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Directorate-General for Trade

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**TRADE AND ENVIRONMENT**  
**ADDRESSING THE CONCERNS OF DEVELOPING COUNTRIES ON THE EFFECTS OF**  
**ENVIRONMENTAL MEASURES ON MARKET ACCESS**  
**REVISED VERSION OF DOC. 344/04**

Submission by the European Communities under Paragraph 32(i)

Ministers in Doha instructed the Committee on Trade and Environment to give particular attention to “the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them”.

This is a key issue to ensure the mutual supportiveness of trade, environment and development. The protection of the environment is a common necessity and a common responsibility, shared by all our countries. Environmental measures are necessary to assume this responsibility. And especially when environmental measures are not based on an international consensus, it is in our common interest to preserve confidence and cooperation despite possible different views on environmental issues.

In particular, the EC are convinced that, in order to stir us into action, the objective of Sustainable Development must reconcile environment and development. Some developing countries are concerned that environmental requirements in developed countries may reduce market access for their companies. We believe that “the answer to concerns about reduced market access is not to weaken such standards but rather to enable exporters to meet them”.<sup>1</sup> In this regard, the EC understand DCs concerns and are ready to work and discuss on the basis that environmental requirements should be developed and applied in such a manner so as to minimize possible adverse effects on market access for developing countries, while still achieving the objectives of environmental policies, as suggested by India in its 2002 submission<sup>2</sup>.

Work recently carried out in various international fora has contributed to clarifying this issue<sup>3</sup>. The discussions which took place in the CTE before Cancún at India’s request were very useful, as was the recent work carried out by UNCTAD<sup>4</sup>. Equally important is the work carried out by UNEP and in

<sup>1</sup> CTE Report to the Fifth Session of the WTO Ministerial Conference in Cancun - WT/CTE/8 - 11 July 2003

<sup>2</sup> WT/CTE/W/207 dated 21 May 2002, paragraph 16

<sup>3</sup> For instance the OECD "case studies" contained in the publication "The Development Dimension of Trade and Environment: Case Studies on Environmental Requirements and Market Access", 19 November 2002, COM/ENV/TD(2002)86/FINAL (available on the OECD website)

<sup>4</sup> UNCTAD work on the effects of environmental measures on market access, financed by the UK development agency DFID, consists of case studies on six Asian countries (Bangladesh, Cambodia, China, Philippines, Thailand and Vietnam) focusing on three sectors –leather and footwear, horticultural products, electronics- and three clusters of issues – information gathering and dissemination on environmental requirements, current

particular the series of workshops on Trade and Environment Technical Assistance/Capacity Building<sup>5</sup>.

We do not intend to address in this submission the substance of environmental requirements. It is a much more controversial debate, which would put the cart before the horse. The EC consider that issues linked to the process of developing and implementing environmental requirements are very promising for useful and concrete work in the CTE, aiming at improving the mutual supportiveness of trade, environment and development and at increasing confidence and cooperation among us.

In more concrete and operational terms, we are convinced that efforts should focus on experience sharing on ways to further improve the dialogue and information mechanisms with DCs when developing and implementing new environmental requirements with a view to: 1) identifying as early as possible potential market access implications, 2) identifying potential “bridges” between our respective legislation and 3) considering technical assistance needs and other means necessary to help affected countries and exporters comply with new requirements while developing their own, where appropriate.

The present submission aims at:

- presenting reforms carried out in the EC policy making process that contribute to address in the development and implementation stages of legislation the concerns highlighted by DCs, and
- making proposals for further cooperation.

## **I. EC actions to further improve its practice when developing new environmental requirements: up-stream transparency and consultation mechanisms**

There is a long tradition of transparency and consultation when developing environmental draft proposals in the EC but it has recently been complemented and systematised through the “Better Regulation Package” essentially aimed at improving regulations through better knowledge about their impacts and systematic consultations of all stakeholders, including DCs.

