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METHODOLOGIES FOR ENVIRONMENTAL AND TRADE REVIEWS

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FOREWORD

This document contains general methodologies for conducting environmental reviews of trade policies and agreements and trade reviews of environmental policies and agreements. It further elaborates one of the procedural guidelines on trade and environment recommended by the OECD Ministerial Council in June 1993: "*Governments should examine or review trade and environmental policies and agreements with potentially significant effects on the other policy area early in their development to assess the implications for the other policy area and to identify alternative policy options for addressing concerns*".

These methodologies were developed as part of the work programme of the Joint Session of Trade and Environment Experts which has been established by the Trade Committee and the Environment Policy Committee. The report is derestricted under the responsibility of the Secretary-General.

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ENVIRONMENTAL REVIEWS OF TRADE POLICIES AND AGREEMENTS

INTRODUCTION

At its June 1993 meeting at Ministerial level, the OECD Council recommended that Member governments "*examine or review trade and environmental policies and agreements with potentially significant effects on the other policy area early in their development to assess the implications for the other policy area and to identify alternative policy options for addressing concerns*". It further recommended that governments "*follow up as appropriate: to implement policy options; to re-examine the policies, agreements and any measures in place; and to address any concerns identified in the conclusion of such re-examinations*".

This paper presents suggestions for a general methodology for conducting environmental reviews of trade policies and agreements. It presents a menu of options from which countries can select when conducting environmental reviews of different types of trade policies and agreements. The choice of which trade policies and agreements should be subject to environmental reviews is a decision to be made by countries individually or jointly. Similarly, the nature and scope of these environmental reviews will differ according to the country or countries conducting the review and according to the type of trade policy or agreement. The reviews are intended to focus on a country's domestic trade policies, including their policy approach to international trade agreements. The general purpose of environmental reviews is to inform policy-makers in advance of the environmental consequences of different trade policy measures. The reviews can bring broad expertise and perspectives to bear in the interest of further trade-environment policy integration. The reviews can also aid in the elaboration of options for addressing the environmental concerns identified, either through the provisions of the trade policy or agreement itself or through complementary environmental mechanisms.

REVIEW PROCEDURES

Selection

Different types of trade policies and agreements will have different types and levels of environmental impacts, and it is not evident that all trade policies and agreements should be subject to environmental reviews. In addition, different countries will vary in their selection of trade policies and agreements for review, and they may wish to establish their own *screening criteria* which reflect their particular trade and environmental policy concerns. Suggestions of the types of criteria which might be used in the preliminary screening of trade policies and agreements for environmental reviews are given in the Checklists.

This methodology for environmental reviews is intended to apply to both national trade measures and trade agreements concluded among two or more countries. Countries can select from this list the types of trade policies and agreements they may wish to review. The following are the main types of **national trade measures or instruments** which might be screened as candidates for environmental reviews:

Tariffs and Related Measures -- Tariffs are monetary levies on imports of a particular category of goods as listed in the tariff schedules of the importing country. They are neutral tools that, in certain circumstances, may have a positive or negative environmental effect insofar as they affect trade in environmentally-damaging or environmentally-beneficial products, technologies and services. Tariffs can have environmental effects in discouraging imports of environmentally-beneficial products, technologies and services by raising their prices. Tariffs, particularly when used as one instrument of a policy to protect domestic industries, can distort production and consumption away from environmentally-sustainable patterns. Tariff escalation, where higher tariffs are charged on processed goods than on raw materials, can have environmental effects in their impacts on resource exploitation. Measures related to tariffs include countervailing duties on imports benefitting from subsidies in the exporting country, and antidumping duties on imports that are sold below normal value, which can also have environmental effects.

Non-Tariff Measures -- Non-tariff measures include quantitative restrictions (such as quotas) on imports; they also include laws, regulations, administrative procedures, purchasing requirements and standards that individually or in combination can affect imported goods. For example, bans on environmentally-damaging goods, such as CFCs and endangered species, affect imported goods and have environmentally-beneficial effects. However, non-tariff measures are often less transparent than tariffs and can also discourage imports of environmentally-beneficial goods and distort trade patterns by protecting domestic industries with related environmental implications.

Trade-Related Subsidies -- Production subsidies are benefits which governments give to the private sector and can take the form of direct payments, loans and loan guarantees, price supports and tax incentives. Subsidies and other forms of industry assistance usually come within the scope of industry policy (subject to international trade obligations). Certain production subsidies can affect the competitiveness of domestic products and firms and have trade implications. Some production subsidies, such as environmental subsidies, can be used for retrofitting equipment to comply with environmental standards or to support technological innovation in anticipation of more stringent regulation, and thus enhance competitive positions. The risk involved with production subsidies is that they can support uncompetitive production on world markets leading to trade and environmental distortions in importing and exporting countries. Export subsidies, which are specifically targeted to promoting exports of domestically-produced goods, can support the export of beneficial or harmful environmental technologies or goods. They can also have implications for trade patterns and contribute to environmental distortions in importing and exporting countries.

TRIPs -- Trade-Related Intellectual Property Rights (TRIPs) are government legal regimes and procedures which influence trade flows through their effects on the legal protection given to such measures as patents, copyrights and trademarks. TRIPs can modify trade in products that enhance or harm the environment and influence patterns of foreign investment and transfer of environmental technologies. TRIPs can also affect the conservation of domestic varieties of plants and animals and other environmental and biological assets.

TRIMs -- Trade-Related Investment Measures (TRIMs) are government measures which influence trade flows through their effects on foreign investment. They include rules regarding local content requirements, export performance, technology transfer, and research and development by foreign firms. TRIMs can affect the use or transfer of environmental products and technologies through foreign investment and the environmental performance of foreign firms.

The following are the main types of **trade agreements** which might be screened as candidates for environmental reviews:

Trade Liberalisation Agreements -- Trade liberalisation agreements are aimed at changing existing trade policies between two or more countries to promote freer and more unrestricted trade. Examples include the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). Trade liberalisation agreements can have a wide range of environmental effects since they generally involve changes to all types of trade measures, e.g. tariffs, non-tariff measures, subsidies, TRIPs, TRIMs, etc. They can also have legal implications for the use of different environmental approaches and instruments in setting rules for permissible trade restrictions on imports and exports.

Commodity Agreements -- Commodity agreements are cooperative arrangements by producer and consumer countries of a particular commodity intended to facilitate the efficient operation of markets as a means of stabilising prices. Examples include the International Tropical Timber Agreement and the International Natural Rubber Agreement. Most current commodity agreements do not contain economic or trade provisions. Low commodity prices have impeded commodity-exporting countries from making the costs of environmental protection an element in pricing, leading to proposals for "*greened*" commodity agreements linking financial rewards to sustainable production methods.

Preferential Trade Agreements -- Preferential trade agreements are tariff concessions and other preferential trade treatment offered by one country or group of countries (usually industrialised countries) to provide enhanced access to imports from one or more other countries (usually developing countries). These tariff concessions are usually non-reciprocal, but could possibly involve reciprocal tariff concessions, which are subject to GATT disciplines. Examples include the Generalised System of Preferences (GSP) and the Lomé Convention. These agreements can have environmental effects in influencing production patterns in developing countries. There are proposals to link GSP treatment to environmental factors and sustainable management practices in exporting countries.

