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COMMUNICATION TO THE COUNCIL AND TO THE PARLIAMENT ON TRADE AND ENVIRONMENT

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COMMUNICATION TO THE COUNCIL AND TO THE PARLIAMENT ON TRADE AND ENVIRONMENT

Executive summary

The international community is paying ever increasing attention to the issue of trade and environment. In a world where concerns about the environment are greater than ever before and yet where there has been significant progress in the liberalisation of world trade, it is inevitable that the relationship between the two will be more closely analyzed.

That process has been given a particular stimulus by the creation of a Committee on Trade and Environment within the WTO. That Committee will make its first report to the first Ministerial Conference of the WTO which will be held in Singapore in December 1996.

Given the importance of the issue of trade and environment, it is vital that the EU contribute fully to the debate and the resulting conclusions. The purpose of this Communication to the Council and Parliament is to set out the Commission's views on the main issues which will be raised in the context of trade and environment.

The Community is committed to a high level of environmental protection and to an open, equitable and non-discriminatory multilateral trading system. The main thrust of the paper is that trade and environment policies can play a mutually supportive role in favour of sustainable development.

Economic performance and environmental performance are not necessarily incompatible. While achieving environmental benefits may in some cases entail additional short-term costs, there are a wide range of "win-win" opportunities in the design and implementation of environmental policies, which could improve resource efficiency, competitiveness and employment. Indeed, high environmental standards can create the conditions under which businesses investing in cleaner, more efficient technologies could improve their competitive position. Countries have the sovereign right to design and implement their own environmental policies through the measures they consider appropriate to protect their domestic environment. Differences in environmental policies should not result in introduction of compensating duties or export rebates (i.e. so-called eco-duties) as a means of compensating for the cost of imposing more rigorous environmental requirements on domestic industries than those supported by foreign competitors.

However, all countries have a responsibility to contribute to the solution of international environmental problems. The most effective way of dealing with such problems is through international and multilateral agreements, not by unilateral trade measures.

In accordance with the principles agreed at the United Nations Conference on Environment and Development, particular account should be taken of the special situation and needs of developing countries in the issue of trade and environment. Mechanisms developed to solve

environmental problems should not jeopardise sustainable development prospects or undermine the export performance of developing countries or countries with economies in transition. Many mechanisms are available to help developing countries and countries with economies in transition to achieve sustainable development.

In order to ensure that trade and environment issues can be effectively tackled at the international level, world trade and environment policies should be not only compatible but also mutually supportive. This is particularly the case where trade policy tools are used as a means to buttress international environmental standards.

Identifying the relationship between trade measures and environmental measures in order to promote sustainable development will help to ensure the predictability essential for environmental policy makers both at national and international levels, and for the industrial world which has to comply with environmental requirements. Considering whether any modifications of the provisions of the multilateral trading system are required - on issues such as the WTO rules and Multilateral Environmental Agreements, new instruments of environmental policy like eco-labelling and trade in dangerous substances - will be the main task of the WTO Committee on Trade and Environment. It is also necessary to ensure that other relevant international bodies, such as the CSD, UNEP, UNCTAD and the OECD, play an effective role in these discussions.

Protecting the environment and maintaining an open, non-discriminatory and equitable multilateral trading system are equally important objectives. Provided that the right framework is in place at international level, they need not be mutually exclusive. Enhancing the conditions for the effective achievement of both objectives will be the main aim of the Commission in discussions in coming months, an aim which underlies the approaches set out in this Communication.

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Introduction

The international community is paying ever increasing attention to the issue of trade and environment. In a world where concerns about the environment are greater than ever before and yet where there has been significant progress in the liberalisation of world trade, it is inevitable that the relationship between the two will be more closely analysed.

A number of important issues have been raised:

- to what extent is trade liberalisation compatible with environmental protection?
- what effect do environmental protection policies have on competitiveness?
- what are the best mechanisms to achieve protection of the environment while preserving an open trading system?
- what account should be taken of the interests of developing countries?

These are among the issues which have begun to be debated in international fora. For example at the United Nations Conference on Environment and Development (UNCED) in 1992, it was recognised that greater coherence between international trade and environment policies was necessary to promote sustainable development and that work should be conducted at the international level to clarify the relationship between the two sets of policies.

When establishing the World Trade Organisation (WTO), the parties to the multilateral trading system expressly recognised that their trade and economic relations in the context of the new organisation should be in accordance with the objective of sustainable development. They therefore decided, at the Ministerial Conference held in April 1994 in Marrakech for the conclusion of the Uruguay Round, to establish a Committee on Trade and Environment (CTE) in the WTO. The CTE, which began its work early in 1995, was given the task "to identify the relationship between trade measures and environmental measures, in order to promote sustainable development" and "to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required".

Following UNCED, initiatives have also been undertaken in other international fora, in particular in the UN Commission on Sustainable Development (CSD), UNEP, UNCTAD and the OECD, to examine the interface between trade and environment policies. The involvement of these various international institutions in the discussion not only witnesses the importance the international community attaches to this issue but also reflects the need for different and complementary expertise for the understanding of the whole spectrum of trade and environment issues.

The result of all these developments has been an increasing awareness in recent years that within the field of trade and environment lies a complex area of new policy linkages which demands the urgent attention of all members of the international community and of the multilateral trading system.

It is against this background that the Commission presents this Communication to the Council and to the European Parliament. It aims to set out the Commission's views on the main issues in the trade and environment debate and on the objectives for further discussions at the international level.

Of particular importance is the work which will be undertaken in the CTE this year in preparation for the first Ministerial Conference of WTO members to be held in Singapore in December 1996, where one of the main items on the agenda will be discussions on the relationship between instruments for environmental protection and the provisions of the multilateral trading system.

The paper is divided into five parts.

Part 1 sets out the background to the concept of sustainable development, as articulated at UNCED.

Part 2 analyses some of the important underlying issues in the debate on trade and environment: the compatibility of trade liberalisation with environmental protection; the effect of environmental protection policies on competitiveness; and the best mechanisms for achieving protection of the environment while preserving an open trading system.

Part 3 considers the interests of developing countries in the issue.

Part 4 looks at some of the detailed issues which arise in the context of environmental protection and the rules of the multinational trading system. It looks at the relationship between national environmental legislation and the multilateral trading system before analysing some of the issues which arise at international level: for example, WTO rules and multilateral environmental agreements; the question of 'processes and production methods'; new instruments of environmental policy like eco-labelling schemes; trade in dangerous substances; and dispute settlement mechanisms for environment-related trade measures.

Part 5 analyses the way in which the debate will be taken forward at international level and sets out some criteria for the way in which the work of the WTO Committee on Trade and Environment should be conducted.

The paper concludes with the Commission's conviction that there should not be, nor need be, any policy contradiction between, on the one hand, upholding the present open, non-discriminatory and equitable multilateral trading system and, on the other, action for the protection of the environment and the promotion of sustainable development. It is with that conviction that the Commission presents this Communication to the Council and to the European Parliament.

1. The Rio Conference: the starting point.

Confronted with the continued and serious deterioration of the world's environment and the emergence of environmental problems of a new dimension, it became apparent to governments and the international community at large in the second half of the 1980s that there was an urgent need for action at the international level to reverse this situation. This led the United Nations, 20 years after the 1972 UN Conference on the Human Environment in Stockholm, to organise in Rio in 1992 the Conference on Environment and Development (UNCED).