The comprehensive framework for “better lawmaking”<sup>6</sup> (transparency & consultation, simplification and impact assessment), adopted in 2002, allows for a significant step forward in improving, simplifying and making more transparent the regulatory environment through impact assessments of regulatory initiatives and wider consultations of stakeholders.

### *Comprehensive impact assessment procedure of all draft legislative proposals*

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adjustment measures at national level to new environmental requirements on key export markets, improved participation in pre-standard setting consultations in export markets. These studies are discussed at regional workshops, in which the EC took part, then in comprehensive national dialogues involving government, business, NGOs, academics etc

<sup>5</sup> On 27/28 March 2004, UNEP – in co-operation with the Korean government – organised in Jeju Island a workshop on T&E CB for SD. The EC participated in the meeting together with many other national governments and IOs. A Chairman Summary was adopted at the end of the workshop stressing that TA/CB efforts should include activities aiming at facilitating compliance by exporter from DCs with environmental requirements in exporting markets.

<sup>6</sup> also known as “Better Regulation Package”. This package includes a general Communication on “Better Lawmaking” (COM(2002)275 dated 5.06.2002), an Action Plan for “Simplifying and improving the regulatory environment” (COM(2002)278 dated 5.06.2002) and 3 specific Communications on “Impact Assessment” (COM(2002)276 dated 5.06.2002), “Updating and Simplifying the Community Acquis” (COM(2003)71 dated 11.02.2003) and “General Principles and minimum standards for consultation of interested third parties by the Commission” (COM(2002)704 dated 11.12.2002).

This element consists of two main steps: a Preliminary Impact Assessment and, for a selected number of significant proposals, a more in-depth analysis called Extended Impact Assessment for proposals that could have substantial economic, environmental or social impact. This later Assessment aims at carrying out a more in-depth analysis, consulting with interested parties (cf minimum standards of consultation below) and identifying the main policy options and alternative instruments available to achieve the objective. This impact assessment also scrutinizes potential impacts on development outside the EU.

#### Minimum standards of consultation

The consultation stage that precedes the legislative proposal to be adopted by the Commission has been further improved in order to make it more transparent and systematic. As a first step, the Commission focuses on applying these minimum standards to those initiatives that will be subject to an extended impact assessment.

Consultation processes are open to all individuals and private or public organisations, including governments, in non EU countries, and specifically in DCs. Without excluding other communication tools, a “single access point” exists on the web for open public consultations (lasting in general 8 weeks) at the following address: [http://europa.eu.int/yourvoice/consultations/index\\_en.htm](http://europa.eu.int/yourvoice/consultations/index_en.htm). Results of previous consultations are displayed at this single access point.

#### **Consultation of stakeholders: the example of REACH**

In the case of the internet consultation for REACH, 6400 contributions and a number of specific questions were received; all comments were analysed by the Commission, which resulted in significant amendments to the proposed legislation. Among the contributors, we find several non-EU stakeholders (including from Argentina, Australia, Brazil, Canada, China, Chile, Israel, Japan, Korea, Mexico, Peru, the Philippines, Singapore, South Africa, Thailand and the US). Moreover, this internet consultation was preceded by an “early notice” under Article 2.9.1 of the TBT Agreement to inform Members of upcoming internet consultation so as to invite them to take part in it.

Given the different levels of action, it is important to note that EC Member States also contribute to simplifying and improving the European regulatory environment, in particular in the fields of impact assessments and consultations. Several Member States have now introduced and implemented horizontal policies on better regulation, for instance on impact assessment. As for public consultations, MSs are generally introducing more systematic procedures and the use of internet consultations is expanding.

Moreover, apart from the Better Regulation Package, it is important to keep in mind that, while EC procedures and division of responsibilities between the EU level and Member States may appear complicated, they concur to replacing 25 distinct national markets by a unified EU market of 450 million consumers. It is the most extensive process of harmonisation of standards in the world.