Sectoral Trade Agreements -- Sectoral trade agreements are arrangements between two or more countries with the intent of restricting imports or expanding exports of particular sectors or goods. Examples include voluntary export restraints (VERs) in the automobile sector and the Multifibre Agreement (MFA) in the textiles sector. These agreements can have environmental effects primarily by limiting imports from certain producers or of certain goods and thereby changing trade flows.

In screening these different types of trade instruments and agreements for possible environmental reviews, countries may also wish to consider the nature and magnitude of **potential environmental impacts**. Some countries may be more concerned about trade policies and agreements which affect

pollution levels, while others may focus on those with implications for resource use. Some type of threshold criteria may be established for environmental impacts if the magnitude of potential environmental effects can be predicted. Screening criteria might also relate to the products, processes, sectors and/or regions within a country affected by the trade policy or agreement.

Scope

The **extent and complexity** of environmental reviews will differ according to the type of trade measure or agreement and the legal or administrative structure of the country or countries concerned. Environmental reviews will vary widely in their scope, level of detail and degree of formality, ranging from brief statements to full-fledged environmental impact assessments (EIAs). Countries may want to specify in advance the types of questions (from the Checklists in Section IV) which are to be included in environmental reviews of trade measures and agreements with different types and thresholds of environmental effects. Or countries may wish to structure the environmental reviews on a case-by-case basis.

Methodologies for reviewing trade policies and agreements will have to be **adapted to national legalities and capabilities**. Some countries have mandatory provisions for environmental reviews of certain types of policies and formal mechanisms and procedures for carrying out these reviews; in some cases, these provisions may apply to trade policies and agreements. Other countries may have incorporated elements of a more limited form of environmental reviews or examinations in their policy-making and planning procedures, which may be applicable to trade policies and agreements. Others may have no provisions for environmental reviews and little experience in carrying out environmental reviews.

The scope of the environmental review will vary with the type, extent and significance of the **potential environmental impacts** associated with the trade policy or agreement. In general, it is expected that there would be more complex and extensive reviews of a trade liberalisation agreement than of the extension or modification of a single tariff. On the other hand, the extension or modification of a single subsidy may have complex domestic environmental effects. Some countries may wish to conduct more extensive reviews of particular types of environmental impacts (e.g. resource use) or of potential environmental impacts in particular geographical regions (e.g. the environmental review of the US-Mexican border area under the NAFTA). The scope of the review may also differ depending on whether the environmental effects predicted are largely local or if there are spillovers to other countries.

Timing

The timing of the environmental review will also vary with the type of trade measure or agreement. However, as a general rule, environmental reviews should be conducted as **early in the policy-making process** as possible so that the results of the review can be integrated into this process and help shape the final form of the trade measure or agreement. In some cases, environmental reviews may need to be updated as the policy-making process proceeds. Follow-up reviews after the implementation of the trade policy or agreement may also be desirable. Reviews should complement, rather than replace, routine governmental review procedures of major policies and/or agreements, as the relevance, usefulness and effects of the measure or agreement may change or emerge over time.

With regard to **national trade policies and measures**, environmental reviews might be conducted quite early in their consideration. For trade policies taken by individual countries, the options for structuring and implementing the policy are usually known in advance. A preliminary environmental review could be done at a very early stage so that the results of the review could be considered during the

policy development process. Thus, national trade policies involving tariffs and related measures, non-tariff measures, subsidies or other instruments could generally be reviewed for environmental impacts before they are implemented, modified or removed.

Trade agreements which involve other countries are more difficult to review until there has been some negotiation with the other parties to determine the general parameters of the agreement. Usually, there is a less clear idea of what will emerge as a final policy or agreement than in the case of national trade measures. But again, the degree of early knowledge will vary with the type of agreement. For preferential trade agreements, commodity agreements, or bilateral trade agreements, the general approach is usually known fairly early in the process and much of the later stages of negotiations may be devoted to determining details such as reference levels of trade, percentages, schedules, etc. With regard to these types of trade agreements, an environmental review could be done in principle early in the negotiating process.

The timing of an environmental review of a **trade liberalisation agreement**, which often includes complex, varied and even new types of trade measures, is more complex. The general outlines of the agreement may not be known until the negotiating process has proceeded for several months or even years. If possible, an environmental review might be conducted in advance of a trade liberalisation agreement to assess the current situation and frame broad environmental policy concerns. Or environmental reviews might be conducted during the negotiation process to help guide the negotiators in the later stages. In addition, a refinement or updating of the environmental review during the negotiations or near the end of the process, when the final details are being worked out, may be beneficial.

Trade measures and agreements may also warrant subsequent environmental reviews as part of the **follow-up process**. The economic effects of trade measures and agreements are often long-term, influencing economic activities over many years. Trade measures and agreements may have short-term negative impacts on specific products and sectors from the environmental point of view, but longer-term beneficial impacts, or vice versa. One of the difficulties in conducting environmental reviews of trade measures and agreements is identifying both short-term and long-term impacts. Follow-up reviews of the actual environmental effects of trade measures and agreements could help inform the overall environmental review process. It would also allow adjustments to be made to the original trade measures and agreements for environmental reasons, if necessary.

Participants

The participants and extent of their participation in the environmental review process will vary with the type of trade measure or agreement and the country or countries concerned. The three main types of actors are *national and sub-national government participants*, *private sector participants* and *international participants*. In general, governments might consider the establishment of enquiry points or focal points where interested parties may receive information concerning environmental reviews in the interest of promoting transparency and coordination.

Environmental reviews could be carried out by **government officials** since the responsibility for decision-making with regard to trade policies or agreements generally rests with national governments. In some countries, representatives of sub-national or provincial governments might be included in the review process. Environmental reviews of trade policies and agreements could include both environmental officials and trade officials to further the integration of the policy-making process. The environmental review process might also include representatives of other agencies of government whose areas of expertise and responsibility are involved in the trade policy or agreement, such as agriculture, industry, energy, labour, and finance, probably through the mechanism of an inter-departmental working group. However, the

agency co-ordinating the reviews and the exact governmental participation will differ by country and by type of trade measure or agreement. Full inter-departmental reviews may be more desirable in the case of trade liberalisation agreements, but less necessary in the case of some national trade measures.

Environmental reviews of trade measures and agreements would best provide for transparency and consultation with **private sector representatives**, such as environmentalists, industry representatives, trade unions, consumer groups and academics. It is possible that private sector representatives might also request or initiate an environmental review of a trade measure or agreement. There is a clear role for non-governmental actors to help identify areas of environmental sensitivity and concerns and to advise on technical matters. Environmental groups may be informed about areas where market failures or policy intervention failures have environmental effects. Industry experts are often knowledgeable about the technical aspects of different activities that may have environmental implications. Trade unions could bring a labour perspective, and consumer groups could add that of consumers. Academics may be most informed as to the scientific basis of various environmental impacts.

Processes for **consultation with non-governmental actors** will differ according to national political and legal practices and cultures. In some countries, there may be procedures, such as formal advisory committees of non-governmental experts, that allow for consultation on an ongoing basis. In some cases, special procedures may be established for participation by non-governmental actors in environmental reviews of trade measures and agreements. The extent and timing of consultations may differ with the trade measure and agreement and its expected economic and environmental impacts. Input might be sought all along the review process. Comments could be solicited on the results of the environmental review and its recommendations so that these could be taken into account in revisions of the environmental review and in the trade policy-making process. However, public review and comment periods may be more difficult in cases of trade agreements where negotiations must be private and final details are often not worked out until the last minute.