UNCED has been a decisive step which gave a new impetus to international dialogue and co-operation and allowed establishment of the bases necessary to tackle progressively at the various relevant levels the environmental and developmental challenges the world is presently facing¹. The outcomes resulting from Rio are based on a general recognition that the prospects for long-term economic development inevitably depend on the preservation of the world's environment and that sustainable development in all countries is an imperative aim at both national and international level.

By promoting the concept of "sustainable development", UNCED led to a fundamental change in approach. In contrast with the "limits to growth" approach of the 1970s, the concept of sustainable development, although requiring the adoption of sound economic policies and management, does not assume that economic growth necessarily has a negative impact on the environment. Rather, it takes into account the resources that trade liberalisation and economic development may provide to countries for supporting the costs of environment protection. This concept implies a global and integrated approach articulated around the three following requirements: (i) environment and development concerns should be integrated into all relevant sectoral policies at national and international level; (ii) economic development should equitably meet the needs of present and future generations; (iii) a value should be assigned to environmental resources in order to identify and assess the environmental effects of economic activities.

An important conclusion reached at UNCED was that, in order to achieve sustainable development, environment, economic and social development policy objectives should no longer be considered separately. To this end, besides adopting a number of principles and instruments, governments agreed to implement an action programme, Agenda 21, which covers a wide range of environment and development challenges and provides an effective framework for the promotion of sustainable development and the establishment of a global partnership between nations. This global partnership should be based, *inter alia*, on the principle of common but differentiated responsibility of countries at different levels of development. As recognised in the preamble of Agenda 21, assistance to developing countries has to be increased in order to cover the incremental costs for the actions developing countries have to undertake to deal with global environmental problems and to accelerate sustainable development.

¹ UNCED, adopted three non-legally binding texts: the Rio Declaration on Environment and Development, which is a statement of twenty-seven Principles; Agenda 21, which is an 800-page document setting out objectives and activities in forty areas; and a non-legally binding statement of forest principles. It also opened for signature two Environmental Agreements, legally binding for the parties: the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. Chapter 2 of Agenda 21 is the most relevant to the discussion on trade and environment.

As endorsed in Chapter 2 of Agenda 21, an overall objective to be pursued by governments in this context is "to make international trade and environment policies mutually supportive". In particular, governments took the commitment to promote a dialogue between the trade, development and environment communities and to encourage work in the relevant international institutions in order to reach a better understanding of the interface between trade and environment policies. Given the high adjustment costs required for achieving sustainable development, Agenda 21 also emphasised the need to take into account the specific situation of developing countries undergoing this process and to ensure the full participation of these countries in international trade.

In its Fifth Action Programme on the Environment ("Towards Sustainability"), the Commission considered that the integration of international trade and environmental policies should be one of the main priorities of the post-Uruguay Round agenda and that it was essential for the Community, in order to fulfil the commitments made in Rio, to take an active part in the discussions in this field. In the Commission's view, this is also in accordance with the objectives of the external and environmental policies of the Community which explicitly include, among others, the promotion of sustainable economic patterns as well as the integration of environmental requirements into all relevant EC policies, including the Community's commercial and co-operation policies.

2. Interactions between Trade and the Environment.

2.1. Environmental effects of trade liberalisation

Agenda 21 states that trade and environment policies can be mutually supportive in favour of sustainable development. This view is based on the conviction that an open multilateral trading system makes possible a more efficient use of natural resources in both economic and environmental terms and contributes to lessening demands on the environment.

The removal of trade obstacles and distortions increases the overall efficiency of the world's economic system by allowing countries to specialise in sectors in which they enjoy competitive advantage, including advantages based on their environmental conditions. Other positive environmental effects of trade liberalisation include facilitation of the international distribution of environmentally sound technologies, services and goods and greater availability of resources for environmental protection for both individual companies and governments. In addition, by increasing income levels and improving living standards, trade can foster awareness of, and appreciation for, environmental values.

On the other hand, without effective measures to address potential negative impacts, the increased economic activity resulting from trade liberalisation² might add to pressure on the environment and on natural resources (e.g. water, arable land, timber, fish). More important, in the absence of national sustainable development strategies providing a framework to ensure the integration of environmental protection requirements into all relevant policy areas and the internalisation of environmental costs, negative environmental impacts could be exacerbated by policy interventions aimed at obtaining short-term economic benefits (e.g. development of export-oriented highly polluting industries).

² According to some estimates produced by the GATT Secretariat, the implementation of the Uruguay Round Agreements will result in an increase in world income of \$510 billion by 2005.

So the impact of trade on the environment depends mainly on the environmental policies and sustainable development strategies implemented at national and international level. Trade liberalisation can act as a magnifier of policy failures, but such failures would undermine sustainable development even in a closed economy. Conversely, if the policies necessary to protect the environment and to promote sustainable development are in place, trade-induced growth will be sustainable.

This is consistent with the analysis provided by the Commission in its 1994 Communication on Economic Growth and the Environment (COM(94)465 final). A basic conclusion in that communication is that there is no simple linear relationship between economic growth and pressure on the environment and that, on the contrary, environmentally sustainable development is unlikely to be achieved in the long run without economic growth. However, the communication also indicates that there is nothing automatic about such a move towards environmentally sustainable development. Although it is true that economic growth by itself generates additional resources that can be devoted to pollution abatement and environmental protection, much of this will only materialise if an appropriate policy framework is put in place.

More analytical work, including country and sectoral case studies, is however needed in order to achieve a better understanding of the potential effects of trade liberalisation. This should remain an important priority for the work of all relevant international institutions, in particular UNEP, UNCTAD and the OECD and a priority for work in the EC. It is also necessary to conduct environmental reviews of trade instruments and agreements with a view to identifying potential environmental impacts and devising appropriate policy responses³.

2.2 Environmental protection and international competitiveness

It has been argued that the establishment of more stringent environmental requirements at national level would damage the competitive position of domestic industries and lead to relocation of polluting activities. Such concerns may be one of the causes of the possible slow down in the pace of new environmental legislation in OECD countries noted in some recent reports. The ongoing discussions on the establishment of a CO₂/energy tax in the European Union show that such concerns might hinder the introduction of new environmental measures aimed at promoting the internalisation of environmental externalities. However, as the Joint Session of Trade and Environment Experts found in its report to the OECD Ministerial Council in May 1995, no systematic relationship between existing environmental policies and competitiveness impacts has been identified. Nor there exists evidence of countries deliberately resorting to low environmental standards to gain competitive advantages or to attract investments, or evidence of significant industrial migration to countries with lower environmental standards⁴.

This finding is consistent with the fact that costs of compliance with environmental regulatory requirements are not a significant factor in the cost structure of most industries. In the European Union, typically they only represent between 1 and 2% of overall production costs. Accordingly, environmental costs are not a decisive parameter for most companies. Environmental policies can have negative impact on the competitive position in specific sectors, but this tends to be where

³ Methodologies for environmental reviews of trade policies and agreements have been developed by the OECD Joint Session of Trade and Environment Experts (see document OECD/GD(94)103).