## **II. Efforts by the EC to further improve its practice when implementing new environmental requirements: down-stream information mechanisms and supportive/accompanying measures**

Here again the EC’s willingness to help exporters from third countries, and especially from developing countries, improve their compliance with EU environmental requirements has materialized in several initiatives.

#### Information tools

Beyond TBT and SPS enquiry points that provide information on EU laws and regulations and their implementation, the EC and their MSs support a lot of initiatives for better information of developing countries. These initiatives often go beyond mere information, and actively assist developing countries in identifying products and developing export markets.

For instance, the European Commission provides the Expanding Exports Helpdesk<sup>7</sup>, an online resource to facilitate access for DCs to markets within the EU. The database currently provides information on tariffs, customs documents and rules of origin but will be expanded to non-tariff information in the future. Sweden decided in April 2004 to establish a contact point for exporters, named Open Trade Gate Sweden<sup>8</sup>, located at the National Board of Trade. The purpose of the Open Trade Gate Sweden is to help exporters from developing countries solve administrative problems when exporting and provide them with information regarding trade rules and regulations and in this context also environmental trade aspects. Several other examples exist as the European Commission's initiative Euro Info Centres. Two of the best known initiatives are the Centre for the Promotion of Imports from developing countries and the Danish Import Promotion Office for Products from Developing Countries (DIPO).

The **Centre for the Promotion of Imports from developing countries (CBI)**<sup>9</sup> was established in 1971 and is an Agency of the Ministry of Foreign Affairs of The Netherlands. The CBI's mission is to contribute to the economic development of developing countries by strengthening the competitiveness of companies from those countries on the EU market.

CBI offers the following programmes:

- Market information: a variety of tools to keep exporters in developing countries in step with the very latest developments on the EU market.
- Company matching: the company matching programme links well-versed suppliers in developing countries to reliable importing companies in the EU and vice versa.
- Export Development Programmes are designed to assist entrepreneurs in developing countries in entering and succeeding on the EU market and/or consolidating or expanding their existing market share. Programmes are flexible and are tailored to the specific needs of the sector and individual exporter. Each programme may combine different elements: technical assistance on implementing regulations and standards, marketing, organisation of production and operational management, training in export marketing and management and market entry assistance.
- Training programmes for exporters and business support organisations on among others, general export marketing and management; trade promotion; management of international trade fair participations and developing client-oriented market information systems.
- Institutional support for capacity building for selected business support organisations.

The **Danish Import Promotion Office for Products from Developing Countries (DIPO)**<sup>10</sup> is established to assist exporters from developing countries in their endeavours to enter the Danish market. The services are free of charge. The office works with two lines of assistance:

- Market information: DIPO provides market information to exporters, Export Promotion Organisations in developing countries and the commercial staff at the embassies accredited to Denmark. The office issues a number of market surveys of the most relevant sectors of the Danish market and the export guide "Exporting to Denmark". DIPO organises trade seminars for trade attachés and other commercial staff at the embassies.
- Contact mediation: DIPO advertises business offers from exporters in developing countries and distributes offers directly to a large number of Danish importers. DIPO supplies exporters with contact data to relevant importers.

Outside initiatives have also benefited from the support of the EC. This is in particular the case of the STIC.

The **Sustainable Trade and Innovation Centre (STIC)**<sup>11</sup> was launched in September 2002 at the World Summit on Sustainable Development in Johannesburg, STIC's mission is to "to assist

<sup>7</sup> <http://export-help.cec.eu.int/>

<sup>8</sup> [www.opentradegate.se](http://www.opentradegate.se)

<sup>9</sup> [www.cbi.nl/](http://www.cbi.nl/)

<sup>10</sup> [www.dipo.dk](http://www.dipo.dk)

<sup>11</sup> [www.sticonline.org/](http://www.sticonline.org/)

developing country exporters to respond, anticipate and ultimately shape the environmental and social dimensions of international trade, thereby capturing a greater share of the value-added". This programme development has been sponsored by the European Commission, the Dutch Ministry for the Environment, European Partners for the Environment (EPE) and the Royal Tropical Institute (KIT). The Foundation objective is to give developing country exporters a voice in the development of sustainable trade by