The **participation of trading partners** in environmental reviews should also be considered. In cases where national trade measures may have transboundary and global environmental impacts, governments will want to consult with other countries during the environmental review process. With regard to trade agreements, environmental reviews could be conducted by each party to the trade agreement separately or could be carried out in a co-operative procedure in a multilateral framework. Mechanisms for bilateral or multilateral cooperation in conducting environmental reviews of trade agreements could be established, such as joint working parties or committees.

Methodologies

Many different types of methodologies could be used in conducting environmental reviews of trade measures and agreements, and most likely a different mix of methodologies will be needed for different types of trade measures and agreements with various types of effects. In general, the review approaches adopted should be flexible and practical. Environmental reviews will depend to a large extent on the information available from the **economic assessments of the trade measure or agreement**, which themselves are difficult to conduct and which may only provide broad indications of the direction of economic changes which may flow from changes to trade measures. Predictions of the likely impacts on trade flows and patterns of production, consumption and investment will be needed to assess potential environmental impacts. Therefore, it is important that economic assessments are conducted prior to or in the early stages of the environmental review.

In reviewing potential environmental impacts, there are methodologies that might be borrowed or adapted from traditional **environmental impact assessments** (EIAs). It should be noted, however, that EIAs have usually been conducted of specific projects (e.g. a dam, mine or factory) for determining effects on the physical environment. Environmental reviews of policies are much more complex and involve a much wider geographical area and a broader range of economic and environmental impacts. Environmental reviews of trade measures and agreements would therefore not be as detailed as an EIA, but would focus on the likely direction and magnitude of potential environmental impacts. There remains a significant amount of analytical work to be done on how to apply EIA methodology to policies, including trade policies.

As a beginning, base-line environmental conditions could be established using existing data. Subsequently, **models and other forecasting techniques** could be used to predict broad changes in resource use, pollution or environmental quality resulting directly or indirectly from the trade measure or agreement. Given data deficiencies and forecasting uncertainties, **scenarios** could be used to test certain hypotheses or predictions of environmental impacts. **Case studies** of particular types of environmental impacts or of particular economic sectors or geographical regions might be conducted. In weighing alternative policy options, general **policy evaluation techniques** might be employed, such as cost-benefit analysis and techniques for handling uncertainty.

Environmental reviews of trade agreements, particularly trade liberalisation agreements, may also involve an **assessment of regulatory effects** or the implications of the provisions and rules established in the trade agreement for environmental policies and measures, including product and process standards, economic instruments, subsidies, etc. This type of review would be different from the assessment of the potential effects of the trade measure or agreement on the physical environment. It would involve legal or policy analysis to determine the legal and policy implications of using different environmental policy approaches, regulations or standards with reference to the trade agreement concerned. Countries may also wish to explore harmonization of their environmental review methodologies to promote greater coherence between the methodologies and procedures of individual countries and avoid duplication of efforts.

Monitoring and Follow-Up

Environmental reviews should also include provisions for monitoring how the results of the reviews are taken into account and implemented and for follow-up to ensure that concerns are being addressed. It is important to monitor how the results of the environmental review are used, both during and after the decision-making process. The procedures for monitoring and follow-up will differ according to the trade measure or agreement and the country or countries concerned. Follow-up reviews of trade agreements could be conducted cooperatively by the countries involved.

The integration of environmental considerations into trade measures and agreements will vary from country to country as a result of differences in overall government structures and procedures. However, some means might be devised for reviewing the findings of environmental reviews and considering how to enhance positive environmental effects and address potential negative environmental effects. The findings of an environmental review may warrant **different policy responses**, including: 1) modification of some aspects of the trade measure or agreement; 2) inclusion of environmental safeguards in the trade measure or agreement; or 3) implementation of a complementary environmental mechanism to accompany the trade measure or agreement. In the case of trade agreements, changes or modifications would imply keeping the negotiated balance of commitments in the agreement and would necessitate a cooperative approach. Complementary mechanisms might include development and/or enforcement of environmental regulations, levying taxes or charges to contribute to an environmental fund, or financial or technical assistance for environmental clean-up.

Provisions for follow-up may be needed to re-examine the environmental implications of trade measures and agreements because circumstances may have changed, new concerns may have emerged, or response measures may no longer be appropriate or need to be re-enforced. There are a number of follow-up activities that may be relevant, including publication of the findings of environmental reviews and the decisions taken in light of the reviews. Some type of environmental monitoring committee or mechanism could be established. There might be provision for future reviews of the findings and policy responses to determine whether the initial estimates of economic and environmental consequences are consistent with actual results. Follow-up reviews, which would vary in their level of detail, could explore environmental aspects that may have been overlooked or not treated in sufficient detail in the initial review. Follow-up reviews could enable governments to consider any revisions to the trade measure or agreement or to the complementary mechanisms that might be appropriate and provide insights for future environmental reviews.

ENVIRONMENTAL EFFECTS

Types of Environmental Effects

There are three main types of physical environmental effects which can be reviewed: *pollution effects*, *health and safety effects*, and *resource effects*. These effects are not mutually exclusive and may overlap.

Pollution Effects -- Pollution effects are primarily increased or decreased emissions of harmful substances into the air, water and/or land, including disposal of solid waste. Levels of pollution, whether from point or non-point sources or mobile or non-mobile sources, can affect air quality, water quality and supply, and soil quality. Pollution effects also relate to the generation, recycling and reuse, and disposal of waste and to the management of hazardous waste.

Health and Safety Effects -- Health and safety effects refer to increased or decreased protection of human, animal or plant life or health. These effects can relate to sanitation, potable water services, chemicals and trace elements in food supply, spread of pests, and environment-related diseases such as the toxic effects of hazardous wastes.

Resource Effects -- Resource effects include increased or decreased use of energy and other natural resources; increased or decreased destruction of wildlife habitats or other ecosystems; increased or decreased depletion of species; and changes in land use patterns. These may be direct effects on the use of an energy, mineral, agricultural, forest or other resource. Or they may be indirect effects resulting from impacts related to an economic activity which uses a natural resource as an input or otherwise affects resource exploitation.

Scope of Environmental Effects

Environmental effects in the country or countries conducting the review can vary in their geographical reach or scope and be *national*, *transboundary* or *global*. Trade measures and agreements can also affect the economies and environments of countries other than those conducting the review and lead to environmental effects which are *national*, *transboundary* or *global* in scope. However, there is not a clear distinction between these different types of geographical effects which are often inter-related.

National Effects -- National environmental effects are those which are by large confined to the territorial borders of a country. They might include urban smog, polluted lakes, or the health of non-threatened and non-migratory species.

Transboundary Effects -- Transboundary environmental effects are those which affect two or more countries. They might include acid rain, polluted rivers or lakes, or management of migratory species.

Global Effects -- Global environmental effects are those which affect all countries. They might include ozone layer depletion, climate change, endangered species and loss of biodiversity.

Types of Trade-Related Effects

Five main categories of trade-related environmental effects have been identified in order to facilitate the conduct of environmental reviews: *product effects*, *technology effects*, *scale effects*, *structural effects* and *regulatory effects*. In general, environmental impacts may stem from the effects of the trade measure or agreement on: 1) product trade flows (*product effects*), 2) technology trade flows (*technology effects*), 3) the level of trade or of economic activity (*scale effects*), 4) the pattern of economic activity (*structural effects*) or 5) legal instruments (*regulatory effects*). These different types of effects can be both positive and negative for the environment. In general, product effects, technology effects and regulatory effects may be either direct or indirect and may be easier to identify and assess during reviews. Scale effects and structural effects, which relate to the influence of the trade measure or agreement on the level or location of economic activity, are indirect effects and more difficult to review.

