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Certification and Trade Policy Strategic Assessment

February, 2004

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Note to the Public Version

This public version of the Certification and Trade Policy Strategic Assessment has been edited by the ISEAL Alliance. The text has been modified to exclude analytical, sensitive information and recommendations that inform the strategic direction taken by the ISEAL Alliance. This version presents a primarily factual overview of the actors and initiatives that are influencing voluntary standards and certification.

Acknowledgements and disclaimer

The authors want to thank ISEAL for entrusting us with this analysis. We want also to express our gratitude to those who have provided comments on prior drafts of this report, particularly, Patrick Mallet, Tom Rotherham, Diane Bowen, Chris Wunderlich, Mar Campins Eritja, and Xavier Fernández Pons.

The opinions expressed in this report are the authors' and do not necessarily represent the view or position of ISEAL, its members, or any other organization. Any mistakes are our own.

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Introduction

Voluntary environmental and social standards and the related certification and labeling systems are increasingly becoming requirements for access to certain markets. Inspired by the failure of intergovernmental processes of the late '90s to ensure biodiversity integrity and the respect of social and human rights, non-governmental organizations (NGOs) gave new impetus to existing systems and created new ones. They tapped on the creation of multi-stakeholder alliances and they expanded concepts of corporate environmental and social responsibility as tools for trade and sustainable development.

This success has prompted the proliferation of a broad array of certification and labeling systems, originated or supported by the private sector (i.e., multinational corporations and professional associations) and governmental initiatives in developed and developing countries.. Government officials and some producers have expressed fears about growing confusion in the market place, as well as about the effects of non-tariff mechanisms such as environmental labels on the market access and competitiveness of developing countries, particularly if the labeling programs have been developed without their proper participation (OECD 2001, 2002a; UNCTAD 2002).

However, the growing recognition of the positive effects of the voluntary environmental and ethical certification and labeling systems (ECL¹), and the great potential of the new markets opened by these tools are changing the views and positions of many original opponents. And to tap into these markets, government- and private sector-led initiatives are increasing the trend towards lowering current standards, making them compatible with current producers' practices (i.e. keeping the status quo even if it is not sustainable), and fueling the creation of local/national systems. This trend is particularly notable in the forest and coffee sectors.

From Rio through Johannesburg to Cancun, the panorama of the international trade and sustainable development debate has dramatically changed, offering new opportunities as well as threats to the existence and future of voluntary labeling.

ECL has evolved (and will continue to evolve) in the dual context of market competition and the international legal framework. ECL systems have to face the competition of initiatives that try to build on the momentum and credibility of the ECL movement, while offering cheaper and less requiring alternatives, and to comply with international law as well as the legislation of the country (or countries) in which they operate.

The competition in the ECL context is more than the one that can exist between two companies selling similar products and where the one more appealing to its clients ends up by winning a bigger market share. This dimension obviously exists as well, but is complicated by the fact that:

- ECL uses communication to the consumers as its main selling product, and that proliferation of labels means diminished credibility for all labels. This would suggest that ideally there is a place only for one ECL label by sector and theme,

¹ The term ethical certification and labeling (ECL) is used as a chapeau for all voluntary environmental and/or social certification and labeling systems, based on standards developed through multi-stakeholders processes aimed at demonstrating environmental and/or social behavior from certified companies. Examples of such initiatives include all ISEAL members.

- Most ECL systems have an impact on access of goods of developing countries into developed country markets, themes that are central to trade negotiators. This increases the role that the competition plays, possibly to a larger extent than in other fields, on government regulations and intervention.

Without the legal dimension, the “game” would be rather simple: the most attractive to its clients in the market place would end up winning the biggest market share. Within the ECL context, the winner will be the one that best harnesses the legal dimension, while offering a decent product. Thus, it is the opinion of the authors that the whole discussion is framed by the legal trade context, particularly the one defined by the World Trade Organization (WTO). The implication of this is not, however, that the international trade regime should be the only concern of ISEAL. Far from this: as explained in the report, the work carried out in other fora can have an enormous impact on ECL through the trade rules.