- The exchange of information between developing country producers and the buyers in developed countries; STIC will undertake market-based research and disseminate information on implications of specific regulations for producers in developing countries. One example is TEXBASE, a new CD Rom containing comprehensive information on environmental and social standards, codes, and case studies of cleaner production for exporters in the textile and clothing sector. The STIC website is intended to be a mechanism for information dissemination and will act as an 'early warning' system for developing country producers.
- The promotion of innovation in order to achieve sustainable patterns of production and trade, for example, by training producers on new tools and techniques and by developing services to enable companies to meet sustainability requirements ;
- The creation of genuine partnerships in order to produce codes of conduct that are fair, feasible and lasting.

### Time frames

EC practice very often goes well beyond WTO requirements. For instance, in the case of the WEEE and RoHS directives, 30 and 41 months were allowed between the publication and the entry into force of the directives, whereas the TBT Committee has recommended only 60 days.

### Trade Related Assistance in the field of Trade and Environment

The September 2003 EC submission of more than 250 programmes demonstrates that the EC are the main providers of Technical Assistance and Capacity Building in the field of Trade and Environment<sup>12</sup>. The EC are showing that they are committed to reinforcing in a very concrete manner the mutual supportiveness between trade, environment and development.

Nevertheless, despite the importance of the EC's efforts, we are aware that further improvements are needed. In particular, and as noted by several WTO Members during our pre-Cancún discussions<sup>13</sup>, there is a need to better focus TRA interventions in the field of trade and environment on compliance with environmental requirements.

Examples already exist. At the end of 2003 the Commission financed under one of its programmes, the Asia Pro Eco Programme, a project aiming at informing Asian electronic manufacturers (particularly SMEs) about new EU standards which are likely to come into force in 2005: WEEE (Waste from Electrical and Electronic Equipments), RoHs (Restriction of the use of certain Hazardous Substances, EuP (Eco-design of Energy-using Products) and IPP (Integrated Pollution Prevention). The German Technical Assistance is providing advice to North African countries in adapting to EU and international environmental product standards and quality norms, with partners ranging from ministries to companies and centres for technology transfer.<sup>14</sup> The French Agency for Development and the French Economic and Trade Department also carry out a specific programme to finance technical cooperation and training projects in Asia and Africa over the 2003-2005 period.<sup>15</sup>

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<sup>12</sup> cf the EC submission WT/CTE/W/231 dated 5 September 2003

<sup>13</sup> §51, CTE Report to the Fifth Session of the WTO Ministerial Conference in Cancun - WT/CTE/8 - 11 July 2003

<sup>14</sup> see for instance [www.gtz-tunisie-mne.org](http://www.gtz-tunisie-mne.org) and [www.citet.nat.tn](http://www.citet.nat.tn) where the German Technical Assistance is cooperating with a Tunisian body in assisting the private sector in complying with ISO 14000 series and product norms relevant to exports to market in the EU.

<sup>15</sup> For instance, a project in Cambodia provides technical assistance to improve the quality of rubber, to set and implement a certification process and to improve the marketing of rubber.

Technical assistance can be further improved through:

- Better co-ordination between policy sectors.<sup>16</sup> Within the EC, coordination mechanisms have been set up between trade and development experts of the Commission and Member States; within the Commission itself, several coordination tools exist, gathering trade, environment and development experts.
- Better coordination by donors and relevant international organisations. The EC September 2003 submission on TRA describing all our existing programmes is part of this effort. EC participation in the work of several international organisations like UNEP and UNCTAD (notably through the recently created Consultative Task Force on environmental requirements and market access) also contributes to joint efforts.
- Focussed action by beneficiary countries. TRA must be demand-driven. Donors need clear projects preferably with detailed assessments of needs (in terms of staff, training, equipment, laboratories). Consistency is also important: when addressing development assistance queries, DCs must not forget to factor the trade and environment aspects.

