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TRADE, ENVIRONMENT AND DEVELOPMENT

Background note by the UNCTAD secretariat*

Executive summary

The 2001 Doha Ministerial Declaration and the Johannesburg Plan of Implementation, adopted by the 2002 World Summit on Sustainable Development (WSSD), reiterated the major role that trade can play in achieving sustainable development and reducing poverty. Trade and environment issues need to be addressed in the context of a broad agenda for sustainable development. This requires an increasing focus on issues of key developmental concern to developing countries, such as market access and trading opportunities for environmentally preferable goods and services; the protection and sustainable use of bio-diversity and traditional knowledge; and the effective implementation of integrated packages of enabling, and, where necessary, trade measures in multilateral environmental agreements to address global environmental problems. UNCTAD has an important role to play in promoting such an agenda.

This report examines the implications of key developments in trade and environment since UNCTAD X. It highlights issues that have occupied a central place in UNCTAD's work, paying special attention to the follow-up to Expert Meetings and subsequent sessions of the Commission. It also highlights issues that are particularly relevant in the context of UNCTAD XI. In that context, attention is paid to coherence between national strategies and global processes towards sustainable development as well as international processes and national policies required in order to ensure sustainable development gains from the multilateral trading system. It is particularly important to ensure that improved market access for products from developing countries is not eroded on account of difficulties in complying with increasingly stringent and complex environmental requirements, in particular for small and medium-sized enterprises. The report also focuses on policies needed to convert niche markets for certain environmentally preferable products into dynamic sectors in order to allow developing countries to diversify exports into value-added products. Furthermore, it aids the Commission in considering the outcome of the Expert Meeting on Definitions and Dimensions in Environmental Goods and Services in Trade and Sustainable Development, held in July 2003.

* This document was submitted late because of the heavy secretariat workload arising from the need to provide support for the Preparatory Committee for UNCTAD XI.

INTRODUCTION

1. As the Commission will meet only a few months before UNCTAD XI, it seems appropriate in this report to (a) highlight major developments in trade and environment since UNCTAD X; (b) review key trade and environment issues of the Bangkok Plan of Action, as well as relevant UNCTAD follow-up activities to other major conferences, in particular the World Summit on Sustainable Development (WSSD); and (c) discuss some practical UNCTAD secretariat initiatives in the context of, or relevant to, UNCTAD XI.

2. Although trade and environment is still a relatively new, complex and cross-cutting subject, it is recognized as important by virtually all countries, though to a varying degree and from different perspectives. These issues need to be addressed in the context of a broad agenda for sustainable development.

3. This report pays special attention to the identification of policies and measures aimed at “assuring development gains from international trade”, focusing on key themes of UNCTAD’s work on trade, environment and development (TED). In accordance with the Bangkok Plan of Action, UNCTAD’s work should strengthen the development dimension of trade and environment by (a) identifying policies to address constraints faced by developing countries in responding to environmental challenges; enhancing understanding of the economic and social implications of trade measures for environmental purposes for countries at different levels of development, including the effects of environmental requirements on developing countries’ exports; and promoting a broad programme of capacity building (paragraph 146); and (b) promoting consensus building and policy analysis to identify issues that could yield benefits for developing countries (paragraph 147). This mandate has allowed UNCTAD to cover a broad range of issues, develop practical initiatives, and respond to new developments and emerging issues, such as the inclusion of specific environmental issues in the WTO Doha work programme and the WSSD.¹ The basic thrust of the UNCTAD X mandate remains useful in guiding UNCTAD’s contribution to ensuring sustainable development benefits from trade.²

4. Since UNCTAD X, the three pillars of UNCTAD’s work on TED issues –intergovernmental, research and policy analysis, and technical cooperation/capacity building (TC/CB) – have been strengthened and synergies among them enhanced. On the intergovernmental side, four Expert Meetings³ have been convened and policy implications of their outcomes discussed by the Trade Commission. Policy analysis has been strengthened through the launching of the annual *Trade and Environment Review*, which provides a forum for more in-depth analysis of key trade and environment issues from a development perspective and their discussion through commentaries by different stakeholders. In addition, a large number of papers have been prepared by developing country researchers and policy makers, as well as secretariat staff, including in the context of the TC/CB programme.

¹ The Johannesburg Plan of Implementation called upon UNCTAD “*within its mandate, to strengthen its contribution to sustainable development programmes and the implementation of Agenda 21 at all levels, particularly in the area of promoting capacity-building.*” (paragraph 137).

² The Mid-term Review notes that “The Bangkok Plan of Action broadened UNCTAD’s work on environmental issues. The work accomplished in this area was well appreciated by member States and valuable in the light of the forthcoming World Summit on Sustainable Development”.

³ Described in section III.

5. The TC/CB programme has been adjusted to respond to demands of developing countries.⁴ It has been growing substantially, both the clusters on (a) TED and (b) BIOTRADE and climate change. In line with UNCTAD's overall strategy aimed at increasing the CB element in TC, activities are increasingly carried out in the framework of longer-term projects; this facilitates follow-up and appropriate sequencing of activities to obtain the desired results.⁵ An independent in-depth evaluation of the TED TC/CB programme was carried out in 2003.⁶ The Working Party on the Medium-term Plan and the Programme Budget endorsed recommendations to further improve the programme. It also noted the positive impact that the programme had had in many beneficiary countries and urged the secretariat to make further efforts to expand the coverage of the programme to all geographical regions, in particular to Africa.⁷

6. Dissemination of papers and other information on UNCTAD activities has been enhanced through the creation and effective use of the TED Website (www.unctad.org/trade_env) and the launching of the TED newsletter. Cooperation with a range of selected partners – government ministries, international agencies and non-governmental organizations – has been strengthened through participation in each other's activities and joint initiatives.

