serious impact on China's overall trade and created adverse effects for many Chinese SMEs. The main reason for this situation was the application of discriminatory non-market-economy criteria and the use of surrogate values by some countries, which disregarded China's "normal values" and the "real production costs" in China. In fact, after more than 20 years of economic reforms, China's market economy development had achieved substantive results. The World Bank had reported as far back as five years ago that over 90 per cent of China's product prices were determined by the supply and demand in the market. Enterprises in China had operated without government interference and prices were determined by market forces. In spite of this, some countries continued to treat China as a non-market economy.

112. She said that China shared the view of the other developing countries, namely that in order to minimize the negative impact of anti-dumping on normal trade, it would be of primary importance that national investigating authorities carry out investigations fairly and on the basis of actual facts. They should increase transparency and refrain from using arbitrary practices, and conduct investigations based on the stringent criteria of the lesser-duty rule. Furthermore, it would be necessary to strengthen the reviews regarding the necessity of continued enforcement of anti-dumping measures with strict implementation of the sunset clauses, so as to avoid the disturbance of normal trade which had been caused by unnecessary anti-dumping measures. As a user of anti-dumping measures, China had always strictly followed the rules and procedures in its investigations and was prepared to continuously improve its anti-dumping system through actual practices.

113. The representative of **Chile** said that the provisions of the Agreement on Anti-Dumping were used to limit the capability of members to have recourse to AD actions. Chile favoured the full application of the general principles of the Understanding on Disputes Settlements. The imposition of AD measures should be applied exceptionally, and to the

extent necessary, to counteract the injury caused by a unfair trade practice. Modifications should be made to some provisions of the Agreement on Anti-Dumping so that they could become more rigorous, and in this regard, he identified several important issues and articles which were in need of being renegotiated. He proposed the following issues: the possibility of disregarding the domestic price as normal value; the need to establish a ranking of priorities to determine the normal value of goods; the application of AD duties to companies which have not been the subject of investigation; the accumulation of suppliers from different origins; and the utilization of the margin of injury to repair the injury caused to the domestic industry.

114. The representative of **Venezuela** said that he supported the following points contained in the report of the Expert Meeting: on the calculation of dumping margins, the proposal for reducing the margin of discretionality provided so that greater objectivity and precision could be applied to each of the methodologies used to calculate the dumping margin; the proposal for increasing the *de minimis* dumping margin to levels which would give due consideration to the special and differential treatment of developing countries; on determination of injury, the methodology put forward by the experts, given that it only considered as significant those imports which were important to the member's market, and which had been affected by an unfair trade practice; and on the reduction of discretion, the suggestion that the investigating authorities' discretion be reduced.

115. He believed that UNCTAD should continue to support developing countries in the area of anti-dumping and countervailing duty actions in the context of the special and differential treatment for developing countries.

116. The representative of **Norway** welcomed the detailed report of the Expert Meeting as well as the note prepared by the secretariat. He said that the report was an important contribution to the ongoing discussions and identified a number of highly appropriate issues with respect to anti-dumping. He noted that there had been increasing recourse to anti-dumping actions, in terms of both the number of actions and the number of countries applying actions. This development represented a concern for his country and a challenge for the multilateral trading system. The report of the Expert Meeting had focused on important deficiencies in the present WTO anti-dumping rules and changes were required. The report had also raised a number of equally important deficiencies regarding anti-dumping rules, where the current provisions were in need of clarification or improvement and various elements should be brought into the discussions in the WTO. He advocated provisions with a minimum of national discretion, and noted that attempts to strengthen the rules in order to prevent misuses of anti-dumping investigations, provisional measures, anti-dumping duties or price undertakings would be supported. Some of the anti-dumping issues which had been identified called for increased preferential treatment of developing countries. In this regard, Norway was prepared to examine proposals in a positive spirit. However, it would refrain from initiatives to provide less strict rules, or to set lower standards for some countries regarding anti-dumping tests, for example in respect of injury or dumping determination. Norway had taken this position in order to avoid legitimating or consolidating the anti-dumping instrument. He said that some anti-dumping rules needed to be strengthened while other provisions required clarification and the reduced possibility of arbitrary application. He

stressed that the issue of anti-dumping must be included in a new round of multilateral trade negotiations. Norway would welcome discussions regarding the limitations in respect of the WTO Dispute Settlement Understanding provided for in Article 17 of the Anti-Dumping Agreement and considered further disciplines in this regard to be warranted.