Among the ECL competitors, ISO is a case apart. ISO produces standards, some of which could be presented as ECL, e.g. ISO 14001. Actually, they *are* presented as such by some parties. This will become particularly true if ISO develops a standard on Corporate Social Responsibility (CSR), as explained in more detail in the chapter on ISO and conformity assessment. But international standards, and ISO in particular are highly considered in WTO, thus making *de facto* ISO both a regulator and a competitor for rigorous ECL.

The structure of this study attempts to reflect this hierarchy and is laid out as follows. It begins with a discussion of key trade-related trends and the positioning of major actors in the context of the WTO negotiations. The chapter's analysis of the present geopolitical setting is followed by an overview of the fundamental technical and substantive issues relating to global commerce and ECL that will continue to be a challenge to ISEAL members regardless of the outcomes relating to the immediate trade policy negotiations. In Chapter 2, we traverse the landscape of issues relating to ISO and conformity assessment, and in Chapter 3 we evaluate numerous emerging ECL initiatives that have both direct and indirect implications for ISEAL and its members. One field of research that has been added to the original terms of reference for this report is presented in Chapter 4, under the title “Other Intergovernmental or NGO-Led Initiatives Relating to ISEAL’s Work”.

I. Trade-Related Issues and ECL

A. *The Evolving Political Context*

From Seattle to Cancun through the Doha Development Agenda (DDA)

The Ministerial process at the WTO has focused on a rapid and expanding trade liberalization agenda. Seattle (1999) collapsed due to problems regarding the lack of transparency, participation and governance within the WTO. But the crisis was certainly re-framed by the economic slow down after September 11, 2000. Doha (2001) gave a new impetus to negotiations, so that the world economic recovery could be facilitated and therefore development to proceed. The DDA was agreed to and applauded by officials.

At the World Summit for Sustainable Development (WSSD) in Johannesburg in 2002, measures were agreed to that promote sustainable globalization. Governments reemphasized and supported the commitments made by governments with DDA and the Monterrey consensus on investment. The Johannesburg Plan of Implementation contains actions to make international trade supportive of sustainable development from the social, environmental and economic points of view and in support of DDA and the Monterrey consensus.

In Doha, developing members agreed to launch discussions on the modalities of new issues such as investments, government procurement, competition policy, and trade facilitation (collectively known as the Singapore Issues, due to the Ministerial location where these issues were first tabled). The Singapore Issues are central to developed countries' trade negotiation agenda.

From Doha to Cancun, developing country delegations did not perceive any progress on the different discussions mandated by the DDA. The pre-Cancun process was riddled with missed DDA deadlines, many of which have still not yet been met. During the lead up to Cancun, the tension grew because the core issues for developing countries, such as agriculture and subsidies, food security, implementation related issues and concerns, special and differential treatment, TRIPS and public health were not being given sufficient attention, while the key topics for developed countries, such as the Singapore issues were being strongly pushed by the EC and USA.

The Doha trade and environment agenda

The DDA gave to parties the specific mandate to undertake discussions on trade and environment matters, some of which are directly relevant to ECL, including:

Negotiating Item

- The relationship between Environmental Agreements MEAs and WTO
- Information exchange with MEAs and Observer Status for MEAs secretariats
- Liberalization of Environmental Goods and Services (EGSs)

Non-negotiating items

- CTE to **discuss and recommend future actions** on the effects of environmental measures on market access, the relevant provisions of trade related aspects of Intellectual Property Rights (IPRs), and **labeling requirements** for environmental

purposes, the **need for any clarification of the current rules and the desirability of negotiations.**

These provisions made their way to the DDA amidst suspicions regarding the true agenda of the EU plus Switzerland, Norway and Japan who pushed for their inclusion. From the developing countries' perspective, to include environment as part of the Doha Agenda was seen as a distraction from the key development priorities and as an opening for future restrictions to market access based on environmental objectives. The US and other GMO friendly countries were mainly concerned with any attempt to use labeling and the precautionary principle to further restrict imports and slow down the agricultural subsidies reform. Therefore, these countries opposed to their inclusion and tried to reduce the scope as much as possible (ICTSD and IISD 2003).