7. In this paper, section II highlights a number of important TED-related developments since UNCTAD X. Section III analyses four key trade and environment issues – environmental requirements, environmentally preferable products, traditional knowledge, and environmental goods and services – and their implications for UNCTAD's recent, ongoing and future work. Section IV suggests possible issues to be addressed by the Commission. This includes the outcome of the Expert Meeting on Definitions and Dimensions in Environmental Goods and Services in Trade and Sustainable Development, held from 9 to 11 July 2003, in particular the recommendations contained in the chairman's summary.⁸

I. MAIN DEVELOPMENTS SINCE UNCTAD X

8. Since UNCTAD X in February 2000, there have been a number of international and national developments with trade and environment implications. The main intergovernmental developments include the outcomes of the 2001 WTO Ministerial Conference and the 2002 WSSD. In addition, important developments have taken place in the global environmental agenda. The Cartagena Protocol on Biosafety, which entered into force in September 2003, has important implications for international trade in biotechnology-derived agricultural products and involves a number of systemic issues in relation to trade rules. The Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC), which has not yet entered into force, will have significant economic and trade implications, even though the protocol itself does not contain specific trade measures. Its Clean

⁴ See UNCTAD, *Progress Report on the Implementation of Agreed Conclusions and Recommendations of the Commission, including the Post-Doha Follow-up* (TD/B/COM.1/61) and previous reports.

⁵ For a comprehensive overview of UNCTAD's TED TC/CB activities and strategy, see *UNCTAD's Technical Cooperation/Capacity Building Programme on Trade, Environment and Development (TED)*. TD/B/WP(XLI)/CRP.1, 15 September 2003.

⁶ *Evaluation of UNCTAD's Trade, Environment and Development Programme*, prepared by an independent evaluation team (Karstein Haarberg, Patrick Krappie and Bob Fairweather) for the forty-first session of the Working Party in September 2003. TD/B/WP/165.

⁷ See the Report of the Working Party, TD/B/WP/L.111.

⁸ TD/B/COM.1/59 and TD/B/COM.1/EM.21/3, 27 August 2003.

Development Mechanism provides new opportunities for investment in and the transfer of environmentally sound technologies to developing countries. Other important international developments include the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture (November 2001).⁹

9. At the national level there have also been many developments, particularly the trends towards increasing “green consumerism” as well as more frequent, stringent and complex environmental and health-related requirements and the related plethora of compliance assessment and accreditation requirements. These trends affect export opportunities for developing countries.

The Doha work programme

10. The 2001 Doha Ministerial Declaration (DMD), for the first time in WTO negotiations, called (in paragraph 31) for immediate negotiations on certain environmental issues, in particular concerning:

- (a) The relationship between existing WTO rules and specific trade obligations (STOs) set out in multilateral environmental agreements (MEAs);
- (b) Procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting of observer status; and
- (c) The reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services (EGS).

11. On the relationship between STOs in MEAs and WTO rules (paragraph 31(i)), differences remain as to what constitutes an STO and on how to analyse its relationship with WTO rules. The Committee on Trade and Environment in Special Session (CTESS) has recently been focusing on the identification and analysis of STOs in selected MEAs, without losing sight of some generic issues of the STO–WTO relationship. Most developing countries interpret STOs to be mandatory provisions under an MEA, while several developed countries maintain that certain discretionary actions by MEA parties undertaken to meet an MEA objective may also constitute STOs. From a development perspective, it is important to ensure that discussions on STOs do not lose sight of the fact that trade measures, where considered necessary to achieve the objectives of MEAs, are more effective when taken as part of packages of measures that also include enabling measures, such as finance, and are based on the principle of common but differentiated responsibilities.¹⁰

12. As regards information exchange and observer status (paragraph 31(ii)), WTO members are in agreement that existing forms of cooperation and information exchange between the WTO and MEAs have proved valuable and should be enhanced. This includes formalizing MEA information sessions in the CTE; holding of MEA information sessions on specific themes; organizing WTO parallel events at the Conferences of Parties to MEAs; and promoting the exchange of documents. The CTESS has been inviting the secretariats of certain MEAs, UNEP and UNCTAD to participate in its meetings as observers on an ad hoc basis.

⁹ The Treaty will enter into force when 40 instruments of ratification have been received. As of 10 November 2003, 32 had been received.

¹⁰ The MEA–WTO relationship and the trade liberalization of environmental goods and services are addressed at length in the first issue of UNCTAD’s *Trade and Environment Review*, forthcoming in early 2004.

13. Environmental services have been playing an important role in ongoing negotiations under Article XIX the General Agreement on Trade in Services (GATS). Discussions on paragraph 31(iii) to date have focused mainly on modalities, definitions, classifications, coverage and scope of EGS to be included in the negotiations. It is important that negotiations on trade liberalization in EGS include products and services of export interest to developing countries. This issue is examined in more detail in section III.C below.

14. The DMD (in paragraph 32) also instructed the CTE to pay particular attention to three issues and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. These three issues are:

- (a) The effects of environmental measures on market access, especially in relation to developing countries, in particular the least developed countries among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- (b) The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement); and
- (c) Labelling requirements for environmental purposes.

15. In addition, paragraph 19 of the DMD deals with issues related to the review of Article 27.3(b) of the TRIPS Agreement, biodiversity and traditional knowledge.

16. Although they are long-standing issues for discussion in the CTE, the post-Doha debate on the three subjects in paragraph 32 has not advanced very much. However, they remain issues of interest and concern for developing countries, particularly the effects of environmental requirements on market access and the relevant articles of the TRIPS Agreement. Some issues in paragraphs 32 and 19 are elaborated on in section III below.