117. The representative of **Canada** stated that although Canada generally supported anti-dumping negotiations, it understood that the special treatment or significant changes to the rules which developing countries and Japan were seeking would be difficult to achieve. She noted that the need for any negotiations in this area had to be carefully defined in order not to create unrealistic expectations, and referred to conflicting internal pressures on import-sensitive sectors seeking protection from unfairly traded and injurious imports and export-oriented sectors that were concerned about anti-dumping actions against them. A number of questions had been raised in the report of the Expert Meeting regarding technical and procedural issues that could benefit from clarification. In this regard, the role of the WTO Ad Hoc Group on Implementation was highlighted as being very important in assisting all member States in reaching a common understanding on the existing rules. Issues that were not resolved through the Ad Hoc Group might require negotiation. While Canada had been supportive of negotiations in this area, it was concerned about views that appeared to consider only one side of the topic, and she noted that the Canadian economy had been faced with significant pressure, particularly in the steel sector as a result of economic crises in Asia and Eastern Europe. These problems had not been manufactured by a protectionist industry, and Canada had among the highest levels of steel import penetration in the world. The impact upon the importing country of injurious imports must also be considered. Developing countries had also taken action against steel imports which was considered to underscore the point that in certain circumstances the import problems became endemic. If negotiations were entered into in this regard, Canada was of the view that the scope of the discussions must be clearly defined in order to reflect economic realities.

118. The representative of **Lesotho** highlighted the adverse effect of dumping as a main concern of developing countries and in particular of African LDCs. The problem had been further exacerbated by the lack of capacity of those countries to initiate anti-dumping actions, or even to pursue their rights under the WTO Dispute Settlement Mechanism. Lesotho had fully subscribed to the concern expressed by the experts that anti-dumping procedures were too complicated, lengthy and costly for LDCs. In particular, the lack of adequate financial, technical and human resources had made it difficult for those countries to initiate investigations and lodge complaints. Anti-dumping actions had had a devastating effect on the economies of developing countries in most cases and had hampered their efforts to diversify their economies into new sectors of production. Lesotho fully subscribed to the recommendations made by the experts to international bodies, including UNCTAD, and highlighted two issues as being of particular importance: (i) the need for technical and financial assistance in defending LDCs' interests in anti-dumping cases; and (ii) the need to strengthen the institutional capacity of customs administrations.

119. The representative of **Japan** noted that it was the legitimate right of countries to take anti-dumping measures in accordance with the WTO Anti-Dumping Agreement. Nevertheless, his country was concerned with the abuses of anti-dumping measures which

could have a substantial negative effect on the global trade regime. He referred to the “chilling effect” of these measures – just the initiation of an investigation often had the effect of stopping exports to an investigating country. The initiation of an AD investigation without adequate grounds was clearly an abuse of anti-dumping measures. Fair price comparisons between domestic and exported prices were crucial in the determination of dumping. In this regard, practices in some countries did not provide for fair price comparison. As to the determination of a causal link between imports and injury to domestic industry, he emphasized that it was unfair to stop imports by imposing anti-dumping measures when the injury was caused by other factors. He supported the idea that UNCTAD should help developing countries to identify and recognize possible misuses of anti-dumping measures, as well as help them to implement these measures in a WTO-consistent manner.

120. The representative of the **United States of America** said he was disappointed that the report of the Expert Meeting had failed to reflect fully the diversity of views expressed. A number of delegations, including the United States delegation, had spoken in support of the appropriateness of the anti-dumping remedy and of the careful balance struck by the existing WTO rules. He emphasized that although the report acknowledged that “not all views were shared by all experts”, it went on to say that “the text is intended to reflect fairly the richness and diversity of the views expressed”. He disagreed with this characterization and said that the body of the report reflected only one side of the discussion.

121. He also disagreed with most of the specific suggestions made in the report, including recommendations to increase *de minimis* and negligibility thresholds, increase the 20 per cent threshold for disregarding sales below cost in calculating normal value, and make mandatory the lesser-duty rule. He felt that the report had provided little more than a litany of desired changes to the rules put forth by those who seemed primarily interested in weakening these remedies. Therefore, the report had not provided an appropriate basis for any further work. Conversely, to the extent that any of the issues raised in the report had merited further discussion, he believed that the most sensible forum for such discussion would be the WTO Anti-Dumping Practices Committee and its Ad Hoc Group on Implementation – bodies which possessed both the expertise and the jurisdiction for this complex subject.