### **III. Proposals for further cooperation**

Individual efforts by those developing new environmental requirements are critical. However, these efforts should be usefully complemented by further work at the multilateral level. Ongoing initiatives such as work of the UNEP/UNCTAD Capacity-building task force on trade, environment and development or, more recently, the UNCTAD so-called consultative task force on environmental requirements and market access are extremely valuable and should be encouraged as they provide information and dialogue mechanisms whereby the concerns and needs of DCs in terms of market access impacts and development of adequate legislation are being addressed.

In light of these considerations, we believe that the CTE has the opportunity to play an important role as a forum in which individual experiences can be exchanged. Indeed, experience sharing is critical if we want to make progress. Moreover, lessons from experience-sharing in the CTE could benefit other WTO Committees also dealing with non-trade concerns. For instance, SPS health-related measures, which constitute the bulk of SPS measures, often raise market access concerns in DCs.

Thus, we strongly encourage other WTO members to examine their own legislation and policies and to present to the CTE their own practices in terms of impact assessment/transparency/stakeholder consultation, technical assistance, and concrete improvement proposals. Members are also invited to share their domestic experiences and approaches to increase inter-agency co-operation between the Trade, Environment and Development departments.

But we should not limit ourselves to individual efforts: broader cooperation is absolutely necessary, at the bilateral and multilateral levels.

#### *Bilateral dialogues*

In recent years, the EC have been developing environmental policy dialogues with several WTO members, including China, India and Korea.

For instance, with China, this platform has been effectively used to discuss common approaches to environmental concerns and market access issues linked to the implementation of the WEEE and RoHS Directives in the EU as similar developments in China. Discussion has taken place between regulators and trade officials on both sides.

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<sup>16</sup> this conclusion was also part of the CTE Report to the Fifth Session of the WTO Ministerial Conference in Cancun

Such bilateral dialogues allow a practical exchange of experience between regulators and contribute to confidence building between trade departments as they see that regulators must meet the same challenges and look for the least trade restrictive solutions. They also provide opportunities to know more about respective problems and constraints, including the development of appropriate legislation to tackle and address emerging or similar environmental issues. In addition they contribute to assuring all WTO members that possible trade concerns will be scrutinized and that least trade restrictive measures will be sought when addressing environmental challenges.

The EC are increasingly developing this kind of dialogues at an early stage of the development of our environmental legislations.

### Multilateral cooperation

We encourage donors to make available overviews of their TRA efforts and all WTO Members to present TRA programmes that have proved to be particularly efficient in the field of compliance with environmental requirements. Indeed, the EC see an obvious link between paragraph 32 (i) of the mandate and paragraph 33 which recognizes “the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them”. The importance of Trade and Environment TA/CB should be reaffirmed in the Committee on Trade and Development and be adequately reflected in the Doha Work programme on technical assistance. But, in order to address T&E TA/CB in a more holistic and coherent way as well as make the best use of existing human and financial resources, efforts should also be considered through increased international cooperation between all relevant organisations (UNEP, UNCTAD, WTO, World Bank etc).

The EC is also open to other ideas like the proposal made by China at the last CTE regular session to study the positive impacts that technology transfer can have on market access.

Lastly, we would like to stress the need for enhanced synergies with the private sector. This is key for two main reasons: first of all, and as recently recognised on the occasion of the workshop organised by UNCTAD in Rio de Janeiro, Brazil, on environmental requirements and market access, the private sector increasingly becomes a standard setter itself and voluntary environmental standards developed by private companies tend to become de facto mandatory (supply chain management, corporate social responsibility initiatives etc). Secondly, it is also important to note that helping DCs comply with new environmental requirements cannot be achieved only through traditional technical assistance and capacity-building but also requires the involvement and contribution of the private sector, notably in the case of technology needs. Public/private partnerships, stakeholder networks, corporate social responsibility initiatives or more sectoral initiatives are therefore strongly encouraged to allow for the emergence of new co-operative avenues among all stakeholders, from the North and South.