The result was a mandate limited to existing WTO rules and specific trade obligations within MEAs, without prejudicing the WTO rights of any Member not party to the MEAs, or add to or diminish their rights and obligations under WTO.

The mandated deadlines included the presentation of a CTE report at the Cancun Fifth Ministerial Conference, on the progress and recommendations on future actions including the desirability of negotiations on the non-negotiating items. It also mandated the conclusion of negotiations related to paragraph 31 by 1 January 2005 (see Box 2).

The preparatory process at the CTE, which will be discussed later in more detail, showed that the confrontation between developed and developing countries for advancing on their respective key development issues was not going to leave any room for the trade and environment discussion.

Cancun, and the world changed

The recent WTO Ministerial conference in September 2003 in Cancun was a disaster for international negotiations. It can be safely said that there is a pre- and a post-Cancun world.

Before the last Ministerial, the situation could have been immediately worrying for ECL initiatives, since environmental labeling (to which ECL can be broadly assimilated in term of trade) was a possible subject of negotiation. This would have had a direct impact on ISEAL and its members.

What are the implications of the Cancun failure?

Many think that WTO may have reached its limit in term of global negotiating platform. One commentator goes as far as to say that, if WTO has exhausted its possibilities, it is because the US has exhausted its ability to gain in this forum (Melendez 2003). In any case, the US has openly claimed that it will now focus its trade agenda on bi-lateral or regional fora. The EU has declared that it is in a "wait and see" mode but may follow the strategic direction that the USA has taken (Stillwell 2003). The G20 is fighting to keep its homogeneity in front of the US attempts to divide them. Some commentators think that the declaration by US trade diplomats that they would not hold trade talks with any G20 members was a determining factor in Colombia and Peru resigning from the G20 (Bridges weekly 2003). All this shamble has made many parties speak of the need to profoundly reform WTO, a reform that could be as dramatic as the one that led from GATT to WTO².

² The Sutherland Committee was established after Cancun by WTO to look at possible institutional reform.

In this situation, trade and the environment, and subsidiary topics will not likely be considered in the near future. Other topics, such as investments and agriculture, are much more important to parties (Stillwell 2003). This could be seen as good news for ECL initiatives, which can, at least for a while, go on with their business without having to be too much concerned about threats coming directly from the WTO. At least this gives some more time to address the issue of compliance with trade rules.

This is unfortunately where the good news stops. The bad news is:

- Possible negotiations would have occurred in places that, even if not very open to civil society participation, were at least identified (CTE or TBT committees). Now, work on ECL-related matters might still happen under the denomination of “working groups”, in an even less transparent manner (Stillwell 2003). WTO monitoring will still be needed, albeit not necessarily knowing what to monitor.
- The collapse of negotiations in Cancun does not change the fact that the Doha mandate is still alive: work may still happen in one or the other committee. The need to monitor them as well will not diminish.
- The issues related to environmental labeling and trade rules may be shifted to bi-lateral and regional negotiation processes. These are increasing in numbers³, and may come to less balanced results since the respective powers of negotiating countries may be less balanced. For example, the USA (as a main demander of bi-lateral discussions) may be better able to pressure one (often developing) country than a block of them.
- Over the last eight years, regional agreements have been closely aligned with WTO agreements, but now this is becoming less the case (Melendez 2003). Regional treaties can be more restrictive than generic WTO agreements. For example the second draft of the Free Trade Agreement of the Americas (FTAA) names ISO as international standardization body, while WTO only refers to international standards, without specifying which organizations can develop them⁴. There is thus a likelihood that regional or bilateral trade agreements could foster a more ECL hostile trade environment than would be achieved through WTO.
- There is a risk that WTO only becomes a formal process to endorse bi-lateral and regional agreements, thus extending possibly more restrictive measures from a regional to global recognition
- The three last bullets hint at a need to monitor each trade agreement in preparation, which could prove a daunting task.