UNCTAD work

17. Through its intergovernmental machinery, policy analysis and technical cooperation/capacity-building activities, UNCTAD has done much work addressing the trade and environment issues highlighted in the DMD, see section III for details.

The World Summit on Sustainable Development

18. The Johannesburg Plan of Implementation (JPOI), adopted by the 2002 WSSD, recognizes the major role that trade can play in achieving sustainable development and in eradicating poverty. It welcomes the decision contained in the DMD to place the needs and interests of developing countries at the heart of the Doha work programme, including through enhanced market access for products of interest to developing countries. The JPOI encourages WTO members to pursue the Doha work programme.

19. The JPOI *inter alia* calls for reform of subsidies that have considerable negative effects on the environment and are incompatible with sustainable development; strengthened cooperation, including in providing technical assistance to developing countries, between the secretariats of WTO, UNCTAD, UNDP, UNEP and other relevant organizations; and voluntary WTO-compatible market-based initiatives for the creation and expansion of domestic and international markets for

environmentally friendly goods and services, including organic products, which maximize environmental and developmental benefits through, *inter alia*, TC/CB to developing countries. Agreed deadlines in areas such as water, sanitation, ozone-depleting substances, restoration of fisheries stocks, reducing biodiversity loss, and efficient use of energy have implications for trade and sustainable development.

UNCTAD work

20. Since the Johannesburg summit, UNCTAD has strengthened its contribution to sustainable development through its own activities, cooperation with the Commission on Sustainable Development¹¹ and a number of “partnerships” launched at WSSD. The latter include:

- The second phase of the UNEP–UNCTAD Capacity Building Task Force on Trade and Environment (CBTF);¹²
- Partnerships involving the BIOTRADE Initiative, in particular:
 - The *Andean BIOTRADE Programme*, a partnership of the Andean Community, the Andean Development Corporation (CAF) and UNCTAD;
 - The *New Ventures Investor Forum: Andean-Amazonian Bio-business Contest*, a partnership between the World Resources Institute, CAF and UNCTAD;
 - The *BioTrade Facilitation Programme (BTFFP)*, a joint initiative with the International Trade Centre.

Global environmental issues

Biosafety

21. Establishing credible and effective safeguards for genetically modified organism (GMOs) is considered critical for maximizing the benefits of biotechnology while minimizing its risks for the environment and human health. Developing countries face particular challenges, including limited financial resources to invest in biosafety and relatively more complex and biodiversity-rich ecosystems.¹³

22. The Cartagena Protocol on Biosafety of the Convention on Biological Diversity (CBD) entered into force on 11 September 2003. It is the first legally binding international treaty covering trade in agricultural biotechnology. It aims to provide an adequate level of safety for the transfer, handling and use of living modified organisms (LMOs).¹⁴ It allows countries, including those that do not yet have biosafety regimes in place, to make informed decisions about the import of GMOs into

¹¹ For example, the secretariat participated in the International Expert Meeting on a 10-Year Framework of Programmes for Sustainable Consumption and Production, Marrakesh, Morocco, 16–19 June 2003.

¹² “Joint programmes with other organizations, such as the UNEP-UNCTAD CBTF, are an effective means for delivering mandates and maximizing the impact of UNCTAD’s work.” Mid-term Review, paragraph 19.

¹³ See Tewolde Berhan Gebre Agziabher, “Balancing Biosafety, Trade and Economic Development Interests in the Implementation of the Cartagena Protocol: A Developing Country Perspective”, in CBD, *Cartagena Protocol on Biosafety: From Negotiation to Implementation*, 2003.

¹⁴ The term used in the Protocol. It means “any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology”.

their countries based on risk assessments.¹⁵ The inclusion of precautionary language means that a Government may decide not to permit a particular GMO to be imported, even if there is insufficient scientific evidence about its potential adverse effects.¹⁶

23. The Protocol includes separate sets of procedures for (a) GMOs that are intentionally introduced into the environment and (b) GMOs intended for food, feed or processing (i.e. agricultural commodities such as soybeans, corn, cotton), which account for the bulk of agro-biotechnology trade. For the first category, the Advanced Informed Agreement (AIA) procedure established by the Protocol requires exporters to provide detailed information and to seek the importing nation's prior approval before the first transboundary movement takes place. The compromise reached on the second, more controversial category subjects it to a simplified procedure, which obliges a party to inform other parties through the Biosafety Clearing-House of a final decision regarding domestic use, including placing on the market, of GMOs that may be subject to transboundary movement. Shipments of commodities with GMOs are to be identified stating that they "may contain" GMOs. Some critical issues related to liability and agricultural commodities have not yet been fully resolved.

24. Three recent developments in the European Union's GMO-related regulations will have both domestic and trade impacts. First, Directive 2001/18/EC,¹⁷ which entered into force in October 2002, establishes harmonized procedures and criteria for the case-by-case evaluation of potential risks arising from the deliberate release of GMOs into the environment or their placing on the market. Second, Regulation (EC) No 1829/2003,¹⁸ dealing with GM food and feed, puts in place a "one door one key" procedure for the scientific assessment and authorization of GMOs and GM food and feed resulting in a centralized EU procedure.¹⁹ Third, Regulation (EC) No 1830/2003 lays down comprehensive traceability²⁰ and labelling requirements for GMOs as well as food and feed produced from GMOs.²¹ The last two regulations entered into force on 7 November 2003, but will have to be

¹⁵ Risk assessments are to be undertaken in a scientific manner, using recognized risk assessment techniques. The importing country has the right to require that the exporting country carries out the risk assessment and bears the cost. This is particularly important for many developing countries.