⁴ Cf. OECD Report to Ministers on Trade and Environment, p. 5.

profit margins are narrow or there are long term structural problems or where processes have a particular heavy environmental impact. So, in most cases, other factors like access to markets, availability of raw materials, transport and communication infrastructure, labour costs and availability of skilled workers, political stability etc. are more influential on location decisions and have a more significant impact on industrial competitiveness than environmental standards.

It is also important to bear in mind that rather than being a burden, environmental policies can provide an incentive for technological innovation, promote economic efficiency and improve overall productivity. The experience of countries in Central and Eastern Europe in the past decades shows that loose environmental policies and economic inefficiency very often go hand in hand.

Secondly, the drive towards higher environmental standards is generating a global market for the environmental industry presently worth around \$250 billion per year, with a high annual growth rate (8%). Therefore, in the present context of rapid expansion of trade in environmental services, equipment and technologies, environmental policies can have a positive impact on international competitiveness by giving early movers a competitive advantage.

Markets for ecologically sound products are also growing. For example, it results from a survey carried out in the European Union in 1995 that 67% of people have already purchased or are prepared to buy products with an environmental bonus, even at a higher price⁵. This consumer-led demand for more environmentally friendly products is an important element which has to be taken into account when considering the relationship between environment policies, competitiveness and economic performance.

These factors lead the Commission to conclude that economic performance and environmental performance are not necessarily incompatible. While achieving environmental benefits can entail additional short-term costs, there are a wide range of "win-win" opportunities in the design and implementation of environmental policies, which could improve resource efficiency, competitiveness and employment.

Countries have the sovereign right to design and implement their own environmental policies through the measures they consider appropriate to protect their domestic environment. Differences in environmental standards can be due to a variety of reasons, including differences in the capacity of absorption of eco-systems, which constitute an entirely legitimate source of comparative advantage. **So differences in environmental policies should not result in the introduction of compensating levies or export rebates, or measures having an equivalent effect (i.e. so-called eco-duties) as a means of compensating for the cost of imposing more rigorous environmental requirements on domestic industries than those supported by foreign competitors.**

Where there are concerns about competitiveness, they can often be effectively addressed by international harmonisation or co-ordination of environmental policies. While recognising that total uniformity of environmental policies is not possible or even desirable in view of the different conditions, values and priorities prevailing in each country, international environmental law has indeed experienced a significant development over the past twenty years and this should result in a progressive convergence of environmental policies and regulations at regional and international level.

⁵ Europeans and the Environment: Eurobarometer 43.1 bis, report produced for the European Commission by INRA (Europe)-E.C.O, November 1995.

2.3 International trade relations and differences in national environmental policies: the need for multilateral co-operation.

Apart from potential impacts on international competitiveness, differences in national environmental policies can result in trade frictions owing to the use of trade measures for environmental purposes or to the adoption of environmental measures with significant trade effects.

Firstly, even when environmental problems are purely domestic, tensions can arise if a domestic regulation either discriminates against or has a particularly burdensome effect on imports. In other words, it is essential to ensure respect for trade principles and provisions in the design and implementation of environmental measures when such measures can have a significant trade impact.

It is widely recognised that the margin of manoeuvre available to countries is already large. WTO members are allowed to take measures necessary to protect the environment within their own territory provided that such measures are not discriminatory or arbitrary and do not result in a disguised restriction to international trade.

A second type of tension arises when environmental policies deal with global or transboundary environmental problems. In these cases, countries might resort to trade restrictions to tackle environmental problems which have an impact, partly or totally, outside their jurisdiction. When this is done outside the context of an Multilateral Environmental Agreement (MEA) this can result in an attempt to influence unilaterally the environmental policies and practices of another country.

The Commission believes that the EU should remain strongly committed to a multilateral approach as the most effective way to tackle global and transboundary environmental problems. As recognised in Principle 12 of the Rio Declaration, unilateral actions to deal with environmental problems outside the jurisdiction of the importing country should be avoided and environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Furthermore, the use of trade restrictions within MEAs should not go beyond what is necessary to ensure the effectiveness of such agreements and the achievement of their environmental objectives. If a different rationale was to be accepted, the scope for applying trade measures under an environmental agreement would be practically limitless.

Existing MEAs, like the Montreal Protocol on Substance that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the CITES (Convention on International Trade in Endangered Species of Wild Flora and Fauna) show that, under the right conditions, trade measures can be a useful instrument to enforce internationally agreed standards or MEAs. The Commission is of the view that, in order to avoid legal uncertainties, the establishment of a clear and predictable framework to accommodate within the multilateral trading system the use of trade measures under MEAs must be an important priority for the newly created WTO Committee on Trade and Environment.

3. Developing countries and economies in transition in the trade and environment debate

Developing countries and countries with economies in transition have specific concerns in the trade and environment debate. While, as a result of the United Nations Conference on Environment and Development, much progress has been made in reaching a better understanding of the trade/environment/development interface, many developing countries and economies in transition still view the growing demand in industrial countries for higher environmental standards with apprehension. While they expect production and consumption patterns of the developed world to be modified, they also fear that its high environmental standards and regulations could hinder their market access opportunities. Furthermore, lower environmental standards in developing countries may expose them to the charge of enjoying "unfair" trade advantages, on the grounds of insufficient internalisation of cost. Developing countries are obviously opposed to such an approach, as it might result in the imposition of "eco-duties" on their exports.

The Commission is fully sensitive to these concerns: trade and environment issues must be approached in ways that do not jeopardise sustainable development prospects or undermine overall export performance of developing countries and countries with economies transition. Implementing the concept of sustainable development implies respect for the Rio principles, notably for those affirming "the need for giving special attention to the special situation and needs of developing countries, particularly the least developed and those environmentally vulnerable", and recognising that standards applied by industrialised countries may be inappropriate and of unwarranted economic and social cost to developing countries.

This leads to the recognition that environmental issues of common concern require discussion and negotiation among countries about priorities and commitments, as well as an equitable burden sharing, so as to take into account the common but differentiated responsibilities of countries at different levels of development. Optimal environmental policies might require differentiated environmental standards among countries. These different standards or objectives should be considered an acceptable cause of comparative advantage. Hence, the very clear stance of the Commission against the notion of "eco-dumping".

The following two examples, already existing in WTO Agreements⁶ are indicative of how a special and differentiated treatment of developing countries could reflect the principle of "common but differentiated responsibilities":

- different schedules for compliance (time-limited exception, phase-in/out periods), or exemption from certain disciplines for environmental purposes under well defined conditions, provided that the underlying environmental goal for which the measures are taken does not risk being undermined;
- application of a *de minimis* clause if developing countries' market share only causes a minimal part of the environmental damage.

As far as market access is concerned, LDCs are potentially a rich source of environmentally friendly products and technologies. Export products from LDCs are, in certain cases, produced in an environmentally sound manner, making use, for instance, of organic rather than synthetic inputs.

⁶ Cf. TBT Agreement art. 12 and SPS Agreement art. 10 for special and differentiated treatment and art. 9 of the Agreement on Safeguards for the "de minimis" clause.

Efforts should be made to ensure that, when products originating from LDCs have a well-assessed environmental advantage on other products, developing countries are able to benefit from the "market premiums" granted by the increasingly environmentally concerned consumption patterns in developed countries. A number of Uruguay Round agreements provide the basis for a special treatment of developing countries, in particular the least developed ones, both as regards improving market access and continuing preferential access.