³ Only concerning the American continent, the following can be mentioned, inter alia:

- The Free Trade Area of the Americas (FTAA). Still in negotiation
- Mercosur. The southern Cone Common Market
- The North American Free Trade Agreement (NAFTA), between Canada, USA and Mexico
- The EU - Mercosur Association Agreement
- The US - Chile Trade Agreement
- The US - Central America Free Trade Agreement
- The US - Colombia Trade Agreement (negotiation to be started soon)
- The US - Peru Trade Agreement. (negotiation to be started soon)

⁴ With the exception of the SPS agreement (see box XXX). The link with ISO is nevertheless strong in many WTO documents (e.g. TBT related ones).

A third aspect of the post-Cancùn world is that the issues that existed before have not disappeared and still need to be resolved (more on this below). However, besides the bi-lateral approach mentioned above, this situation may open the space for other institutions to solve them. This may create a possibility for a bigger role of Multilateral Environmental Agreements, and also could provide an opportunity for non-governmental organizations and ECL supporters. Conversely, it could represent a threat if they are not ready to jump in and the space is taken by business-dominated organizations (e.g. ISO).

The question of where the work will continue is important because it has direct strategic implications for ISEAL and its members. Broadly speaking there are three places where this could happen:

- Within the international trade regime:
 - WTO, either the CTE or the TBT committees (or working groups), a status quo situation
 - Regional or bi-lateral processes, with a greater risk of ECL hostile rules which could be “sanctified” by a weakened WTO
- The international trade regime is the subject of the second part of this chapter
- Within existing private processes such as ISO and business-driven CSR initiatives, theme of Chapters 2 and 3
 - Within a new structure to be defined and where talks could happen on a neutral ground.

A trend by intergovernmental organizations to develop sector-specific standards is important to mention in this context. This is explained in more details in Chapter 4. Intergovernmental organizations (e.g. UNCTAD, UNEP, OECD) are playing a key role in the pursuit of discussions and may influence where they will continue. These three different options will be explored further below, starting with the state of the trade negotiations. It should be kept in mind that the official position of governments, and other actors to a lesser extent, have been expressed in this forum, and whatever the direction talks on ECL and trade may take in the future, these positions are the point from which discussion will continue.

Lastly, it can be argued that the failure of the negotiation is due both to a better organization of developing countries, and a lack of flexibility from the EU and USA to accommodate their needs. One thing is clear: developing countries play an ever-increasing role in the making of international policy.

B. Trade Related Issues at Hand

This second part of the chapter follows the issue in relation to WTO, but, as noted above, regional and/or bi-lateral processes can have an important impact on the discussion. A detailed analysis of each falls outside the scope of this report.

WTO actually only speaks about environmental labeling, but many analysts think the decisions that could be taken regarding this type of labeling would similarly impact on all ECL. This is the position taken here.

There are basically two main issues relating to trade and ECL:

- The first is the relation between non-governmental voluntary initiatives and rules applying to governments and whether a distinction between products can be made based upon non products related production and processing methods (npr PPMs). The purpose of

this report is not to repeat what has already been said, we refer thus the readers to two publications that provide a good analysis of the issue: “The WTO and environmental and social standards, certification and labeling in Agriculture” (Dankers 2003) and “The State of Trade and Environment Law 2003 – Implications for Doha and beyond” (Mann and Porter 2003)

- The second issue pertains to labeling and market access, including the position of different actors (e.g., governments and NGOs), the emerging issue of the environmental goods and services and the government procurement policies.