¹⁶ The Protocol gives importing countries the right to take into account socio-economic concerns, provided their actions are "consistent with their international obligations".

¹⁷ It replaced Directive 90/220/EEC. The new Directive requires that applications for authorization must be accompanied by a full environmental risk assessment, detailed information on the GMO, its release conditions, interaction with the environment, monitoring, waste and contingency plans, labelling and packaging proposals. It provides for a rather complex approval procedure involving both national competent authorities and Community bodies, including the new European Food Safety Authority (EFSA).

¹⁸ It replaces the relevant parts of Regulation (EC) 258/97 on Novel Foods and Novel Food Ingredients.

¹⁹ The scientific risk assessment will be carried out by the EFSA. Its opinion will be made available to the public and the public can make comments. On the basis of this opinion, the Commission will draft a proposal for granting or refusing authorization. Products authorized will be entered into a public register of GM food and feed.

²⁰ Business operators must transmit and retain information about products that contain or are produced from GMOs at each stage of the placing on the market.

²¹ This regulation is aimed at ensuring full traceability of GMOs, i.e. the tracking of the movement of GM products, throughout the production and distribution chains and at providing consumers with comprehensive information by labelling all food and feed consisting of, containing or produced from a GMO. The law also adds, relative to previous rules, compulsory labelling of all food and food ingredients produced from GMOs, irrespective of whether there is DNA or protein of GM origin in the final product, and for the first time, for all GM feed. The presence of GM material in conventional food does not have to be labelled if it is below 0.9 per cent and if it can be shown to be unintended and technically unavoidable. The threshold for the unintended presence of unapproved GMOs that have been assessed as risk-free is 0.5 per cent.

applied after a transitional period. According to some, the revised Directive and the two new regulations may pave the way for resumed GMO authorizations in the European Union.²²

UNCTAD work

25. UNCTAD has a key role to play in helping developing countries in enhancing understanding of the trade, environmental, including biodiversity, and developmental implications of biotechnologies. It has done considerable analytical work on specific problems that developing countries face in the context of trade in biotech products.²³ The Secretary-General convened an Ad Hoc Expert Group on *Industrial and Environmental Applications of Biotechnology: Implications for Trade and Development*²⁴ (November 2001). As a follow-up, in the context of the UNCTAD Science and Technology Diplomacy Initiative, UNCTAD is preparing an executive forum on biotechnology and trade. The Commission on Science and Technology for Development, which is serviced by UNCTAD, has also addressed this issue.

Climate change – Kyoto Protocol

26. While climate change is one of the most important environmental issues, it is also an important cross-sectoral economic problem. Given the multitude of greenhouse gas emission sources in both developed and developing economies, policy responses will require a fundamental change in the way that energy is produced and used.

27. The Kyoto Protocol²⁵ to the United Nations Framework Convention on Climate Change (UNFCCC) marks the first step in an international move to limit emissions of greenhouse gases. The Protocol has set legally binding reduction targets for countries listed in its Annex B (industrial countries²⁶). To meet their emissions commitments, Annex B countries have considerable flexibility in their choice of domestic policies, including carbon/energy taxes, subsidies, energy efficiency standards and government procurement policies. Article 2.3 states that this must be done in such a way as to minimize adverse effects on international trade. The Protocol also introduced three international flexibility mechanisms, namely international emissions trading, joint implementation, and the clean Development Mechanism (CDM) that can also be used for meeting reduction targets. The CDM in particular opens new avenues for financing the reduction of greenhouse gas emissions in developing countries.

UNCTAD work

28. Ongoing work in UNCTAD on climate change focuses on assisting developing countries in deriving investment and sustainable development benefits from the CDM.

²² After the commercial release of some 18 GMOs, including maize, oil seed rape, soybean and chicory, was approved under Directive 90/220/EEC no new authorizations have been granted since October 1998.

²³ See, for example, Simonetta Zarrilli, *International Trade in GMOs and Multilateral Negotiations: A New Dilemma for Developing Countries*, UNCTAD/DITC/TNCD/1, 20 October 2000.

²⁴ *The New Bio-economy: Industrial and Environmental Biotechnology in Developing Countries*, UNCTAD/DITC/TED/12.

²⁵ The “double trigger” for the entry into force of the Kyoto Protocol requires 55 Parties to the Convention to ratify the Protocol, including Annex B Parties accounting for 55 per cent of that group’s carbon dioxide emissions in 1990. As of November 2003, 118 countries had ratified; ratifications by Annex B countries accounted for 44.2 per cent of that group’s 1990 emissions and include Japan, Canada and the EU.

²⁶ Annex B countries include all the OECD countries and countries in transition to a market economy.

II. SELECTED KEY THEMES IN UNCTAD'S WORK

29. This section analyses four key trade and environment issues – environmental requirements and market access, environmentally preferable products, environmental goods and services, and traditional knowledge – highlights relevant UNCTAD work undertaken in these areas since UNCTAD X.

Environmental requirements and market access

30. In recent years, environmental requirements – comprising governmental regulations, voluntary private sector or NGO-created standards and their associated conformity assessment systems – have become more stringent, frequent and complex. Such requirements are becoming more prevalent in sectors such as food production, automobiles, electrical and electronic equipment, textiles and clothing, leather and footwear, timber and chemicals.²⁷ In practice, importers and buyers are often setting the standards in the market.