Product Effects -- Product effects are associated with trade in specific products which can enhance or harm the environment. *Positive product effects* may result from increased trade in goods which are environmentally-beneficial relative to competing products, such as energy-efficient machinery, low-sulfur coal, or recyclable containers. Positive product effects would also stem from increased trade in environmental goods and technologies themselves, such as equipment for water treatment, waste management and air quality. *Negative product effects* may result from increased trade in goods which are environmentally-sensitive, such as hazardous wastes, dangerous chemicals or endangered species.

Technology Effects -- Technology effects are associated with changes in the way products are made depending largely on the technology used. *Positive technology effects* may result when the output of pollution per unit of economic product is reduced. Foreign producers may transfer cleaner technologies abroad when a trade measure or agreement results in a more open market and a business climate more conducive to investment. If there are positive scale effects which generate an increase in income levels, the public may demand a cleaner environment as an expression of their increased national wealth, which in turn will generate demand for cleaner technologies, more stringent pollution standards and stricter enforcement of existing environmental laws. *Negative technology effects* or the lack of positive effects may occur if neither of the above scenarios eventuates.

Scale Effects -- Scale effects are associated with the overall level of economic activity or the macro-economic effects resulting from the trade measure or agreement. *Positive scale effects* may result from higher levels of economic growth and financial gain, particularly when appropriate environmental policies are present. *Negative scale effects* may occur when higher levels of economic growth, trade and/or transport bring increased pollution and faster draw-down of resources due to the absence of appropriate environmental policies.

Structural Effects -- Structural effects are associated with changes in the patterns of economic activity or the micro-economic effects resulting from the trade measure or agreement. *Positive structural effects* may result when trade measures and agreements promote an efficient allocation of resources and efficient patterns of production and consumption. *Negative structural effects* may occur when appropriate environmental policies do not accompany changes in patterns of economic activity, and when environmental costs and benefits are not reflected in the prices of traded goods.

Regulatory Effects -- Regulatory effects are associated with the legal and policy effects of a trade measure or agreement on environmental regulations, standards and other measures. *Positive regulatory effects* result when trade measures and agreements take care to maintain the ability of governments to pursue appropriate and effective environmental policies. *Negative regulatory effects* may occur when the ability of governments to enact and implement appropriate environmental regulations is undermined by the provisions of the trade measure or agreement.

CHECKLISTS

Preliminary Screening (for the selection of trade measures and agreements to be reviewed)

What is the type of national trade measure (e.g. tariff, non-tariff measure, trade-related subsidy) or trade agreement (e.g. preferential trade agreement, trade liberalisation agreement)?

What are the principle types of environmental effects predicted (e.g. pollution, health and safety, resource degradation)?

What is the potential magnitude of the environmental effects predicted?

What is the potential scope of the environmental effects predicted (e.g. national, transboundary, global)?

What products, processes, sectors and/or regions may be affected by the trade measure or agreement?

Product Effects

Product Identification -- *Does the trade measure or agreement directly affect the import or export of a specific product?*

Environmental Effects -- *Does the product have potential positive or negative environmental effects? What are its environmental effects relative to those of alternative products?*

Policy Responses -- *Do environmental standards or trade controls exist with respect to environmentally-damaging products and are they being adequately enforced? Are there means available to enhance the environmental benefits of certain products through the trade measure or agreement?*

Technology Effects

Production Technologies -- *Is the trade measure or agreement likely to affect the processes or production methods for a specific product?*

Environmental Effects -- *Does the trade measure or agreement establish conditions conducive to the transfer of cleaner technologies?*

Policy Responses -- *Are there impediments to the diffusion of environmental technologies? If so, what are they and how can they be ameliorated?*

Scale Effects

Scale of Economic Growth -- *Might the trade measure or agreement increase economic growth at the macro-economic level and by how much? What are the expected environmental benefits in terms of financial resources for environmental protection or the level of environmental preferences?*

Scale of Pollution -- *Might the trade measure or agreement increase or decrease overall levels of pollution and by how much? What are the expected environmental impacts in terms of releases of pollutants to air, water and land?*

Scale of Transport -- *Might the trade measure or agreement increase or decrease overall levels of transport and by how much? What are the expected environmental impacts in terms of pollution, congestion, land-use, etc.?*

Scale of Resource Use -- *Might the trade measure or agreement increase or decrease overall levels of resource use and by how much? What are the expected environmental impacts in terms of the intensity of use of natural resources?*

Policy Responses -- *Are means available to enhance positive scale effects and channel the benefits of growth into environmental protection? Are existing environmental policies sufficient to address negative scale effects? Should changes be made to the trade measure or agreement or are complementary policies needed?*

Structural Effects

Structure of Production -- *Might the trade measure or agreement increase or decrease the production of specific products or sectors? What are the expected environmental impacts of changes in production patterns at the micro-economic level?*

Structure of Consumption -- *Might the trade measure or agreement increase or decrease the consumption of specific products or sectors? What are the expected environmental impacts of changes in consumption patterns at the micro-economic level?*

Structure of Investment -- *Might the trade measure or agreement increase or decrease investment in specific products or sectors? What are the expected environmental impacts of changes in investment patterns at the micro-economic level?*

Structure of Costs -- *Might the trade measure or agreement increase or decrease raw material costs, energy costs, labour costs or capital costs for specific products or sectors? What are the environmental implications?*

Geographical Structure -- *Might the trade measure or agreement increase or decrease production, consumption or investment in particular geographical areas or regions? What are the environmental implications?*

Policy Responses -- *Are means available to enhance positive structural effects? Are environmental policies sufficient to address negative structural effects? Should changes be made to the trade measure or agreement or are complementary policies needed?*

Regulatory Effects (primarily applicable to trade liberalisation agreements)

General:

General Goals -- *Does the trade agreement specify any general goals or objectives such as sustainable development?*

Environmental Principles -- *Does the trade agreement take into account environmental principles such as the Precautionary Principle and the Polluter Pays Principle?*

Trade Measures:

Import Restrictions -- *Does the trade agreement include provisions specifying when import restrictions may be used to ensure compliance with domestic product standards and domestic process standards?*

Export Restrictions -- *Does the trade agreement include provisions specifying when export restrictions may be used? What are these rules, e.g. can export restrictions be used for the conservation of natural resources or in short supply situations?*

Environmental Agreements -- *Does the trade agreement have provisions relating to trade measures linked to environmental agreements? How is an environmental agreement defined?*

Exceptions -- *Does the trade agreement include specific exceptions to its general rules for trade measures taken to protect the environment? What are the criteria for judging the legality of an exception?*

Environmental Policy Instruments

Product Standards -- *Does the trade agreement have provisions regarding the harmonization of environmental product standards? How is greater harmonization to be achieved, e.g. through mutual recognition, equivalency, international standards? Are international standards recommended as a ceiling or floor to national standards? How is the legitimacy of national standards to be judged in terms of scientific evidence and risk management?*

Environmental Subsidies -- *Does the trade agreement have provisions specifying when government assistance may be given to the private sector to achieve environmental objectives? What are these provisions, e.g. when are these subsidies actionable or subject to countervailing measures?*

Economic Instruments -- *Does the trade agreement have provisions specifying when border tax adjustments may be used to correspond to domestic environmental taxes and charges? What are the provisions regarding adjustments to domestic taxes on products, processes and inputs to processes?*