122. Furthermore, the report had mistakenly approached the whole issue of anti-dumping rules in a manner that suggested that they were somehow inconsistent with liberal trade and a major barrier to such trade. It should be borne in mind that the practice of injurious dumping had been specifically condemned by GATT 1994 and that the ability to have recourse to anti-dumping and countervailing duty remedies, where warranted, had been an important factor in making possible the significant reductions in tariffs and other trade barriers in recent decades and in sustaining support in both developed and developing countries for continued trade liberalization. To some extent, this had emerged in section D of the report, where there was a back-handed acknowledgement that textiles liberalization was made possible only by the assurance that all WTO Members would be able to address instances of unfair trade.

123. While acknowledging the concerns of developing countries facing difficulties in applying anti-dumping and countervailing duty remedies, he found it ironic that, on the one hand, the report had urged a number of procedural and methodological changes to AD and

CVD rules which would make these remedies even more complex to administer and the proceedings more costly to participate in, while on the other hand it had urged that actions be taken to strengthen the ability of developing countries to use the remedies and to reduce the cost of participation to exporters. This type of advice had been both contradictory and short-sighted. He admitted, however, the necessity of striking a balance in these situations, which were characterized by a natural tension, or a trade-off between increased transparency, fairness, due process and methodological precision, while at the same time ensuring that remedies remained administrable and accessible.

124. He recalled that the United States had been stressing the great importance of working with its partners in an effort to achieve better implementation of the existing rules, for example with regard to the work in the WTO Anti-Dumping Committee and its subsidiary bodies.

125. Finally, referring to the technical difficulties often faced by developing countries in implementing their own anti-dumping laws, he reiterated the United States' readiness, in conjunction with the WTO secretariat, to provide technical assistance for this purpose to any country requesting such assistance.

126. The representative of the **Russian Federation** said that his country was one of the countries which had been confronted with the largest number of restrictions on their exports, particularly anti-dumping measures. Such restrictions were often applied in a discriminatory manner. Anti-dumping measures were used by a growing number of countries irrespective of their development level. In this regard, he supported the majority of concerns expressed by the experts. However, he said that anti-dumping measures were applied against Russian exporters, although the Russian Federation was not recognized as a country with a market economy, and that such treatment was discriminatory. Moreover, in anti-dumping proceedings, "non-market economy" status had lacked clear criteria, while the relevant practices of users were neither transparent nor predictable. In addition, the definitions of a "market economy" in national AD laws did not correspond to those contained in the WTO Anti-Dumping Agreement. Although experts had expressed diverse views in the report, which demonstrated the difficulty in finding common solutions, the report and the Meeting had clearly indicated that UNCTAD's analytical work in this area should continue and contribute to future multilateral trade negotiations, as well as to the definition of the national trade policy of individual countries.

127. The representative of **Mauritius** found it paradoxical that while the exports of developing countries were subject to anti-dumping actions in foreign markets, they were often not able to apply anti-dumping measures against dumped imports in their own markets, owing *inter alia* to their lack of appropriate legal frameworks. In this regard, she highlighted the need for technical assistance to be provided to small developing economies in the elaboration of anti-dumping legislation and the setting up of investigation authorities. She proposed that small economies be exempted from anti-dumping actions.

128. The representative of the **European Commission** (EC) noted that while many of the recommendations of the report of the Expert Meeting had already been tabled in the relevant WTO meetings, the EC was committed to a constructive position in these meetings and

therefore supported the report when it called for the issues and recommendations that had been identified therein to be raised in the proper context – namely, the WTO Committees, Special Sessions, or in the new trade round. This reflected the EC's efforts to ensure that the concerns of the developing countries were given special consideration. As regards special and differential treatment, he believed that the whole issue was more complex and nuanced than the report had suggested, considering, for instance, that companies in developing countries could possess similar resources and be as large, technologically sophisticated and productive as those in developed countries. More and more, both developed and developing countries were subject to anti-dumping investigations by developing countries, some of the latter having been among the biggest users of commercial defence instruments in the previous three years.