It should also be noted that the strategy defined in Rio, in particular Agenda 21, emphasises that the integration of environmental requirements into all relevant policy areas is indispensable to achieve sustainable development and is essential to enhance the development prospects of developing countries and countries with economies in transition in the long run.

As a result of the Uruguay Round, but also within existing Environmental Agreements e.g. the Montreal Protocol⁷, new approaches have been developed for encouraging developing countries to adopt alternative technologies. These incentives, which acknowledge the differentiated responsibility of developing countries could play an important role in facilitating adjustment in these countries. Technical and financial assistance should, in accordance with the commitments taken in Rio play the main role in this task of facilitation which can include:

- Ensuring the regular flow of information about environmental legislation;
- Training schemes to help developing countries and economies in transition to interpret trade and environment-related information, in order for them to develop appropriate policy responses;
- Improvement of the capacity of developing countries and economies in transition in the area of product verification, certification and other quality controls for environmental purposes;
- Improvement of the institutional and technical capacity to control the movement of dangerous substances such as dangerous wastes and chemicals;
- Exploitation of market opportunities and the promotion of environment-friendly products.
- Technology research and development co-operation;
- Technical assistance to improve the environmental performance of key polluting sectors (e.g. mining industries).

In all these fields, considerable scope exists for regional co-operation both within and between the various regional trading arrangements among developing countries (e.g. MERCOSUR and ASEAN). Regional agreements, concluded in conformity with the WTO, with the aim of

⁷ The Montreal Protocol on Substances that Deplete the Ozone Layer contains special implementation provisions for developing countries whose consumption of substances controlled by the protocol is below a certain level. Moreover, the Protocol commits signatories to facilitate access of developing countries to environmentally safe alternative substances and technology, while Parties to the Protocol also undertake to facilitate, bilaterally or multilaterally, the provision of subsidies, aid credits etc. for the use of alternative technology and for substitute products. Trade sanctions are foreseen for those not complying with the provisions of the Protocol.

liberalising trade between parties, can generate additional resources which are needed for investments in developing countries, including in the area of environmental protection and sustainable development. Similarly the Association Agreements with Central and Eastern European Countries provide the basis for environmental co-operation and lay the foundations for preparing the Associated countries for EU membership through a pre-accession strategy which includes training, research, the exchange of information on environmental policy and forms of co-operation.

The process of adjustment to sustainable development also goes beyond the mandate of the WTO and the dialogue on trade and environment. The Community's development and economic co-operation programmes, as well as those of other bilateral donors provide the means to support and encourage developing countries and economies in transition to adjust to sustainable ways of production and consumption. The same is true for the multilateral donors (i.e. World Bank), which will have to ensure to "make sustainable development a central goal of their policies and programmes, including by intensifying and deepening the integration of environmental considerations into all aspects of their programmes" (Communiqué of the G 7 Summit in Halifax, June 1995, point 26). Also, standard setting bodies like the ISO (International Standards Organisation), currently developing new environmental standards, should be encouraged to extend support to developing countries and economies in transition in the implementation of these new standards. Moreover, positive incentives such as the Community's new GSP regulation for industrial products, will help to encourage, from 1998 onwards, sound environmental production; there might be scope to broaden the application of this approach. The incentive regime established under the new regulation will initially apply to timber products meeting the standards set by the ITTO⁸ (International Trade in Timber Organisation) and it might be extended to other products manufactured in compliance with relevant international environmental standards.

Finally, the removal of trade restrictions and distortions is particularly important for developing countries and countries with economies in transition, as a means to promote their effective integration into the world's economy which is an essential condition for achieving sustainable development. From this perspective, the successful conclusion of the Uruguay Round negotiations constitutes a major achievement.

4. The Multilateral Trading System and environmental protection

Tensions between trade rules and environment policies might arise due, inter alia, to the fact that, while the international trade regime seeks the substantial reduction of tariffs and barriers to trade, the achievement of environmental protection objectives requires the control of trade in certain categories of products. It would, however, be inappropriate to draw the conclusion that trade rules constitute an obstacle to the implementation of effective environmental policies at national level.

Trade-related environmental measures are not inconsistent with the provisions of the multilateral trading system if they conform to certain basic trade requirements, particularly the principles of non-discrimination between exporting countries (GATT Article I) and between domestic and imported products (GATT Article III). Furthermore, although protecting the environment was not a major concern when the Agreement was drafted in 1947, GATT Article XX permits trade restrictions that are "necessary to protect human, animal or plant life or health" or "relate to the conservation of

⁸ The ITTO has as a primary aim the attainment of trade only in products derived from sustainable forest management by the year 2000. This is the so-called "Target 2000".

exhaustible natural resources". These exceptions virtually encompass all objectives of environment policy. However, it might be appropriate to further clarify the status of measures necessary to protect the environment under GATT Article XX.

In the report on trade and environment issued in 1992 by the GATT Secretariat, it was noted that "GATT rules place essentially no constraint on the ability of countries to use appropriate policies to protect their environment from damage from domestic production activities or from the consumption of domestically produced or imported products". Similarly, from the analytical work carried out to date (mainly by the GATT Group on Environmental Measures and International Trade, known as the EMIT Group, and by the OECD Joint Session of Trade and Environment Experts) the conclusion can be drawn that trade rules allow countries to take any measures necessary for protecting the environment within their own territory if they are not discriminatory, arbitrary and do not result in disguised restriction on international trade.

Moreover, the multilateral trading system already includes extensive provision for environmental concerns. Positive steps aimed at accommodating environmental concerns into the multilateral trading system were agreed in the Uruguay Round negotiations. In the first place, the Agreement establishing the WTO provides in its preamble that the relations among WTO members in the field of trade and economic endeavour "should be conducted with a view to raising standards of living, and expanding the production of and trade in goods and services, **while allowing for the optimal use of resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment** and to enhance the means of doing so". Secondly, several Uruguay Round Agreements explicitly take into account environmental considerations⁹. Finally - and most importantly - at the Marrakech Ministerial Conference concluding the Uruguay Round it was decided to establish a Committee on Trade and Environment (CTE) with a very comprehensive mandate within the WTO.

The CTE must address a number of specific issues in the trade and environment debate. This chapter summarises the most important. The timetable for dealing with these issues will vary. Some - the GATT/WTO rules and Multilateral Environment Agreements, new instruments of environmental policy, trade in dangerous substances, dispute settlement for environment-related trade measures - may be ready for detailed consideration at the WTO Ministerial in Singapore in December 1996. Others - for instance, product-related measures and PPMs, economic instruments, trade in services and the environment and intellectual property rights and the environment - will require a longer time frame.

4.1 GATT/WTO rules and Multilateral Environmental Agreements

International co-operation in the field of environmental protection has to date led to 180 treaties or agreements for the protection of the global environment and conservation of natural resources. Not all these agreements have an impact on trade and therefore fall outside the context of the debate on trade and environment. Specifically, only 18 of these Multilateral Environment Agreements

⁹ The environment is mentioned in the Agreements on Technical Barriers to Trade, on Sanitary and Phytosanitary Measures, on Agriculture, on Trade-Related Intellectual Property Rights and on Subsidies and Countervailing Measures. For example, under the latter, "assistance to promote adaptation of existing facilities to new environmental requirements imposed by law", if provided under certain conditions, may be considered as a non-actionable subsidy (so called "green list"). This shows that the WTO has given special attention to measures intended to improve environmental protection.