31. Generally aimed at improving environmental quality and health in domestic markets, such requirements have economic effects at home²⁸ and abroad. For developing countries, strengthening the capacity to meet greater standards in export markets may yield longer-term benefits in terms of greater resource efficiency, higher occupational safety, improved health conditions and less environmental pollution. However, the latter benefits could often be achieved in a more cost-effective manner, particularly when external requirements are ill-suited for the prevailing environmental and developmental conditions.

32. Concerns about potentially adverse trade effects of environmental requirements arise in particular where:

- (a) Regulations or standards are not based on or do not adhere to internationally agreed standards developed by international standardization bodies.²⁹
- (b) There is a lack of equivalency agreements and mutual recognition, at the standards, certification and accreditation levels, between and among Governments and private sector bodies.

²⁷ For example, the proposed new EC system called REACH (Registration, Evaluation and Authorization of Chemicals) would require companies that produce and import more than one tonne of a chemical substance per year to register it in a central database, assess the risks arising from its use and take the necessary measures to manage the identified risk. This reverses the burden of proof from public authorities to industry.

²⁸ A study by the US Office of Management and Budget (OMB) reports that, between 1992 and 2002, societal benefits of Environmental Protection Agency regulations significantly outweighed domestic costs of compliance (estimated respectively at \$146–230 billion and \$36–42 billion annually). See OMB, “Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities”, http://www.whitehouse.gov/omb/infoereg/2003_cost-ben_final_rpt.pdf

²⁹ There are many regulations, especially relating to chemical residues in consumer items, such as leather and fabrics, that are not based on any international standard, usually because only a small group of countries has decided to regulate that substance. For more details, see OECD, Addressing market-access concerns of developing countries arising from environmental requirements: Lessons from national experiences (COM/ENV/TD(2003)33), Paris, June 2003.

- (c) Trade partners are effectively prevented from effective participation in drafting or review processes for regulations³⁰ or standards and do not receive adequate and timely information on changes in regulations or standards.
- (d) Developing countries lack the technical infrastructure and expertise to implement new standards and regulations.
- (e) High costs of compliance or administrative requirements create specific problems for small and medium-sized enterprises (SMEs) and have the effect of crowding out small producers.
- (f) Large information gaps exist, particularly in respect of voluntary standards and buyers' requirements.

33. With the reduction in tariff protection and the elimination of quotas, voluntary labelling for environmental purposes may become a relatively more important factor in developed country markets. The European Commission, in a communication on measures aimed at strengthening the competitiveness of the EU textile and clothing sector in anticipation of the elimination of WTO import quotas in January 2005, announced that it would explore the use of labelling to facilitate access to the EU market for products that respect international labour or environmental standards.³¹ Certain labels could play a role in promoting exports of environmentally preferable products from developing countries, but SMEs tend to have problems in complying with stringent environmental criteria. Environmental labelling programmes should be developed and implemented in a transparent and non-discriminatory manner,³² and criteria related to processes and production should, to the extent possible, reflect the local environmental and developmental conditions in producing countries. Greater attention should be given to the increasingly important role of certification issues, and equivalency/mutual recognition arrangements that will facilitate developing country exports.

UNCTAD work

34. The *Expert Meeting on Environmental Requirements and International Trade* (October 2002) identified a number of specific ways to mitigate potentially negative effects of environmental measures on market access for developing countries. These include the involvement at an early stage of developing countries in the design of environmental measures; longer time frames for compliance; better dissemination of information; well-focused technical assistance, including seeking support

³⁰ Such consultations can significantly reduce cost impacts of regulations. For example, in May–July 2003, the European Commission conducted an Internet consultation on the draft REACH Regulation. Some 6,000 comments were received, including from stakeholders in Chile, China, Malaysia, Mexico and Thailand. According to a new Impact Assessment, these comments have resulted in important changes that substantially reduce costs (to approximately €2.8–5.2 billion over 11 years) without diminishing the protection of health and the environment.

³¹ The Commission will discuss proposed measures with interested parties and will set up a High-Level Group to explore initiatives and make recommendations. Commission of the European Communities, *The future of the textiles and clothing sector in the enlarged European Union*, COM(2003)649 final, October 2003; http://europa.eu.int/comm/enterprise/textile/documents/com2003_0649en.pdf

³² To this end, the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance – an association of leading international standard-setting, certification and accreditation organizations (non-governmental) that focus on social and environmental issues – is currently developing an International Code of Good Practice for Setting Social and Environmental Standards.

through Article 11 of the Agreement on Technical Barriers to Trade (TBT); and the need to recognize the equivalence of environmental measures in developing countries.³³

35. This subject has also been central to a number of UNCTAD TC/CB projects, including case studies on environmental requirements, market access and export competitiveness for six Asian countries (Bangladesh, Cambodia, China, Philippines, Thailand and Viet Nam) in three sectors: leather and footwear,³⁴ horticultural products and electronics under the project *Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues*.³⁵ Work in certain Central American and Caribbean countries will focus on selected agricultural products.

36. At its seventh session, the Commission invited the secretariat to explore the possibility of creating, as a project-based activity, a Consultative Task Force (CTF) on Environmental Requirements and International Trade.³⁶ The CTF is envisaged as an open-ended multi-stakeholder forum of government, private sector and NGO representatives from developed and developing countries. It could aim at (a) improving collection and dissemination of information on environmental requirements, notably on voluntary standards (including buyers' requirements), and analysing key underlying trends; (b) reviewing experiences in involving developing countries in pre-standard-setting consultations concerning regulations and standards that may have significant implications for them; and (c) exploring proactive adjustment policies and measures in developing countries, with a special focus on improving information management, including early-warning mechanisms, and identifying measures and strategies to address the specific needs of SMEs. It would closely coordinate its activities with other initiatives.³⁷ Exploratory studies on the above issues will be discussed at a joint UNCTAD–Inmetro³⁸ workshop in early 2004.