Where could problems come from?

As explained below, the relation between ECL and trade rules is at best tinted by uncertainty. Under these circumstances, we recommend a precautionary approach towards these potential problems. While there are distinctions between the scope of work of the different ISEAL members, hence different levels of probability that trade-related problem will arise, all are here considered equal.

At first sight, and in the view of many practitioners, ECL systems, being private voluntary initiatives are not submitted to WTO rules. According to Chaytor and Dufey (2003), “Voluntary eco-labeling schemes may be covered by the provisions of the agreement on TBT dealing with standards, but only to the extent that the schemes could be said to have a governmental character. Thus eco-labeling schemes administrated by NGOs or other non-governmental entities do not fall within the scope of the TBT agreement. This creates an anomalous situation where only a minority of eco-labeling schemes (mandatory and government run) are regulated by WTO rules while the majority of such schemes (voluntary and private) are un-regulated.” However this interpretation has never been tested. The TBT does stipulate that governments “shall take such reasonable measures as may be available to them to ensure that [...] non-governmental standardizing bodies within their territories [...] accept and comply with [the] Code of Good Practice” for the Preparation, Adoption and Application of Standards in Annex 3 of the TBT agreement (Art. 4.1). The SPS agreement has a similar provision (Art. 13). Under the precautionary approach recommended above, it is thus preferable to assume that ECL is indeed submitted to WTO rules.

Whatever the solution to the issue mentioned above, whenever services or products certified under an ECL scheme enter a government procurement policy (for example the Dutch government deciding to buy only wooden products certified under FSC) the WTO Government Procurement Agreement comes into play. It is worth emphasizing that government procurement is an important mechanism to increase the visibility and market share of ECL products.

Non-discrimination between like products is one of the basic principles of the international trade regime. This is usually understood as precluding differences based on non-product related product and processing methods (npr PPM), i.e. processing methods that have theoretically no influence on the quality and fitness for use of products. For example, timber coming from a well-managed forest may not be physically different from one coming from unsustainable cuts.

It is important to note that the traditional anti npr PPM attitude of WTO and its dispute settlement mechanism is shifting towards a more balanced approach. The early anti PPM position, as characterized in the outcomes of the “Tuna-Dolphin” cases is gradually reversed as demonstrated by the rulings in the “Shrimp-Turtle” and “EC-Asbestos” cases. A thorough analysis of the development of the npr PPM issue in trade laws is provided in Mann and Porter

(2003). On the other hand, many countries, including developing ones, have strongly reaffirmed at Cancun their opposition to consider npr PPMs under WTO. Thus, it is far from certain that the evolution of WTO jurisprudence will continue to evolve in the same direction. It is safer to assume that the anti npr PPM attitude in the international trade regime will prevail. It is worth noting in this respect that the position of the different blocks is somewhat of a loose cannon. In the TBT context, the EU is basically pro-npr PPM, while developing countries deem it to be an excuse for protectionism. In the debate of environmental goods and services, the positions are more open: some developing countries see the differentiation of agricultural products on the basis of their production methods as a potential benefit for their products, including Colombia, Kenya and other African countries. Others see this as a threat to their agriculture and market access. The USA have had a shifting position on the issue, but seem to have currently adopted an anti-npr PPM attitude, possibly because of the pending dispute on GMOs (USA against EU), while the EU keeps supportive of npr PPMs. The topic is developed further below.

Text within the TBT gives some clues concerning the principles that underlie what can be considered an international standardization body. None of these seems very difficult to comply with, and we can only recommend that all ECL schemes within ISEAL follow these principles. Where sanitary or phytosanitary measures are concerned, the case is more difficult than with the TBT, because three organizations are specifically named as international standardization bodies. To the degree feasible, close collaboration with these three organizations is recommended, as a means of satisfying the coherence principle⁵.