(MEAs) contain trade provisions, that is they envisage the possibility of limiting trade in some form or another for the effective achievement of their environmental goal.

The three main examples of MEAs containing trade restrictions are the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973), the Montreal Protocol on Substances that Deplete the Ozone Layer (1987), and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989).

CITES entered into force in 1975 and has now been ratified by 130 countries. CITES regulates trade in endangered species by defining conditions under which import and export permits may be issued.

The Montreal Protocol entered into force in 1989 and has been ratified by 149 Parties. It contains detailed provisions governing the production and consumption of ozone depleting chemicals. Unregulated trade in ozone-depleting substances would probably result in the relocation of production facilities to countries not party to the Protocol and re-exportation of chemicals or products manufactured from them to countries which are parties to the Protocol. As a result of these concerns, the Montreal Protocol contains various provisions which affect international trade.

The Basel Convention entered into force in May 1992 and has been ratified by 92 parties. Each party has the right to prohibit the import of hazardous wastes. Exports are permitted when the importing country has given permission in writing. Trade with countries which are not parties to the convention is generally not allowed.

The relationship between the provisions of the multilateral trading system and trade measures taken pursuant to multilateral environmental agreements (MEAs) lies at the heart of the discussion on trade and environment and represents a core-issue of the international agenda. Any decision and recommendation on this issue should be taken also with a view to possible future MEAs.

It is generally recognised that the multilateral trading system should consider favourably trade restrictive measures which are taken pursuant to MEAs. As stated in Principles 7 and 12 of the Rio Declaration, international co-operation (versus unilateral measures) should be supported to protect global commons and solve transboundary environmental problems.

International co-operation is most effective from an environmental point of view, because the joint effort of all countries concerned is necessary to tackle environmental problems of transboundary and global nature. Moreover, it is likely to prevent the use of unilateral trade restrictions, which could be tempting in cases where no multilateral action is taken.

In the light of this, the Commission considers that the multilateral trading system should accommodate, under clear and predictable rules, the use of trade measures taken in the framework of Multilateral Environmental Agreements. Such measures can be necessary to achieve the objectives of an MEA, and the fact that they are negotiated and agreed multilaterally is the best guarantee against the risk of protectionist abuses.

With this aim in mind, the Commission will continue to play a leading role in the discussions in the WTO in an effort to reach agreement on a system which is geared to accommodating within the WTO rules trade measures taken pursuant to an MEA. Any agreed solution should provide flexibility for environmental negotiations in terms of judgement on the legitimacy of environmental

objectives and on the trade measures needed to achieve them. Similarly, the relationship between trade provisions in MEAs and WTO Agreements should be articulated in such a way to avoid the perception that the latter might take precedence over the former. The challenge is therefore to design a system which essentially allows the WTO system to accommodate trade measures taken pursuant to the provisions of an MEA while at the same time establishing safeguards against the application of unnecessary restrictions on WTO Members, especially those which are not parties to the MEA, preserving their right to discourage any protectionist abuse through the Dispute Settlement mechanism of the WTO. On the other hand, WTO Members parties to the MEA should not resort to the WTO Dispute Settlement mechanism with the aim of circumventing or impairing the obligations they have accepted by becoming parties to the MEA.

4.2 Product-related and Processes and Production Method-related measures

The rules of the multilateral trading system make a basic distinction between product-related measures and non-product-related measures. Product-related measures are trade measures relating to the nature or quality of the product itself, for example a ban on the importation of brakes containing asbestos. Non-product related measures are trade measures which relate to the way in which a product is produced or processed, that is to say to its processes and production methods (PPMs). An example would be an import ban on paper bleached with chlorine.

It should, however, be noted that the distinction between product-related and PPM-related measures is becoming increasingly diffuse. In the first place, PPMs can sometimes affect the characteristics of the product (e.g. pesticides can be present in agricultural products and be detrimental for human health). Accordingly, the notion of product-related requirements encompasses also measures relating to PPMs which have an effect on the final characteristics of the product. Secondly, some of the new instruments of environmental policy (e.g. eco-labelling schemes) are based on the so-called "life-cycle approach", used to assess the environmental impact of a product from "cradle to grave". Therefore they include criteria relating to both the environmental characteristics of a product and the PPMs used.

As far as product-related measures are concerned, the GATT/WTO rules place very limited constraints on the rights of members to protect their own environment against damage from domestic production and consumption of domestic and imported products. Product-related environmental requirements, under the form of technical regulations and standards, are one of the traditional instruments of environment policy. GATT Article III allows each country to impose on imported products the same requirements in force for domestic 'like products' as long as this does not result in treatment less favourable for imports. A comprehensive regime, basically contained in the Agreement on Technical Barriers to Trade (TBT) and in the Agreement on Sanitary and Phytosanitary measures (SPS), has also been developed. This regime is primarily aimed at ensuring transparency in the preparation, adoption and application of technical regulations and standards and conformity assessment procedures, but some substantive provisions, concerning non-discrimination and the notion of least trade-restrictiveness are also included.

Promoting international harmonisation of standards and technical regulations is one of the main objectives of the TBT and SPS regimes. However, harmonisation towards the highest level of environmental protection is very difficult to achieve because of the different conditions, priorities and levels of economic development prevailing in each country. A certain flexibility is therefore necessary in order to enable countries to adopt product-related environmental requirements more stringent than those agreed at international level, while ensuring at the same time that this

possibility is not used for protectionist purposes. Accordingly, the TBT and SPS Agreements contain provisions allowing countries not to apply international standards if they would be ineffective or inappropriate to achieve an environmental objective.

Processes and Production Methods raise more complex issues. Certain PPMs may lead to environmental degradation to air, water, or land in a bordering country or in a shared region. Industrial production can be the source of air pollution near a frontier at a shared river or lake. A PPM may lead to the loss of migratory species and shared living resources due to inappropriate conservation measures (e.g. depletion of high seas fisheries or the threatening or endangering of migratory marine mammals). A PPM may lead to environmental degradation of the "global commons", that is to say, of assets or resources commonly shared by all countries (e.g. the depletion of the ozone layer, climate change, loss of biodiversity).

Although it is undisputed that countries have the sovereign right to determine their own environmental policies, the extent to which, under WTO rules, one country can enforce its environmental policies to deal with transboundary and global problems in a way that affects international trade remains open to question.

It is clear that quantitative import and export prohibitions or restrictions related to Processes and Production Methods (PPMs), imposed on products whose characteristics do not cause themselves environmental harm, are inconsistent with GATT/WTO rules, as presently interpreted by recent (unadopted) jurisprudence. The most important consequence of this interpretation is that a WTO Member cannot unilaterally ban or restrict the import of products because of the environmental effects of processes and production methods (PPMs) used in the exporting (producing) country.