Environmentally preferable products

Issues

37. There has been considerable interest in exploring opportunities for enhanced trade in products with environmental and developmental benefits, including in the context of recent UN Conferences, including WSSD and the Third United Nations Conference on the Least Developed Countries (Brussels, 2001). Environmentally preferable products (EPPs) include organic, non-wood forest, traditional-knowledge-based and renewable energy products. Markets for certain EPPs are growing

³³ Aspects of these issues were also discussed in the Expert Meeting on Market Entry Conditions Affecting Competitiveness and Export of Goods and Services of Developing Countries: Large Distribution Networks, Taking into Account the Special Needs of LDCs (November 2003).

³⁴ A subregional workshop on leather and footwear (Bangkok, November 2003), drew some general conclusions. It underscored that "in addition to existing tariff and other NTBs, TBT and SPS measures are becoming decisive tools in the competitiveness race and need to be dealt with as an integral part of business strategies of companies and economic strategies of developing country governments (i.e. eco-positioning together with price, quality and brand positioning) to defend and expand international market shares. The complexity of measures requires a strategic and pro-active response by exporting developing countries, rather than a piecemeal, reactive and short-term approach." The workshop identified a number of elements that could be part of such a pro-active approach, both at the national and international level. The conclusions are accessible at www.unctad.org/trade_env/test1/meetings/bangkok5.htm.

³⁵ TED's flagship project is funded by the UK Department for International Development (DFID).

³⁶ The Government of the Netherlands has provided initial funding support for exploratory activities.

³⁷ For more information, see www.unctad.org/trade_env/test1/projects/taskforce.htm.

³⁸ National Institute of Metrology, Standardization and Industrial Quality in Brazil.

quickly and can be further promoted. However, developing country producers must overcome a number of obstacles to take advantage of these growing markets.

38. For example, the world market for organic food and beverages in 2003 is estimated at \$23–25 billion. In several developed countries demand is growing at annual rates of 15 to 20 per cent a year. Domestic markets are also growing rapidly in some developing countries.

39. Impediments for developing country producers can include high certification costs, lack of technical know-how, limited access to finance, high transaction costs, limited infrastructure, competition with subsidized conventional agricultural products and the absence of government support. Developing country Governments can play an important role in promoting the development of this sector by removing market distortions and providing a supportive framework and policy.³⁹

40. A key trade problem is that the international organic market is confronted with hundreds of private sector standards and governmental regulations and a host of conformity assessment and accreditation systems. Mutual recognition and equivalency among these systems are extremely limited. The plethora of certification requirements and regulations could become a major obstacle to continuous and rapid development of the organic sector, especially for producers in developing countries, and a critical technical barrier to trade.

UNCTAD work

41. *The Expert Meeting on Ways to Enhance the Production and Export Capacities of Developing Countries of Agricultural and Food Products, including Niche Products, such as Environmentally Preferable Products* (July 2001) was followed by a range of technical cooperation activities,⁴⁰ policy-oriented studies and practical initiatives such as the creation of the UNCTAD/FAO/IFOAM⁴¹ International Task Force (ITF) on Harmonization and Equivalence in Organic Agriculture.⁴² In addition, the Expert Meeting on Environmental Goods and Services focused on certain categories of EPPs that could be included in the scope of WTO negotiations under paragraph 31(iii) of the DMD (see section C below). Proposed work on dynamic sectors should pay full attention to certain categories of EPPs (see box).

42. The UNCTAD BIOTRADE Initiative seeks to enhance the capacity of developing countries to produce value-added products from biodiversity for both domestic and export markets. BIOTRADE country programmes in Bolivia, Brazil, Colombia, Ecuador, Peru, and Venezuela include enterprise development, market information, access to finance, export promotion and linkages with

³⁹ For more information, see Sophia Twarog and Rene Vossenaar, "Obstacles Facing Developing Country Exports of Organic Products to Developed Country Markets", in C. Westermayer and B. Geier (eds.) *The Organic Guarantee System: The Need and Strategy for Harmonisation and Equivalence*, IFOAM–FAO–UNCTAD, 2002.

⁴⁰ Work on market access and certification issues for organic products in eight Central American and Caribbean countries under the project *Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues* has been recently launched. National case studies are being prepared.

⁴¹ International Federation of Organic Agriculture Movements.

⁴² The second ITF meeting (Geneva, 20–21 October 2003) reviewed the existing situation and its impacts and started work aimed at identifying short- and medium-term practical and conceptual elements to promote harmonization, technical equivalence and mutual recognition as regards standard setting, conformity assessment and accreditation. For more information, see the ITF home page at www.unctad.org/trade_env/itf-organic, as well as TD/B/COM.1/61.

local communities. Country programmes are also being initiated in Uganda and some other countries.⁴³

EPPs as dynamic sectors

The UNCTAD XI process provides an opportunity to discuss ways for developing countries to benefit from dynamic sectors in world trade to diversify exports into value-added products.⁴⁴ Niche markets are growing for certain categories of products that have environmental benefits and, in addition, often contribute significantly to poverty alleviation and enhanced gender equality. Developing countries have comparative advantages in several such sectors, for example organic agricultural products; certain herbal and medicinal products, including those promoted under the BIOTRADE Initiative; and environmentally preferable services, such as eco-tourism.

UNCTAD, in cooperation with its many partners, is well placed to carry out sectoral reviews of selected EPPs, starting, for example, with organic agricultural products. These could focus on markets; the interplay of domestic policies and international actions to remove obstacles to exports of EPPs from developing countries; harmonization and equivalence; and opportunities for regional cooperation among developing countries to strengthen certification and accreditation infrastructure. In addition, sectoral reviews of other dynamic sectors should include the impact of environment and health requirements on market entry and penetration.