129. He further highlighted a number of points in the report of the Expert Meeting. Concerning paragraph 6 – exclusion of sales below cost – he said that it had been difficult to comprehend how making more than 20 per cent of sales (by volume) at a loss constituted ordinary and sound business behaviour. The very existence of such a considerable volume of loss-making sales was indeed an indication that the play of market forces was to a considerable extent disturbed and that exporters would under normal circumstances face difficulties in the market, e.g. their credit rating would be affected. He said that there could be many reasons for the survival of such exporters and that one reason could be that the banking system of the exporting country had not properly reflected the situation of creditors. Another reason could be that the bankruptcy laws were not adequate. The present rules in this regard had reflected a good balance between what was normal economic behaviour and what was a market disruption. On paragraph 13 – exchange rate fluctuations – the EC, while having no problem with the current law, was sympathetic to the concerns which had been raised and supported the idea of exploring these concerns in the context of trade negotiations. With regard to paragraph 15 – zeroing (exceptions) – criticism that dealt with time periods by definition was independent of the size of an economy. He recalled that the inclusion of this provision in the Agreement on Anti-Dumping had been at the specific request of the EC during the Uruguay Round. He felt that the allegation that such a rule disproportionately benefited large economies was not justified. It was only large economies that needed, in exceptional circumstances, a system which enabled them to compare normal values and export prices in a different way so as to take into account certain patterns of dumping behaviour peculiar to them. On paragraph 24 – lesser-duty rules – he said that the EC had consistently applied these rules, irrespective of the nature of the exporting country concerned, and thus had no problem with the proposal. He noted, however, that some countries might have considerable difficulties in accepting a mandatory lesser-duty rule because it could add considerable complexity to the investigation. On paragraph 25 – back-to-back complaints – he said that this was a very complex issue and there were a number of problems involved with the proposal. First, market circumstances for a particular product could change quickly and therefore the results of an investigation could quickly be out of date. Second, the EC applied higher standards for adopting AD measures than most other WTO signatories, including a public interest test. The prohibition of the second AD investigation would put the EC at a disadvantage, since other countries had already undertaken it after the first investigation. However, the EC remained open to discussing this issue in the context of the implementation process in a new round and also supported a careful and thorough evaluation

of such back-to-back cases in the meantime. With regard to paragraph 34, concerning the special concerns of developing countries, the EC had supported the proposal to make Article 15 more operational, as it had stated on various occasions. Action in this area had helped the European Union in its overall strategy to help developing countries and to better integrate them into the world trade system. The details were a matter of discussion in the WTO, but certain proposals such as raising the *de minimis* dumping margins or the negligible import volume could be countenanced only for the least developed countries. In this regard, he referred to the capabilities of certain industries in developing countries, which would be enabled to cause serious injuries if there was an increase in these margins. On paragraph 35 – cost of defence – the EC fully understood the problem. It had expended considerable resources in providing technical assistance, training seminars and published material, in the belief that prevention was better than cure.

130. The representative of the **Republic of Korea** emphasized that the suggestions made by experts in the report had been intended to reflect the diversity of the views expressed rather than agreement. He suggested that those delegations which had reservations about the report's suggestions should state their concerns paragraph by paragraph. The report provided a summary of views and was a good foundation on which future discussions could be built. Substantive discussions on these issues could take place in UNCTAD and other competent forums which covered anti-dumping and countervailing issues. In this regard, he felt that the WTO Anti-Dumping Agreement was in need of being amended in a reasonable way so as to improve its operability and remedy the problem of conflicting interpretations. Also, due consideration should be given to the difficulties confronted by developing countries and small economies. Improvements should be made through balanced negotiations rather than left to dispute settlement panels. However, in approaching such negotiations, one should not lose sight of the fact that divergences over the WTO Anti-Dumping Agreement did not follow the developed/developing countries line of division. The main point was to reduce the discretion of this Agreement and to make it more objective.

131. The representative of **Australia** noted that although there were some important development-related issues in the report of the Expert Meeting, UNCTAD should exercise care in focusing its resources on issues that could be addressed more appropriately in other forums, namely the WTO Committee on Anti-Dumping Practices and its Ad Hoc Group. Some of the results of the Expert Meeting were useful and thought-provoking, while others did not fairly reflect the discussions that had taken place during the Meeting. In this context, he expressed reservations about endorsing any recommendation that UNCTAD undertake further work on some of the issues raised.