The main argument against the use of unilateral trade measures is that they would run counter to sovereignty over domestic production processes. However, in the case of environmental harm to a neighbouring state, this may be counteracted by the argument that States also have an obligation under Principle 2 of the Rio Declaration "to ensure that activities within their jurisdiction do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

The need to ensure that environmental protection can be enforced when there is the risk of irreparable harm to the environment of another state or the global commons, while at the same time dispelling the risk of giving leeway to possible protectionist abuses, is the most challenging task of the international community in the debate on trade and the environment. The Commission considers that there may be specific exceptional circumstances in which the rules of the multilateral trading system should not preclude the adoption of relevant trade measures against a country which is violating some fundamental legal duties under international environmental law, such as the obligation to ensure that activities within its jurisdiction do not cause damage to the environment of other States and the obligation to cooperate to conserve, protect and restore the health and integrity of the Earth's ecosystem (Principles 2 and 7 of the Rio Declaration). But trade measures must be based on rigorous scientific evidence, be proportional to the objectives sought and implemented in a transparent manner: they should be considered as last resort measures, once attempts to find other bilateral and multilateral solution have been exhausted.

4.3 New instruments of environmental policy, including eco-labelling schemes

It is increasingly being realised that, in order to be effective, environmental policies have to rely on a multiplicity of innovative measures, instruments and approaches and not solely depend on traditional regulatory measures. Among the new instruments of environmental policy, voluntary eco-labelling schemes based on a life-cycle approach have attracted much attention. There are also a variety of other new instruments and measures, particularly relating to packaging and recycling (e.g. voluntary agreements, mandatory recovery schemes and deposit-refund systems), which in principle cannot be assimilated to any of the traditional categories of product-related and PPM-related measures.

From a trade perspective, the evolution towards a greater diversification of environmental instruments is, in general terms, positive. The new instruments of environmental policy are very often voluntary and rely basically on market mechanisms. Therefore, they do not result in the establishment of direct border trade restrictions. However, such instruments can have indirect effects on trade. The potential trade impact of instruments based on a "life-cycle" approach has given rise to specific concerns, particularly as regards the application of PPM-related criteria to imported products.

Some work has already been done to analyse the relationship between the new instruments of environmental policy and the WTO Agreements and to identify their potential trade effects. Although more analytical work is still required, the preliminary findings have shown that, because of their innovative character, some instruments might not be adequately covered by the present provisions of the multilateral trading system. **Accordingly, the need to extend the scope of existing rules and mechanisms or to develop new ones should be considered, particularly with a view to ensuring transparency and non-discrimination in the operation of such instruments, while at the same time avoiding the creation of excessive constraints or burdensome mechanisms.**

The Commission's analysis has particularly focused on voluntary eco-labelling schemes based on a life-cycle approach. This analysis has shown that, while a WTO regime aimed at ensuring increased transparency in the operation of eco-labelling schemes is desirable, at present such schemes do not seem to be fully covered by the WTO/TBT Agreement.

The Commission is also of the view that a possible WTO transparency regime should include some substantive provisions to avoid discrimination and trade distortions in the whole process of the operation of eco-labelling schemes. Similarly, it would be necessary to ensure that the same requirements apply to both governmental and non-governmental schemes and to preserve the integrity of the life-cycle approach.

International harmonisation might be an effective response to minimise the potential trade effects of the new instruments of environmental policy, particularly eco-labelling schemes. However, in view of the difficulties involved (e.g. lack of sufficient experience at national level, differing national characteristics and priorities), it would be preferable to follow a step-by-step approach, focusing first on the transparency issue, and to examine at a later stage whether further measures are needed, especially concerning the harmonisation of the life-cycle analysis.

4.4 Economic instruments

The use of economic instruments for environmental purposes, including environmental taxes and charges, is increasingly advocated as a complement to traditional "command and control" measures, since these instruments, if properly designed and implemented, are particularly efficient and transparent. However, the trade effects of economic instruments such as tradable permits, deposit refund schemes and environmental taxes are still to be fully understood, given the limited role that these instruments have so far played in the overall implementation of environmental policies.

The issue which has so far drawn most attention in the trade and environment debate as regards the use of economic instruments is that of the trade rules on Border Tax Adjustments (BTAs). These allow for the application of domestic taxes on imports and the remission of domestic taxes on exports. The rules on BTAs are designed to equalise the burden of taxation on domestic and foreign products and at the same time to avoid protection of domestic production through taxation. These objectives need to be upheld when discussing environmental taxation; it should not be possible to discriminate or act in a protectionist manner simply by labelling a tax as 'environmental'.

There are two aspects of the rules on BTAs which particularly need to be addressed in discussions on trade and environment. In the first place, it has been argued that present GATT rules on BTAs might determine the choice of environmental fiscal instruments in view of the fact that taxes on products are eligible for BTAs, while taxes on production processes (e.g. emission charges) are not. Countries might, as a result, tend to establish product taxes for environmental purposes rather than production taxes which, in some cases, might be a more effective instrument.

Another problem which needs to be addressed relates to the eligibility for BTAs of "taxes occultes" (i.e. taxes on capital equipment, auxiliary materials and services used in the production of other taxable goods, including taxes on energy). This problem arises because WTO rules on BTAs seem to be more elaborated on the export than on the import side and there is therefore a need to assess whether the system is meant to be symmetrical. For example, the Uruguay Round Agreement on Subsidies and Countervailing Measures includes a special reference to the possibility of rebating certain indirect taxes on energy, fuels and oil used and consumed in the production of exported goods, while there is not a similar provision for imports.

The Commission believes that clarification of these issues is required, in particular as to whether present rules on BTAs are conducive to the most efficient choice of fiscal instrument (i.e. taxes on products and taxes on production processes) and whether "taxes occultes", including taxes on energy, are eligible for BTAs.

4.5 Dispute Settlement for environment-related trade measures

One important aspect of the trade-environment interconnection is the necessity to ensure that in case of disputes concerning environment-related trade measures, the interests and the specific objectives of the two disciplines be taken into account and that one does not jeopardise the fulfilment of the legitimate objectives of the other. In this respect, two main issues deserve attention:

- the need to develop proper and efficient dispute settlement mechanisms for Multilateral Environmental Agreements (MEAs).

Although MEAs contain provisions on dispute avoidance, consultation, meditation, conciliation,

arbitration and judicial settlement, dispute settlement provisions in MEAs are not in general perceived to be very strong.

The Commission favours the development of proper and efficient dispute settlement mechanisms including appropriate enforcement mechanisms for existing and future MEAs, in particular for those including trade provisions.

- the need to determine the most appropriate ways to channel into WTO environment-related dispute settlement procedures the necessary environmental expertise.

The Commission is of the view that environmental expertise will prove essential to test whether environment-related trade measures are necessary and for the assessment of scientific evidence requested in support of trade measures taken for environmental reasons. **The Commission therefore believes that the current provisions of the Uruguay Round understanding on Dispute Settlement should be applied in respect of the use of relevant legal and technical environmental expertise in environment-related disputes.**

4.6. Trade in dangerous substances and the issue of Domestically Prohibited Goods (DPGs)

This issue is particularly important for developing countries. They have expressed concern that goods whose marketing and consumption is prohibited or severely restricted by industrialised countries within their territory might be exported without control towards developing countries.

Many DPGs are already covered by international instruments like the Montreal Protocol on Ozone Depleting Substances and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Furthermore, a voluntary system of Prior Informed Consent (PIC) for exports of dangerous chemicals and pesticides has been established by the London guidelines on the Exchange of Information on Chemicals in International Trade and the FAO's International Code of Conduct on the Distribution and the Use of Pesticides. The EU has already made the prior informed consent principle mandatory through Regulation 2455/92 and is actively participating in the work undertaken under the auspices of UNEP and the FAO to negotiate a legally binding PIC convention.