Environmental goods and services

Issues

43. Liberalization of trade in environmental good and services (EGS) may result in sustainable development benefits for developing countries, including easier access to environmentally sound technology (EST) and know-how; more efficient resource management and improved environmental conditions; and enhanced capacity to comply with environmental requirements in domestic and international markets. While these benefits are of key importance to developing countries, a situation where environmental benefits go to one set of countries and trade gains to another would not be a desirable outcome of the negotiations. Therefore, negotiations should pay greater attention to EGS of export interest to developing countries.⁴⁵

44. Negotiations on trade liberalization in environmental goods are taking place in the negotiating group on non-agricultural market access, with the CTESS playing a role in clarifying concepts, including the definition and coverage of environmental goods. So far, negotiations have focused on finding agreement on modalities. Environmental goods may eventually be included among sectors identified for further tariff liberalization. For developing countries, it would be useful to identify certain categories of EPPs that could benefit from trade liberalization in EGS. However, this should be based on objective criteria to avoid possible new non-tariff barriers (NTBs) and additional costs, for example for certification. WTO negotiators would have to address questions such as how to deal with agricultural products and NTBs in the context of the negotiations.

⁴³ For more information, see www.biotrade.org.

⁴⁴ *Enhancing Developing Countries' Participation in and Benefits from New and Dynamic Growth Opportunities in World Trade*. Note prepared by the UNCTAD secretariat.

⁴⁵ Currently the lion's share of trade in EGS originates in developed countries. See, for example, UNCTAD, *Environmental Goods: Trade Statistics for Developing Countries*, 2003, TD/B/COM.1/EM.21/CRP.1.

45. Environmental services differ greatly in market structure, regulatory frameworks and technological development. It is therefore useful to distinguish between (a) environmental infrastructure services, mainly related to water and waste management; (b) non-infrastructure, professional environmental services, for example site clean-up and remediation, cleaning of exhaust gases, noise abatement, nature and landscape protection; and (c) related services with an environmental component, for example construction or engineering services. These distinctly different categories of environmental services will require different approaches in the negotiations, as well as on the domestic front.

46. It is also important to ensure that negotiations have commercially, financially and technically viable results. This will require consensus building with regard to the classification of environmental services and, in some cases, also the linking of negotiations on environmental services with negotiations on environmental goods. Developing countries could seek to identify a list of different types of services of interest to them, with emphasis on “mode 4”.⁴⁶ Some developing countries see opportunities for capturing export markets in environment-related professional services, which may, however, be affected by regulatory barriers, notably regarding the temporary movement of natural persons. Consequently, issues relating to recognition, qualifications, licensing procedures and international standards will require more attention and analysis. It would be helpful to have a compilation of existing qualification and certification requirements that affect market access for service providers from developing countries.

UNCTAD work

47. The Expert Meeting on *Definitions and Dimensions in Environmental Goods and Services in Trade and Sustainable Development* (July 2003) helped to clarify issues of definition and classification as well as development implications. Recommendations to the international community included development of consensus on the classification of environmental services and promotion of discussions on the relationship between transfer ESTs and trade liberalization of EGS. Many experts emphasized that in order to “level the playing field” for developing countries it would be important to link the negotiations and discussions on EGS with a range of issues such as emergency safeguard mechanisms; government procurement; the role of subsidies for EGS, particularly in developed countries; existing market structures of EGS and related anti-competitive practices; standards as a market entry barrier for EGS; supply capacity; and capacity building and policy coherence at both national and international levels.

48. At the national level, most developing countries still need to design national policies and regulatory frameworks to ensure that, as far as possible, liberalization in environmental services strengthens national capacities, promotes transfer of technology, and enhances efficiency and competitiveness. In most developing countries, there is a need to improve the quality and efficient delivery of basic infrastructure-related environmental services such as water and sanitation.⁴⁷ As this requires large investments and access to technology and management practices, there are potential benefits from private sector participation, including through foreign direct investment. However, adequate regulatory frameworks need to be developed to ensure that national environmental, social and developmental objectives are respected, including with regard to universal access to basic environmental services at affordable prices. Caution and a gradual approach to making commitments

⁴⁶ Colombia, for example, has put forward a proposal (S/CSS/W/121).

⁴⁷ For more information see Simonetta Zarrilli (ed.), *Energy and Environmental Services: Negotiating Objectives and Development Priorities*, UNCTAD/DITC/TNCD/2003/3, at www.unctad.org/en/docs/ditctncd20033_en.pdf.

in the GATS context are needed in view of insufficient regulatory frameworks and institutional capacities, difficulties in assessing demand and supply, and insufficient understanding of the implications of liberalization, in particular in sub-sectors for which data are largely not available.

49. Recommendations on possible actions at the national level included:

- Development of a list of environmental goods that reflects a country's sustainable development and trade interests;
- Implementation of policies and measures that translate environmental, human health and resource management needs into demand for EGS;
- Coordination among all relevant policy contexts to ensure an integrated approach to the development of the various EGS sectors and trade liberalization;
- Promotion of policy dialogues involving trade negotiators, policy makers, regulators, providers of environmental services and other stakeholders;
- Appropriate sequencing of regulatory consolidation and liberalization.

50. Experts encouraged the UNCTAD secretariat to provide policy analysis and TC/CB in the area of EGS, in particular by:

- Continuing to provide assistance in organizing national policy dialogues and undertaking analytical and empirical studies on issues related to the liberalization of trade in environmental services;⁴⁸
- Assisting interested countries in compiling lists of environmental goods that reflect their trade, environmental and developmental priorities;
- Contributing to the clarification of issues related to the transfer of ESTs and trade in EGS;
- Promoting TC and CB activities to promote exports of EPPs, such as the BIOTRADE Initiative and the CBTF.