Voluntary Programmes -- *Does the trade agreement specify how voluntary government-industry agreements or other voluntary programmes such as eco-labelling are to be treated under its provisions?*

Other Policies:

Foreign Investment -- *Does the trade agreement have provisions relating to trade-related investment measures or TRIMs which might have implications for environmental policy? Does it have provisions relating to environmental policies and foreign investment?*

Intellectual Property Rights -- *Does the trade agreement have provisions relating to trade-related intellectual property rights or TRIPs which might have implications for environmental policy? What are the provisions or exceptions relating to intellectual property protection for environmental assets?*

Services -- *Does the trade agreement have provisions relating to trade in services which might have implications for environmental policy? What are the provisions relating to trade in environmental services and/or trade in services with environmental impacts?*

Procedures:

Notification -- *Does the trade agreement have provisions requiring notification of environmental measures with trade implications? What is the scope and timing of the notification requirements?*

Sub-National Entities -- *Does the trade agreement specify how the environmental laws and regulations of subnational entities are to be treated under its provisions?*

Dispute Settlement -- *Does the trade agreement have mechanisms for dispute settlement? Are there any special provisions for the consideration of environment-related trade disputes? What are the provisions regarding the choice of forum, burden of proof, transparency and consultation with non-governmental groups, or consideration of scientific and environmental expertise?*

Enforcement -- *Does the trade agreement have provisions relating to the enforcement of environmental regulations and standards?*

Policy Responses -- *Are changes to the trade agreement needed to ensure that governments have the ability to enact and implement appropriate and effective environmental policies? Are complementary policies or changes to environmental policies needed?*

TRADE REVIEWS OF ENVIRONMENTAL POLICIES AND AGREEMENTS

INTRODUCTION

At its June 1993 meeting at Ministerial level the OECD Council recommended that Member governments "*examine or review trade and environmental policies and agreements with potentially significant effects on the other policy area early in their development to assess the implications for the other policy area and to identify alternative policy options for addressing concerns*". It further recommended that governments "*follow up as appropriate: to implement policy options; to re-examine the policies, agreements and any measures in place; and to address any concerns identified in the conclusion of such re-examinations*".

In general, both trade and environmental examinations and reviews would be meant to identify the potential positive and negative implications for the other policy area and to highlight policy approaches for enhancing the contribution of trade and environmental policies and agreements to the goal of sustainable development. In the case of trade examinations, reviews and follow-up of environmental policies, the main objectives¹ could be perceived as including:

- Greater transparency in, and better understanding of, the various environmental policies and practices. This is not meant, however, to include criticism of the objective of the policy under review.
- An early appreciation and evaluation of individual environmental policies and practices and their impact on trade and the economy in general, as well as their implications for trade and economic policies. Such appreciations should take into account the wider economic, environment and development needs, policies and objectives of each country.
- An appreciation of the impact of those policies on the functioning of the multilateral trading system.
- As a result of the above mentioned, achieving improved adherence to applicable trade rules, disciplines and commitments, or, as the case may be, to reveal the need for an adjustment of this regulatory framework to observed needs and circumstances. The decision over the most appropriate actions to be taken is a national prerogative.

The ultimate goal of trade examinations, reviews and follow-up of environmental policies would be to ensure the achievement of environmental objectives in ways that minimise undesirable trade effects, by identifying, if necessary, less trade restrictive options that would equally satisfy the environmental objective. If this goal cannot be satisfactorily attained, trade examinations, reviews and follow-up would furthermore provide a basis for the elaboration of appropriate complementary mechanisms, in order to address at best the environmental and trade concerns identified.

REVIEW PROCEDURES

Selection

Preliminary Screening

The first issue to be addressed before launching examinations and reviews is the selection of policies and agreements which would be subject to such reviews. The conduct of reviews will not only require a certain amount of time and of financial and human resources, but may also raise operating difficulties. Thus, for reasons of feasibility and economic efficiency, and given the limited resources available for conducting reviews, it is important to launch such reviews in a selective way, when they are useful and warranted, and not for each and every environmental policy. In fact, there are environmental policies or agreements which have no trade implications, or whose implications are negligible. **A preliminary screening** of the whole range of environmental policies and agreements would thus be needed, in order to select the relevant policies and agreements.

By its very nature the pre-screening stage has to be easy to use and quick to perform. Its main aim would be to avoid congesting the main reviews procedure. It should on the other hand avoid over-simplification in order to preserve the credibility of its findings. In some cases a "threshold test" could be used to determine environmental policies and agreements with potentially significant effects on the other policy area. Such a test would be limited at this stage to a first-glance evaluation : it should be appropriately selective so as to exclude instruments and policies with minor or no implications but without entering into the detailed analysis used to confirm anticipated implications in the framework of the review.

General Criteria

The following criteria could be considered in identifying the **types** of policies or agreements to be reviewed :

Does the agreement or policy contain specific provisions related to trade or traded products ? While environmental policies or agreements that do not have such provisions can impact trade indirectly, many do not. A policy that contains express provisions relating to trade or traded products, such as specific requirements with respect to border measures, is more likely to have a significant trade impact.

Is the agreement or policy discriminatory on its face ? Discriminatory policies are more likely to have an important interference with the system of trade rules (regulatory implications) than are non-discriminatory policies. They are also more likely to cause trade distortions.

Does the agreement or policy address environmental problems beyond the jurisdiction of the country or countries enacting the policy or adopting the agreement? While purely domestic regulations can have a significant impact on trade, policies with extra-jurisdictional effects (namely those addressing transboundary, regional and global commons considerations) are more likely to have such an impact. In the case of environmental problems affecting several countries, the extent to which other affected countries recognise the necessity for environmental action or approve the choice of action means can furthermore indicate whether trade concerns are likely to be raised.

Does the policy or agreement address a broad category of economic activity, or is it narrowly tailored to address a very specific problem? Major regulations affecting substantial sectors of the economy or significant trade flows are more likely to cause trade impacts than very focused ones. However, very specific economic sectors may have interlinkages with the rest of the economy in the concerned country and entail quite important consequences.

Implications for Trade

The selection implies furthermore to determine the criteria for identifying environmental policies and agreements having **significant implications for trade and trade policy**, so as to warrant conducting a review. Effects which are "potentially significant" may be defined in accordance with the environmental and economic **endowments and priorities** prevailing in the country conducting the review. Accordingly, certain environmental policy areas may call for more important and comprehensive action, and thus be more relevant than others with a view to a trade review. They may also relate to products, sectors or regions of particular importance for the economy and general welfare of the country or countries concerned. For instance, potential effects on fishing products might be presumed highly significant for a country whose economy is heavily depending on exports of such products. Potential effects may furthermore vary according to the economic situation of the countries concerned. The very same policy might have negligible effects on an industrialised country, and at the same time seriously affect a developing country.

Types of Instruments

The **trade relevance** of the environmental policies or agreements can also provide useful insight into the nature and level of potential trade implications. **This criterion relates to the types of trade and other instruments used in the framework of the policies or agreements under consideration.** Certain types of instruments used for environmental purposes may be more likely than others to warrant a careful examination because of their nature and weight within the multilateral trading system, as well as their degree of market conformity. Such instruments may include **Regulatory Instruments**, such as :

Product or Process Restrictions or Bans -- Restrictions or bans can be imposed on the production, circulation or use of certain hazardous products or substances, of scarce resources, or of endangered species. Similarly restrictions or bans can be applied to production processes having negative environmental consequences. Trade policy instruments, such as import and export restrictions or bans, will often be introduced as a complement to domestic regulations.