The Commission considers that the WTO could take complementary action in this area by establishing a notification system which could act as a "safety net". In order to avoid unnecessary duplication of work and regulatory confusion, this notification system should only apply to DPGs not covered by existing international agreements and/or to exports from WTO Members which are not parties to those agreements. It is however important to ensure that the establishment of a notification system in the WTO do not discourage WTO Members from participating in relevant existing and future environmental agreements.

4.7 Trade in services and the environment

Until recently the relationship between trade in services and the environment has hardly been considered, mainly because of the relative lack of sufficient attention and understanding in public, private and academic circles and more importantly, due to the absence of a common set of multilateral rules and disciplines in the field of trade in services.

With the entry into force of the Uruguay Round General Agreement on Trade in Services (GATS)

and the Decision on Trade in Services and the Environment this situation is changing. Since the process is starting from zero, a working programme has to be set up. An important first step will be to analyse the possible interference between all service sectors covered by the GATS and the environment. Although a careful analysis will be necessary to determine the possible interconnections, it could be worthwhile focusing first on a limited number of sectors whose intrinsic nature is of significance in the field of environment. The most obvious example is the transport sector in which significant progress has already been made towards incorporating environmental considerations into transport policy developments as well as towards elaborating substantive programmes and projects in this regards. Work in the WTO CTE will need to look at the relationship between existing international co-operation and the WTO.

Other important services sectors which inevitably have some direct or indirect environmental impact are the tourism and travel sector, the construction sector and several professional services like architecture, engineering and urban planning services.

Next to the sectoral-based analysis, the need exists to address the relationship between the provisions of the new multilateral framework on services and environmental agreements, policies and measures. While acknowledging the obvious differences between trade in services and trade in goods, much of the existing expertise on the relationship between the GATT and the environment could be used in this context.

4.8 Intellectual Property Rights and the Environment

The successful conclusion of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) constitutes a major milestone in the efforts of the industrial countries to bring the level of IPR protection, namely in developing countries (with certain transitional periods), to a world class level. This will greatly further investment in new technologies, including those which can be beneficial to the environment, and constitutes the basis for technology transfer. The TRIPs agreement also allows necessary measures to be taken under certain conditions against the use of technologies detrimental to the environment.

Alongside the TRIPs agreement in the WTO, the issue of intellectual property rights has been addressed in a number of fora, the most prominent being the Convention on Biological Diversity. Access to and transfer of technology are important aspects covered by Article 16 of the Convention. Article 16-5 states that contracting parties, recognising that patents and other intellectual property rights may have an influence on the implementation of this Convention, should co-operate in this regard, subject to national legislation and international law, in order to ensure that such rights are supportive of and do not run counter to its objectives. This, in view of the Commission, includes the WTO agreement and its TRIPs provisions. Furthermore, Article 16-2 of the Convention recognises that transfer and access to technology shall be provided on terms which recognise and are consistent with the adequate and effective protection of intellectual property rights.

The Community and its Member States have made it clear in a ratification declaration on the Convention that in relation to the implementation of the Convention, the compliance with intellectual property constitutes an essential element for the implementation of policies for technology transfer and co-investment. According to this declaration, the European Union will encourage the use of the financial mechanism established by the Convention to promote the voluntary transfer of intellectual property rights held by European operators, in particular as regards granting of licenses, through normal commercial mechanisms and decisions, while ensuring

adequate and effective protection of property rights.

The Commission believes that it is of paramount importance that the Community should defend this position in the field of environment and intellectual property rights in the Convention, and also in other relevant fora.

While it is Governments which have subscribed to the obligations under the Convention on Biological Diversity, most of the relevant technology and related intellectual property rights which could be transferred to developing countries in order to solve the problems addressed by the Convention resides within the private sector. It is therefore worth considering how to involve the private sector efficiently in order to address the issues which arise, taking also into account the supportive role that the Governments of industrialised countries have to play in particular in the framework of their development co-operation programmes.

5. The way forward in the international trade and environment debate

As noted in part I of this communication, trade and environment emerged as a major international issue at the Rio Conference on Environment and Development (UNCED). Since then, some significant steps have been taken at international level to examine the links between trade and environmental protection and to promote the integration of environmental requirements into the multilateral trading system, with a view to achieving a better interaction between trade and environment policies in favour of sustainable development.

The obstacles to be overcome at international level in order to fulfil this objective are, in some respects, similar to those the European Union is facing to integrate environmental requirements into other policy areas, including the establishment and functioning of the internal market. However, at international level there is no integrated institutional framework, as in the EU, but a multitude of bodies and institutions with specialised tasks, different composition and varying structures.

In order to improve the complementarity and mutual supportiveness of trade and environment policies in favour of sustainable development, it is therefore necessary to bring together the work conducted in various international fora. These include notably the WTO Committee on Trade and Environment (CTE), the CSD, UNEP, UNCTAD's Ad Hoc Working Group on Trade, Environment and Development and the OECD Joint Session of Trade and Environment Experts (JSTE).

5.1 The WTO Committee on Trade and Environment

By virtue of its mandate and work programme, the CTE will be the main forum for addressing the relationship between trade and environment. The Committee has been given both analytical and prescriptive functions: to consider the inter linkages between trade and environment needed to promote sustainable development, and to make recommendations on whether any modifications to the provisions of the multilateral trading system are required.

In order to perform effectively its tasks and harmoniously articulate its role with those of other relevant fora, the CTE has to meet certain **basic parameters and conditions**:

- (i) The CTE's work has to be **result-oriented**.

The deliberations on trade and environment in the GATT were initiated in 1991 in the Working Group on Environmental Measures and International Trade (EMIT), and since then the analytical work on some of the items in the CTE's work programme has advanced significantly.

Trade and environment will be on the agenda of the first WTO Ministerial Conference (Singapore, December 1996) and, in order to build up the CTE's credibility, its report to the Conference should contain specific recommendations.

(ii) The CTE's approach should be **balanced**.

In accordance with the terms of reference agreed at Marrakech, the recommendations of the CTE should address three fundamental aspects: (a) the need for rules to enhance the positive interaction between trade and environmental measures for the promotion of sustainable development; (b) the avoidance of protectionist trade measures; and (c) surveillance of trade measures used for environmental purposes.

These three aspects have to be duly integrated in the CTE's work and should each be given the same level of priority. The CTE should not just operate as a trade watchdog to scrutinise potential trade effects of environmental measures, but should also consider positive steps to promote the integration of environmental requirements into the multilateral trading system.

(iii) The CTE would usefully benefit from receiving an effective **input from environmental experts and from other international organisations**.

In order to best perform its tasks, the CTE would benefit from having environmental expertise and scientific and technical advice. To this end, the CTE should improve its co-operation links with all relevant international organisations, including UNEP and the Secretariats of multilateral environmental agreements.

(iv) **Increased transparency** in the work of the CTE is needed.