51. Through its TC/CB programme UNCTAD is already assisting selected developing countries in supporting national consultations and coordination between government ministries, suppliers of EGS and other stakeholders to identify the implications of liberalization in environmental services and strengthen coherence between liberalization and national sustainable development objectives. National studies have been prepared in a number of Central American and Caribbean countries. UNCTAD is also assisting developing countries in identifying environmental goods of potential export interest, initially focusing on EPPs.

Traditional knowledge

Issues

52. Traditional knowledge (TK) has received increasing attention on the international agenda. This is due to a number of factors, including the recognition of its importance in the lives of the majority of the world's population and in the conservation of biodiversity; concerns about the rapid loss of TK and global cultural diversity; concerns about unauthorized or inappropriate patenting or use of TK with little or no benefit sharing with the original TK holders; and interest in harnessing the potential of TK for local sustainable development.

⁴⁸ This topic is addressed at length in the first issue of the *Trade and Environment Review*, forthcoming in early 2004.

53. As TK is a very complex issue touching upon many facets of life, the preservation, protection and promotion of TK must be multifaceted and holistic to be effective. Many countries are in the process of developing national TK regimes. Ideally, such regimes should be based upon an initial assessment of the types of TK in the country and existing legislation and institutional arrangements, and a multi-stakeholder dialogue to identify the main TK-related concerns and objectives. For preservation of TK, measures aimed at raising awareness of the value of TK, preserving the natural environment and enhancing the livelihoods of TK-holding communities may be important. Protection of TK may involve measures acknowledging positive rights of TK-holders to their TK, as well as measures aimed at preventing unauthorized and uncompensated use. TK-based innovations can be promoted by facilitating interactions between TK systems and other knowledge systems (e.g. traditional medicine and “modern” medicine). Commercialization of TK-based products, where appropriate, should be promoted with an emphasis on the participation of TK-holding communities, including their involvement in production, equitable benefit-sharing and prior informed consent.

54. Setting up national TK regimes is quite important. But national-level protection cannot fully prevent international unauthorized use. There have therefore been calls for an international TK protection framework. A requirement to disclose the source of origin of TK (and genetic resources) in relevant patent applications has been proposed by several developing countries⁴⁹ as an important first step for the defensive protection of TK (i.e. preventing inappropriate intellectual property rights (IPRs) from being applied for by third parties). But much TK is currently used by third parties who do not apply for IPRs to it. Some believe that preventing this would involve an international system for positive TK protection.⁵⁰

UNCTAD work

55. In UNCTAD, the emphasis has been on exchanging national experiences on policies and measures to protect TK in a broad sense and on identifying policies to harness TK for trade and development. Following the *Expert Meeting on Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices* (October/November 2000) and the fifth session of the Commission, the Government of India and UNCTAD convened an *International Seminar on Systems for the Protection and Commercialization of Traditional Knowledge* (New Delhi, 3–5 April 2002).⁵¹ In the communiqué issued by the meeting, participants expressed the need for understanding the viability of various instruments, including national *sui generis* systems of protection and their recognition at the international level.

56. On related matters, in September 2002, the secretariat organized a briefing for Geneva-based delegates on the FAO International Treaty, including its implications for discussions in TRIPS and WIPO, as well as national policies relating to agro-biodiversity, traditional knowledge, the protection of plant varieties and the balance between breeders’ and farmers’ rights.

⁴⁹ In the WTO, for example, developing country submissions to the TRIPS Council include IP/C/W/356 in June 2002.

⁵⁰ In the WTO, TK is discussed mainly in the TRIPS Council and the CTE. Recently, the African Group proposed the establishment of a WTO Committee on TK. Various facets of TK are also being addressed in the CBD, particularly the Working Group on Article 8(j), the World Intellectual Property Organization (WIPO), particularly in its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (established in 2001), the United Nations Permanent Forum on Indigenous Issues, and other bodies. Protection of TK is also a requirement included in the FAO International Treaty on Plant Genetic Resources for Food and Agriculture, adopted in November 2001.

⁵¹ A large number of papers and presentations from these meetings are available under “meetings” at www.unctad.org/trade_env. Selected Expert Meeting papers will be published soon in book form.

III. POSSIBLE ISSUES TO BE ADDRESSED BY THE COMMISSION

57. The Commission may wish to pay particular attention to a number of issues raised in this paper:

- The outcome of the Expert Meeting on Definitions and Dimensions in Environmental Goods and Services in Trade and Sustainable Development, held in July 2003, in particular the recommendations contained in the chairman's summary;⁵²
- The planned activities to explore, as a project-based activity, the possibility of the creation of a Consultative Task Force on Environmental Requirements and International Trade. The Commission may wish to invite member States to share, on a voluntary basis, relevant information and expertise with the secretariat as appropriate for the effective implementation of the project;
- Progress in the work of the UNCTAD–FAO–IFOAM Task Force on Harmonization and Equivalence in Organic Agriculture;
- Sectoral reviews to identify opportunities for developing countries to derive benefits from dynamic niche markets for EPPs;
- Areas requiring special attention in the UNCTAD XI context, such as the linkages between trade, environment and poverty, in particular in the commodities sector; and;
- WSSD follow-up, including UNCTAD partnerships in the context of the BIOTRADE Initiative and the second phase of CBTF.

⁵² TD/B/COM.1/59 and TD/B/COM.1/EM.21/3, 27 August 2003.