Technical Regulations -- Technical regulations set by government authorities on products and processes, or more broadly economic activities, include design standards and technical regulations, including packaging and recycling requirements, testing and monitoring standards and technical regulations, as well as performance standards and technical regulations such as emission and ambient norms.

Resource Use Quotas -- Quotas are fixed by governments for the use of renewable natural resources or the amount of emissions of production activities, in order to conserve those resources and limit their exploitation, limit pollution and share the burden of pollution prevention among industries.

Economic Instruments, such as :

Environmental Taxes and Charges -- Environmental taxes and charges include emission charges, applied on the discharge of pollutants into air, water, soil and on the generation of noise (including user charges and disposal charges) and product charges, applied to polluting products and levied at the stage of production, consumption or disposal.

Environmental Subsidies -- Environmental subsidies include various forms of financial assistance (grants, soft loans, tax allowances) used as an incentive for altering environmental behaviour or given to firms to help them comply with imposed standards.²

Deposit-Refund Systems -- Deposits paid on a potentially polluting product and refunded when the product is returned are used to internalise the costs of disposal, attain a given rate of recycling and reward good environmental behaviour.

Or **Voluntary Schemes**, such as :

Eco-labelling Schemes -- Environmental labelling is used to inform consumers about the availability of environmentally friendly goods and help them select these goods, as well as to offer a market incentive to manufacturers willing to satisfy the demand for such goods.

It should be noted that the criteria determining the types of policies and agreements which should be subject to review and to follow-up activities are a national matter, although some degree of harmonisation might be useful. A shared approach with respect to the focus of the review is likely to confer greater credibility to the review conclusions. Furthermore, it is essential to develop ways for taking into account the concerns of third countries, which claim specific environmental policies have a trade impact on them, not only in the framework of co-operative review procedures, but also during the conduct of national reviews, examinations and follow-up.

Scope

The nature and timing of examinations and reviews, as well as the level and depth of analysis and documentation may differ according to the type of environmental policy or agreement in question and according to different legal or administrative structures of the country conducting the review. The following considerations are only meant as indications for the formulation of national methodologies, adapted to the specific needs and circumstances prevailing in each country.

To date no OECD countries have specific provisions for trade reviews of environmental policies or agreements. However, policy development or parliamentary control procedures in several countries already provide for some level of assessment of policy proposals. This assessment may take the form of more general economic reviews or regulatory impact assessments, undertaken by standing advisory teams to policy makers, or through the institution of ad hoc interdepartmental committees.

General economic reviews often investigate the implications of environmental policies on trade and competitiveness, and, in particular, the consequences on domestic industry of differing policies across different countries. Research covers both the operation of individual measures at the microeconomic level and their likely impact on the operation of the economy in general. Regulatory assessments are undertaken

periodically by interested ministries in order to make regulatory programs more effective, less burdensome and in greater alignment with overall governmental priorities.

Trade reviews of environmental policies or agreements could thus be performed in the framework of such general economic or regulatory reviews, or undertaken independently but along the line of existing assessment mechanisms. In case of environmental policies or agreements affecting several countries, concerned countries may decide to establish co-operative procedures for conducting reviews in a bilateral or multilateral framework.

The level of generality or specificity of the review will depend on the scope of the environmental policy or agreement under review, to account for factors such as the number and type of environmental issues addressed by the policy or agreement, or the economic sectors or trading partners affected. The review of a global policy should be tackled in a more extensive and detailed way than the review of an individual policy measure. In particular, the introduction of broad policy approaches to new environmental challenges would warrant particularly thorough reviews. Likewise, the breadth and depth of analysis may vary as a function of the significance, nature and level of anticipated trade implications of the environmental policy or agreement under review. Important and extensive implications could warrant formal, broad and in depth reviews, while more limited implications could be satisfactorily analysed through less formal and extensive examinations. The outcome itself could vary from brief statements to complete assessment overviews.

In the framework of a limited examination, the analysis of the whole set of questions enumerated in the Checklist would amount in an unduly burdensome procedure. A limited set of questions should rather be selected, depending on the type of policy or policy measures analysed. Concerned countries may wish to specify in advance the sets of questions which would be appropriate for specific types of policies or policy measures, or, on the contrary, adopt a more flexible approach, allowing them to structure the review on a case by case basis. In the latter case, the development of general guidelines for different categories of cases might be usefully developed in order to confer transparency and predictability to the review.

Timing

As a general rule, trade reviews of environmental policies and agreements should be undertaken as early in the policy-making process as possible, in order to allow for all the issues or concerns raised in the course of policy development or negotiations to be addressed. This will also give a better opportunity for taking into account the findings of the reviews on eventual policy implications and integrating the conclusions and suggestions into the policy to be adopted.

This is particularly true with respect to domestic policy-making: later stages in the policy-making process, especially at the parliamentary level, become formal and rigid; if later stages entail complex and burdensome procedures, the feasibility of any amendments might be severely compromised. On the other hand, the aims, structure and terms of domestic environmental policies are usually easier to circumscribe at an early stage, thus quickly allowing for a consideration of potential effects.

Trade reviews of environmental agreements, whether they are performed at the domestic level, or in the framework of co-operative procedures involving the countries concerned, can however be more difficult to undertake at a very early stage. In fact, at the beginning of the negotiation process there is a less clear idea of what may actually emerge in terms of a final policy or agreement. Although the general objectives of the agreement can be fairly clearly defined even before launching the negotiations, the proposed policy directions and measures used to achieve such objectives may not be determined until a later

stage of the negotiations. It is important that the review takes place after the main features of the agreement have been established to enable a better estimation of their potential trade implications, but at a stage when eventual concerns can still be addressed.

According to the type of environmental policy or agreement under review, as well as of anticipated implications, **an updating of the review may be warranted as the policy-making process proceeds**. Furthermore, subsequent, follow-up reviews may be needed periodically after the implementation of the policy or the agreement. Short-term and long-term implications are in fact not always easy to identify, so as to elaborate specific remedies and policy adjustments to match them. In addition, changes in the prevailing economic or environmental circumstances may raise new concerns, obviate concerns raised in the past, or reduce the relevance or appropriateness of previous policy responses. Follow-up reviews would thus allow an assessment of the evolution of the policy or the agreement and of their effects on a longer time horizon. A continuous review process could also be envisaged under certain circumstances, notably when progressive effects on economic activities are expected.

The level of specificity of the analysis could vary depending on the timing of the review. In case of a periodical or continuous review process, follow-up reviews could warrant a limited analysis compared to the complete and detailed initial one. Subsequent reviews might focus essentially on the policy areas or implications which raised major concerns in the framework of the initial review. However, any limitation of scope should not preclude the examination of new impacts arising in the course of the policy implementation.

Participants

The participants and extent of their participation in the review process will vary with the type of environmental policy or agreement and the country or countries concerned. Participants in the review process include national government officials, private sector representatives, and trading partners of the concerned country. However, **the prime responsibility for conducting trade reviews of environmental policies or agreements rests with government officials**, whether such reviews are undertaken at the national level during and following the development and implementation by governments of their national policies and international engagements, or on the basis of co-operative procedures among several concerned countries.