Non-governmental actors, including environmental NGOs, industry, consumers, etc., can provide a valuable input to the CTE's work. It is urgent to put in place effective mechanisms to ensure that NGOs receive timely and adequate information on the CTE's activities and are able to submit their comments, views and suggestions to the CTE. This can be done, without diminishing the value of intergovernmental dialogue, through early derestriction of documents and regular informal meetings with the participation of the WTO Secretariat, delegations and NGOs. It is also necessary to establish channels to give NGOs the possibility to make their own submissions.

However, transparency within the CTE should not be regarded as a substitute for transparency within individual WTO Members. The responsibility for dialogue with non-governmental actors lies primarily at the national level.

According to the Marrakech ministerial decision on trade and environment, the **initial work programme and terms of reference** of the CTE should be **reviewed at the first WTO Ministerial Conference**. It is unclear at this stage whether changes will actually be needed since the implementation of the present programme of work has just been initiated. However, the Singapore Ministerial Conference might provide an opportunity to address some imbalances present in the

Marrakech Ministerial Decision on Trade and Environment. For example, while under item 6 of its work programme, the CTE has to consider "the **environmental benefits** of removing trade restrictions and distortions", it would be more appropriate to address in more comprehensive terms, the **environmental effects**, both positive and negative, of such removal. The need to **reinforce co-operation links** with all relevant international organisations could also be explicitly mentioned.

5.2 Other relevant bodies

The role of the **Commission on Sustainable Development (CSD)**, as the body in charge of monitoring the implementation of Agenda 21 and other outcomes of the Rio Conference, will remain increasingly important in the run-up to the 1997 special session of the UN General Assembly on UNCED follow-up. The CSD reviews annually developments in the field of trade and environment with a view to identifying gaps and promoting co-ordination and its decisions have significantly contributed to giving shape to the trade and environment agenda.

For example, at its second session (May 1994) the CSD adopted a resolution recognising, inter alia, the need to assess the environmental impact of trade and to promote the integration of some environmental principles and concepts (e.g. the polluter-pays principle and the precautionary approach) into the trading system. Similarly, an EU proposal for a study on the relationship between environmental protection, competitiveness, job creation and development was approved at the third session.

In the conclusions adopted by the Council in April last year in preparation for the 3rd session of the CSD, the useful role played by the **UNEP/UNCTAD** initiative on trade, environment and sustainable development and by the UNCTAD ad hoc working group to complement the work of the CTE was noted. It was stressed that UNEP and UNCTAD should continue to provide input to the work of the CSD and address some important issues not covered by the CTE programme of work, notably the environmental impact of trade policies, the internalisation of environmental costs and the implementation of the polluter-pays principle.

It was also noted by the Council that a **stronger role for UNEP** was needed, as the environmental counterpart of the trade side represented by the WTO, as facilitator of co-operation between secretariats of different environmental agreements and as creator of a model for MEAs. In this context, the Commission welcomes the outcome of the 18th session of UNEP's Governing Council (Nairobi, May 1995) and, in particular, the inclusion of a new programme area on trade and environment in the programme of work for the biennium 1996/97. It should however be noted that the financial resources budgeted for this new programme area might be insufficient to build-up a stronger role for UNEP in the international debate on trade and environment.

Finally, the **OECD Joint Session of Trade and Environment Experts (JSTE)** has carried out extensive analytical work on various trade and environment issues. In accordance with the recommendations contained in the report endorsed by the OECD Council at Ministerial level in May 1995, the JSTE should continue its multidisciplinary work on trade and environment with a view to providing analytical material and inputs for negotiations in other international fora, particularly in the CTE.

Conclusions

In the on-going work in international fora on trade and environment, the Commission will be guided by some fundamental orientations.

The Commission is committed to a high level of environmental protection and to an open, equitable and non-discriminatory multilateral trading system. Trade and environment policies can play a mutually supportive role in favour of sustainable development.

Economic performance and environmental performance are not necessarily incompatible. While achieving environmental benefits may in some cases entail additional short-term costs, there are a wide range of "win-win" opportunities in the design and implementation of environmental policies, which could improve resource efficiency, competitiveness and employment. Differences in environmental policies should not result in introduction of compensating duties or export rebates (i.e. so-called eco-duties) as a means of compensating for the cost of imposing more rigorous environmental requirements on domestic industries than those supported by foreign competitors.

The most effective way of dealing with international environmental problems is through international and multilateral agreements, not by unilateral trade measures.

The Commission believes that particular account should be taken of the special situation and needs of developing countries in the issue of trade and environment. Mechanisms developed to solve environmental problems should not jeopardise sustainable development prospects or undermine the export performance of developing countries or countries with economies in transition. Many mechanisms are available to help developing countries and countries with economies in transition to achieve sustainable development.

Identifying the relationship between trade measures and environmental measures in order to promote sustainable development will help to ensure the predictability essential for environmental policy makers both at national and international levels, and for the industrial world which has to comply with environmental requirements. Considering whether any modifications of the provisions of the multilateral trading system are required -on issues such as the WTO rules and Multilateral Environmental Agreements, new instruments of environmental policy like eco-labelling and trade in dangerous substances - will be the main task of the WTO Committee on Trade and Environment. It is also necessary to ensure that other relevant international bodies, such as the CSD, UNEP, UNCTAD and the OECD, play an effective role in these discussions. The agenda for the WTO CTE is a large one, but among the key issues to be addressed with a view to the Singapore WTO Ministerial meeting in December will be:

- **Multilateral Environment Agreements.** In some circumstances, trade restrictions may be considered necessary for the achievement of the environmental goals of MEAs. In such circumstances, the multilateral trade rules should not act as an impediment but rather accommodate as compatible with the multilateral trade system, under clear and predictable rules, the use of justifiable trade restrictions adopted under MEAs..
- **New instruments of environmental policy.** The relationship between trade rules and innovative instruments of environment policy needs to be clarified in order to encompass instruments like eco-labelling.

- **Dispute Settlement.** The best ways to ensure co-operation and exchange of expertise in the settlement of trade and environment related disputes should be explored.
- **Trade in dangerous substances.** Consideration should be given to the establishment by the WTO of a notification system as a complement to existing international instruments on trade in dangerous substances.

Other issues which must be addressed, but which may require a longer time frame include:

- **Processes and production methods.** The existing GATT rules are clear in preventing the unilateral imposition by one country of its standards on another through restrictions on trade in products subject to certain processes and production methods. But there is a need to address the question of how such rules should apply when there is evidence of real and direct damage to the environment of one state or to the global commons through the use of particular processes and production methods in another.
- **Economic instruments and trade rules.** Clarification of this issue is required, in particular as to whether present rules on BTAs are conducive to the most efficient choice of fiscal instrument (i.e. taxes on products and taxes on production processes) and whether "taxes occultes", including taxes on energy, are eligible for BTAs.

While these and other issues need to be addressed at international level, the Commission is also of the view that, in general terms, the multilateral trade rules do not compromise the ability of countries to take measures necessary to protect their own environments. WTO rules do not prevent the adoption of national measures aimed at domestic production activities or at the consumption of domestically produced or imported goods, provided that measures impacting on trade are not discriminatory and do not go beyond what is necessary to achieve the environmental goal.

Protecting the environment and maintaining an open, non-discriminatory and equitable multilateral trading system are equally important objectives. Provided that the right framework is in place at international level, they should be mutually supportive. Enhancing the conditions for the effective achievement of both objectives will be the main aim of the Commission in discussions in coming months, an aim which underlies the approach set out in this Communication.