132. The representative of **Turkey** welcomed the work that had been done on anti-dumping issues in UNCTAD so far. Nevertheless, he noted that these issues needed further study by UNCTAD and other development organizations. The outcome of the Expert Meeting constituted a good starting point for further discussions. He highlighted a number of issues as being of particular importance, including the 5 per cent viability test, constructed normal value, fair and symmetrical comparisons, credit cost, duty drawback, level of trade, *de minimis* dumping margin, negligible import volumes, cumulation, lesser-duty rule, back-to-back complaints, sunset reviews, language, and countervailing duties.



*Chairman's Summary*<sup>1</sup>

133. Under item 6, with respect to recommendations to UNCTAD, there were certain areas where consensus could not be reached on agreed recommendations. Taking into account the debate and various proposals which had been submitted with the objective of reaching agreement, I proposed a text under my own responsibility. The following text, which incorporated minor amendments, received a large degree of support from the delegations. However, some delegations could not adhere to a consensus on certain paragraphs.

**Recommendations to UNCTAD**

134. UNCTAD, within its mandate, as defined in paragraphs 132 and 106 of the Bangkok Plan of Action, should conduct comparative analyses on the technical difficulties as identified by developing countries regarding anti-dumping and countervailing measures, such as:

- (a) Empirical studies of the practical trade impact of various thresholds;
- (b) A study on the impact of dumping and anti-dumping measures, with particular focus on the special situation of developing countries;
- (c) An examination of the technical feasibility of provisions for enhancing the special and differential treatment in the application of anti-dumping and countervailing measures.

135. Upon completion of these analyses, UNCTAD should design, and implement upon request and within available resources, a technical assistance programme with a view to supporting developing countries in developing improved understanding of anti-dumping and countervailing duty rules and procedures and capacity to administer anti-dumping and countervailing remedies and participate in anti-dumping and countervailing duty proceedings more effectively.

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<sup>1</sup> See para. 136 below.

## VII. ACTION BY THE COMMISSION AND CLOSING STATEMENTS

136. At its closing plenary meeting, on 23 March 2001, the Commission adopted recommendations on agenda items 3-6. (For the texts of the recommendations, see section I above.) It further decided to include the Chairman's summary on agenda item 6 in its report. (For the summary, see paras. 133-135 above.)

### *Closing statements*

137. The representative of **South Africa**, speaking on behalf of the **African Group**, said he regretted that it had not been possible to reach full agreement on the issue of anti-dumping. UNCTAD had an important role to play in helping developing countries understand issues on the multilateral trade agenda and integrate into the world economy. This was the understanding behind the Bangkok Plan of Action, and he hoped that that understanding would be accepted by all delegations in future.

138. The representative of **Mexico**, speaking on behalf of the **Latin American and Caribbean Group**, said that the Commission had achieved tangible results. UNCTAD had a central consensus-building role to play in the development process.

139. The representative of **Sweden**, speaking on behalf of the **European Union**, said that some thought should be given to the number of agenda items to be included in the Commission's agenda; four items seemed too many. In addition, some consistency should be ensured in the three Commissions in terms of the procedures to be followed and the format of the outcomes. The European Union saw the Commissions as instruments for implementing the Bangkok Plan of Action and not a means of broadening the scope of UNCTAD's mandate. Priorities must be set for UNCTAD's activities.

140. The representative of **Singapore**, speaking on behalf of the **Asian Group and China**, said that her Group regretted that it had not been possible to reach agreement on some of the elements under item 6 on anti-dumping issues. The Group attached importance to the role of UNCTAD, in particular with regard to technical cooperation and analysis.

141. The representative of the **United States of America** said that, in the Commission, policy exchanges had suffered as a result of the quest for agreed conclusions. Concerning UNCTAD's activities, there was a need for a sober look at priorities, and care should be taken not to lose the focus on core goals.

## **VIII. ORGANIZATIONAL MATTERS**

### **A. Opening of the session**

142. The fifth session of the Commission on Trade in Goods and Services, and Commodities was held at the Palais des Nations, Geneva, from 19 to 23 February 2001 and 23 March 2001. The session was opened on 19 February 2001 by Mr. Rubens Ricupero, Secretary-General of UNCTAD.