Trade reviews should be carried out **by government officials representing the various policy areas directly or indirectly concerned by the policy-making process**. This means not only that both trade officials and environmental officials should participate, but also that representatives of other policy areas likely to be affected, such as agriculture, industry, energy, labour, finance, investment or competition policy, should be actively involved. Moreover, other concerned levels of administration, including local administrations, or sub-national governments in the case of federal states, may also be involved. It is important, however, that the department or agency bearing the main regulatory responsibility for a given project remain clearly identified. Co-ordination within the government will largely depend on the allocation of competences between government sectors in the framework of the constitutional structure of each country.

Reviews should moreover ensure transparency and public participation, as early in the process as possible, allowing for private sector expertise, interests and concerns to be taken into consideration. Private sector representatives, including representatives of concerned economic sectors, trade unions, environmentalists, or academics, can provide useful insight into the ins and outs of policies under review. Environmental groups and academics may further inform on the environmental sensitivities, rationale, and scientific basis underlying the policy under review.

On the other hand, representatives of affected economic sectors or trade unions can give concrete, firsthand opinions on immediate policy implications as they are felt by various sectors of activity. This can be particularly true for eventual competitiveness effects. For this reason, it may be useful, depending on each country's political, legislative and administrative practice, to provide to private sector interest groups or associations the possibility to request the launching of a trade review if they can illustrate potential impact of an environmental policy on their sector of activities. Although private sector claims would essentially bear on existing policies and thus only be on the basis of reviews "a posteriori", their relevance should not be underestimated. In practice, government officials usually endeavour to substantiate or dismiss domestic industry claims by verifying trade flows and prices and to take appropriate policy actions according to the conclusions of their overview.

As is the case with governmental co-ordination, processes for consultation with interested private-sector representatives will differ according to national political and legal practices and cultures. The views of affected parties can be accommodated through the normal processes of government. Such processes might include representation to formal advisory committees providing regular input to the policy-making process, or ad-hoc consultations in the framework of a review. Particular procedures may be warranted for non governmental input to negotiation processes, where confidentiality is often required.

In the framework of trade reviews of environmental policies and agreements, it is very important to **incorporate the concerns of the country's trading partners, including third countries or private interests outside the country's jurisdiction**. As it has been noted above, third countries should be given the opportunity to share their concerns about potential negative effects of a domestic policy on their economy and trade. In cases where national environmental policies may have trade impacts on those countries, ways should be devised to accommodate to the extent possible their interests and concerns (including existing mechanisms such as the consultation and notification procedures of the GATT TBT or SPS Agreements). Converging and coherent action in the framework of reviews can increase the credibility of any conclusions or policy suggestions adopted by concerned governments.

Reviews of environmental agreements can be carried out nationally by each party to the agreement in consultation with other affected parties, or in a co-operative procedure in a multilateral framework. Given that trade implications are, by definition, not limited within a single country, this option is likely to ensure a better integration of the concerns of all interested parties, even if it may prove more difficult or burdensome to carry out successfully. International co-ordination in conducting reviews, whether in a national or a multilateral framework, may act as dispute prevention by limiting the need for resorting to dispute settlement procedures, unless concerned countries cannot agree on the conclusions to draw from the review.

Methodologies

Appropriate methodologies for conducting trade reviews of environmental policies and agreements may vary according to the types of policies and agreements under review and their anticipated effects. They may involve on the one hand **economic assessments** based on supply-demand analysis and cost-benefit analysis. They may include on the other hand **regulatory assessments** based on legal analysis of the relationship between the proposed policy instruments and the applicable international trade agreements and trade rules in general. The possibility for **parallel assessments** performed by representatives of different policy areas and highlighting different points of view could also be envisaged.

With respect to methodologies for reviews, **useful indications and analogies could be drawn from existing mechanisms within the GATT system**, including various notification requirements, or the Trade Policy Review Mechanism (TPRM). Those mechanisms are not specifically focused on

environmental policies or agreements but deal with the full range of trade policies and practices of GATT contracting parties.

According to the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (GATT BISD 26S/210), GATT contracting parties undertake to the extent possible to notify, preferably in advance, their adoption of trade measures affecting the operation of the General Agreement. In this framework, the GATT Trade Policy Review Mechanism was established in 1989 to enable the regular collective appreciation and evaluation of the individual contracting parties' trade policies and practices. The GATT Council discusses a complete report submitted periodically by each contracting party on its trade policies and practices and supplemented by a GATT Secretariat report, or brief reports introducing significant changes in policies. According to their agreed structure, these reports give an overview of the economic environment of the reviewed country, of the framework and objectives of its general trade policy, as well as of the trade policies and practices by measure and by sector.

The Agreement on Technical Barriers to Trade, as it has been amended in the framework of the Uruguay Round negotiations, provides (art.2.9) that Member countries adopting technical regulations which are not based on existing international standards and which may have a significant effect on trade of other Members inform in advance other Members thereof, allow reasonable time for comments and endeavour to take such comments into account. It furthermore provides (art.2.5) that Members shall, upon request of other Members, explain the justification of technical regulations which may have significant effects on trade of those Members. Enquiry points instituted by each Member provide any information required on technical regulations, standards, or conformity assessment procedures adopted or proposed within the Member's territory, or on international arrangements within the scope of the TBT Agreements to which the Member participates (art.10).

Monitoring and Follow-up

After the conclusion of a trade review it is essential to follow-up in order to ensure that the conclusions and policy suggestions of the review are satisfactorily taken into account in the environmental decision-making process. Furthermore, as soon as the environmental policies or agreements which have been subject to review are enacted, it is important to monitor whether policy options are correctly implemented, and whether enacted policies do not raise trade implications which were not anticipated. The type and scope of reviewed policies, the number and importance of affected economic sectors, as well as the nature and level of ascertained implications, will determine procedures for such monitoring and follow-up.

The ways for integrating review conclusions into the decision-making and implementation process could include a) **the modification of some aspects of the reviewed policy or agreement**, namely by adopting alternative policy options with a higher degree of compatibility to trade policy requirements; b) **the modification of some aspects of existing trade policies** which cannot be satisfied without severely compromising important objectives of the environmental policy or agreement under review; or c) **the inclusion of complementary provisions** with a view to counterbalance unavoidable negative trade implications. Such complementary provisions would mainly aim at enhancing the efficiency of the environmental policy in ways which do not unduly burden trade. They might, inter alia, include financial and technical assistance to developing countries or financial support to promote the implementation of new and costly environmental requirements, to the extent they are authorised under the Subsidies Code.

TRADE EFFECTS

The impact of environmental instruments or policies, both direct and indirect, has to be assessed to determine whether or not they can be a source of trade distortion. However, indirect effects are more difficult to ascertain, in particular since they may have other more important causes, and whether they are significant or not will often be based on subjective judgements. The way and degree to which policies are implemented is also an important factor that must be given due consideration.

On the other hand, the review of any regulatory, economic and trade instruments used in environmental policies should also include evaluation of their environmental effectiveness, framed in terms of performance standards. Evaluation of particular trade and trade-related instruments should also include consideration of the extent to which they may lead to inadvertent, undesirable environmental effects, e.g. by shifting production to processes or products that generate other pollutants ("cross-pollutant shift") or that pollute other environmental media ("cross-media shift").

In order to better understand the environmental policies under review, it is useful to get a grasp of the underlying environmental problems and the intent of the drafters, as well as to assess the potential evolution of these policies on a longer time horizon. Such procedures are however not intended to pronounce on the environmental justification of the measures under review.

In general, **trade and environmental aims should be sufficiently taken into account, so that both trade and environmental considerations can be satisfied to the maximum extent possible when elaborating policies.** For instance, when assessing whether a measure is not more trade restrictive than necessary, the goal of environmental optimality should not be ignored. It belongs to each country to set its own environmental priorities and to establish the appropriate balance between those priorities and other economic considerations. However care should be taken when applying trade policy criteria not to result in the application of less effective environmental policy alternatives.

Trade and Economic Implications

Overall economic implications refer to the anticipated broad and sectoral economic effects of regulatory, economic or trade instruments being applied. Direct trade implications refer to the impact on trade flows and economic activities depending on trade flows, as well as to the effects on trading partners, including trade with developing countries and market access issues.

Indirect trade implications refer to the impact on trade-related aspects of business climate, such as investment conditions, or intellectual property rights protection. They further refer to competitiveness effects and the extent to which any given instrument may encourage or discourage competitive markets (by affecting market concentration, incentives for product or process innovation, or incentives to reduce costs). Competitiveness considerations include changes in industry production and operating costs and changes in market behaviour³.

Regulatory Implications

Regulatory implications refer to the interference of the environmental policies and agreements under review with the existing national trade policies and international obligations, as well as to their compatibility with international trade rules and principles in the framework of the GATT, or of any relevant

regional trade agreements. Trade-related environmental policy proposals need to be examined against treaty obligations. Reviews cannot authorise unilateral changes to policies agreed at international level, but may give rise to a renegotiation and revision of such policies multilaterally.

CHECKLISTS

Preliminary Screening (for the selection of policies and agreements to be reviewed)

**Does the policy or agreement contain specific provisions related to trade or traded products?
Does the policy affect traded products?**

What are the types of trade or trade-related instruments (e.g. regulatory instruments, economic instruments) used in the framework of the policy or agreement under review?

Are the environmental requirements of the policy or the agreement product-related? In case of process-related requirements, do they have an effect on the characteristics of the product or not?

Is the policy or agreement discriminatory on its face?

Is the policy or agreement applied equally and consistently to like products, whatever their country of origin?

Are prohibitions, controls or formalities imposed by environmental measures on foreign goods at the point of entry or in their marketing similarly imposed on domestic products?

Do the measures required or authorised by relevant IEAs apply differential treatment to non-parties?

Does the policy or agreement address environmental problems beyond the jurisdiction of the country or countries enacting the policy or adopting the agreement ?

What type of environmental problems or environmental impacts (e.g. pollution, degradation of renewable and non-renewable resources, conservation and management of living resources, animal welfare) does the envisaged policy or agreement address?

What is the potential geographical application (e.g. national, transboundary, global) of the policy or agreement?

To what extent is it feasible and justifiable to harmonise the environmental requirements with respect to the problem addressed?

Does the policy or agreement address a broad category of economic activity, or is it narrowly tailored to address a very specific problem?

What is the magnitude of the environmental impact and the urgency for action?

What is the importance of the products, or sectors that may be affected by the environmental policy or agreement for the economy of the concerned country?

Trade and Economic Implications

What are the likely effects on trade flows of the envisaged measures? Do the measures create trade distortions?

What volume or value of trade may be affected by the measures?

What effects may the measures have on trading partners, particularly on less developed countries?

How may the envisaged measures affect access of foreign products to domestic markets?

Might the environmental policy or agreement have the effect of increasing or decreasing investment in specific products, sectors, or regions (i.e. causing a relocation of production)?

To what extent may the environmental policy or agreement have the effect of encouraging or discouraging competitiveness in specific markets, or industrial sectors? What changes may such policies or agreements bring to industrial production, to operating costs or to market behaviour?

Regulatory Implications

Are the transboundary or global environmental problems addressed: i) through international co-operation, ii) through the negotiation, or iii) through the implementation of international environmental agreements among countries concerned?

What is the basis for taking trade measures to address the transboundary or global environmental problems? (e.g. exclusively national decision, or action based on requirements, or policy suggestions in the framework of an IEA, or on general principles of international law)

Are the envisaged measures based on scientific evidence? How do the various alternatives address valid differences of view regarding the science upon which the policy measure is based?

Are the envisaged measures based on ethical, value or cultural preferences which may not be shared universally?

Are all concerned countries given full opportunity to participate in the negotiation and implementation of relevant IEAs or to join such IEAs at a later stage?

Non-Discrimination (MFN) -- *Does the envisaged policy or agreement discriminate among countries, and if so, how and why?*

Is the policy or agreement applied equally and consistently to like products, whatever their country of origin?

Might treatment between foreign suppliers which is non-discriminatory on its face have nonetheless discriminatory effects?

Do the measures required or authorised by relevant IEAs apply differential treatment to non-parties? Would the absence of differential treatment undermine the objectives of the agreement? Have eventual reasons for not joining the IEA (such as different environmental endowments, differing evaluation of the national cost-benefit balance and of science and risk assessments, or differing environmental policy priorities) been taken into account?

Non-Discrimination (National Treatment) -- *Are prohibitions, controls or formalities imposed by environmental measures on foreign goods at the point of entry or in their marketing similarly imposed on domestic products?*

Might treatment of foreign suppliers which is non-discriminatory on its face have nonetheless discriminatory effects?

Necessity -- *Does the scope of the envisaged measure go beyond what is necessary to achieve the goals of the environmental policy? (e.g. by affecting a wider range of products than required to address the environmental problem, or by introducing trade prohibitions when a surveillance mechanism would be sufficient)*

Are there equally effective environmental measures which would restrict trade less ?

Are there ways for reducing or minimising any trade distortions or other negative trade effects, in consistency with the achievement of environmental objectives?

Are the measures implemented in a way which avoids undue administrative complexities or disguised import/export restraints, such as time-consuming or costly border procedures, or excessive and costly information generating requirements?

Complementarity -- *How do envisaged trade measures relate to domestic environmental protection measures?*

Is the aim and effect of the envisaged trade measures on foreign suppliers or buyers comparable to those of the domestic instruments?

Alternative Policy Options

Are the envisaged measures the first best solution, or are there more effective alternatives available to achieve the environmental objective?

If there are alternative measures (including trade measures) available, how and to what extent would they lead to the achievement of the environmental objectives?

How do the various alternatives take account of differences in environmental circumstances, differing approaches to the environmental problems, or the ability to adopt and implement environmental requirements?

Are there any positive approaches to encourage widespread adoption of environmental commitments in IEAs, including taking account the particular concerns of developing countries and facilitating their participation through technical and financial assistance and providing flexible implementation?

Monitoring

Identification and certification -- *How are the products to which the the envisaged measures apply to be identified? (e.g. through border inspection, or by means of a certification system based on mutual agreement among countries concerned)*

How does the importing country intend to control whether imported products conform to specific product or PPM requirements? How can the importing country face eventual circumventing actions? What is the cost of control for the importing country, the cost of certification for exporting country producers?

ENDNOTES

1. See, in particular the **Objectives** of the **GATT Trade Policy Review Mechanism** (Decision of 12 April 1989 arising from action taken by the Uruguay Round Trade Negotiations Committee, L/6489, BISD 36S/61)
2. It should be noted that environmental countervailing duties have been sometimes proposed in order to eliminate the alleged competitive advantage of imports produced in countries with lower and less expensive environmental standards. They have never been imposed to date and they are not compatible with applicable trade rules.
3. See, in particular OECD (1993), **Environmental Policies and Industrial Competitiveness**.