### **B. Election of officers**

(Agenda item 1)

143. At its opening plenary meeting, on 19 February 2001, the Commission elected its Bureau as follows:

Chairperson: Mr. Boniface G. Britto Chidyausiku (Zimbabwe)

Vice-Chairpersons: Mr. Douglas Griffiths (United States of America)

Ms. Gothami Indikadahena (Sri Lanka)

Mr. Victor Retselisitsoe Lechesa (Lesotho)

Mr. Adrian Mara (Albania)

Mr. Ronald Saborio Soto (Costa Rica)

Rapporteur: Mr. Hagen Streichert (Germany)

### **C. Adoption of the agenda and organization of work**

(Agenda item 2)

144. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.1/35. Accordingly, the agenda for the fifth session was as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Major agricultural concerns of developing countries: Impact of the reform process in agriculture on LDCs and net food importing developing countries and ways to address their concerns in multilateral trade negotiations

4. Analysis of ways to enhance the contribution of specific services sectors to the development perspectives of developing countries: National experiences with regulations and liberalization: Examples in the construction services sector and its contribution to the development of developing countries
5. The sustainable use of biological resources: Systems and national experiences for the protection of traditional knowledge, innovations and practices
6. Analysis of market access issues facing developing countries: Impact of anti-dumping and countervailing actions
7. Other business
8. Adoption of the report of the Commission to the Trade and Development Board

#### **D. Other business**

(Agenda item 7)

145. At its closing plenary, on 23 March 2001, the Commission approved the provisional agenda for its sixth session (see Annex I).

#### **E. Adoption of the report of the Commission to the Trade and Development Board**

(Agenda item 8)

146. Also at its closing plenary, the Commission adopted its draft report (TD/B/COM.1/L.13 and Add.1-3), subject to amendments to summaries of statements by individual delegations, and authorized the Rapporteur to complete the report in the light of the proceedings of the closing plenary.

## **Annex I**

### **PROVISIONAL AGENDA FOR THE SIXTH SESSION OF THE COMMISSION**

1. Election of officers
2. Adoption of the agenda and organization of work
3. The sustainable use of biological resources: Ways to enhance the production and export capacities of developing countries of agriculture and food products, including niche products, such as environmentally preferable products (EPPs)
4. Analysis of ways to enhance the contribution of specific services sectors to the development perspectives of developing countries: Energy services in international trade: development implications
5. Analysis of market access issues facing developing countries: Consumer interests, competitiveness, competition and development
6. Progress report on the implementation of agreed conclusions and recommendations of the Commission
7. Provisional agenda for the seventh session of the Commission
8. Other business
9. Adoption of the report of the Commission to the Trade and Development Board.

## Annex II

### ATTENDANCE \*

1. The following States members of UNCTAD were represented at the session:

Albania	Jamaica
Algeria	Kenya
Angola	Lesotho
Argentina	Libyan Arab Jamahiriya
Australia	Malta
Austria	Mauritius
Bangladesh	Mexico
Barbados	Morocco
Belarus	Nepal
Brazil	Netherlands
Bulgaria	Nicaragua
Burkina Faso	Norway
Cameroon	Panama
Canada	Peru
China	Philippines
Colombia	Portugal
Congo	Romania
Costa Rica	Russian Federation
Côte d'Ivoire	Senegal
Croatia	Singapore
Czech Republic	Slovakia
Democratic People's Republic of Korea	South Africa
Dominican Republic	Spain
Ecuador	Sri Lanka
Egypt	Sudan
El Salvador	Sweden
Ethiopia	Switzerland
Finland	Thailand
France	Trinidad and Tobago
Germany	Tunisia
Guatemala	Turkey
India	Uganda
Indonesia	Ukraine
Iran (Islamic Republic of)	United Kingdom of Great Britain and Northern Ireland
Iraq	United Republic of Tanzania
Israel	United States of America
Italy	Uruguay

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\* For the list of participants, see TD/B/COM.1/INF.5.

Venezuela  
Viet Nam  
Yugoslavia

Zambia  
Yemen  
Zimbabwe

2. The following intergovernmental organizations were represented at the session:

Arab Labour Organization  
European Community  
Organization of African Unity  
Organization of the Islamic Conference

3. The following specialized agencies and related organization were represented at the session :

Food and Agriculture Organization of the United Nations  
World Health Organization  
International Monetary Fund  
World Intellectual Property Organization  
United Nations Industrial Development Organization  
World Trade Organization

4. The International Trade Centre UNCTAD/WTO was represented at this session.  
5. The following non-governmental organizations were represented at the session :

*General Category*

World Association of Small and Medium Enterprises  
Friends World Committee for Consultation  
International Confederation of Free Trade Unions  
World Federation of United Nations Associations  
Institute for Agriculture and Trade Policy