Market access and labeling

At the Fourth WTO Ministerial Conference at Doha, Members agreed in Paragraph 32 (i) and (iii) of the Doha Ministerial Declaration to instruct the CTE, in pursuing work on all items on its agenda, to give particular attention to the effects of environmental measures and market access, as well as labeling requirements for environmental purposes. These are non-negotiating items of the Doha mandate, which implies that the outcome of these discussions should have been recommendations on:

- *Whether there is any need to clarify relevant WTO rules*
- *Future actions*
- *Desirability of negotiations*

While many environmental ministries, as well as NGOs and the private sector in developing countries, are developing, engaged in, or supporting labeling schemes, trade negotiators from the same countries often perceive ECL as purely a trade barrier. This contradictory situation means that WTO discussions can lead to very surprising and unpredictable results, an element to keep in mind while elaborating any trade related strategy.

Yet, no clear understanding exists on the extent to which non-governmental voluntary certification and labeling, in general, is governed by trade rules. Indeed as mentioned before, this has been one of the most debated topics of the whole existence of the CTE. To date

⁵ Cf TBT triennial review Annex 4:

12. In order to avoid the development of conflicting international standards, it is important that international standardizing bodies avoid duplication of, or overlap with, the work of other international standardizing bodies. In this respect, cooperation and coordination with other relevant international bodies is essential.

members remain far from agreement on how to address labeling issues at the CTE (ICTSD and IISD 2003)

From Doha to Cancun there were a number of CTE's meetings that discussed labeling and surrounding issues. The report presented to the Ministerial Conference is not conclusive and thus no recommendation was made, in breach with the Doha Mandate.

However, important aspects of the debate must be highlighted. CTE's official document reports "most members agreed that voluntary, participatory, market-based and transparent environmental labeling schemes were potentially efficient economic instruments in order to inform consumers about environmentally friendly products. As such they could help to move consumption on to a more sustainable footing". Moreover, "**they tend, generally to be less trade restrictive than other instruments**" (WTO CTE 2003). The preference for less trade restrictive measures to achieve a legitimate objectives being one of the key principles of the international trade regime, this statement could be taken as a growing international acceptance of ECL. Obviously, clarifying statements follow those statements that such schemes need to be non-discriminatory and not to result in unnecessary barrier to trade.

Key Issues

Key issues discussed included:

- For many, the core issue is one of market access and the effects of strong schemes. Concerns were expressed that strong eco-labeling schemes could prove a barrier to (their) market access (ICTSD and IISD 2003).
- The problems faced by developing countries and particularly for their small and medium size enterprises (SME) by the proliferation and diversity of schemes, and their complexity.
- The need to better involve developing countries in international and national standard-setting processes, which are currently putting them at disadvantage due to limited and ineffective participation.
- The need to support developing countries in the development of their own schemes to support their own environmental objectives, and the recognition of equivalence between different standards, including the harmonization of certification and labeling schemes.
- Whether measures should be identified for Special and Differential Treatment (SDT) for developing countries, including measures for SMEs.
- The need for mechanisms that ensure transparency in setting standards and labeling, including notifications of emerging environmental regulations and of voluntary standards in early stages of development.
- Capacity building and transfer of technology.
- The issue of npr PPMs and precaution, which developing countries have so far not felt comfortable enough to raise or discuss (Melendez 2003).
- Labeling schemes should be measurable and scientifically based.
- The need for a common understanding on eco-labeling through agreement rather than through dispute settlement.

Crucial areas of disagreement that were not resolved in the pre-Cancun discussions relate to:

1. The scope of CTE work:

- Should the work focus on all eco-labels or environmental labels or only on private voluntary ones?

- Should the 10-point term of reference of the CTE work be reviewed to meet members' requirements?

2. The procedural issues:

- Should CTE or TBT Committee deal with these issues, or should it be made in collaboration between both?

3. Need for new rules:

- Whether there is indeed a need to elaborate new rules, or the TBT and SPS agreements, which, as indicated before, would apply as subsidiary to certification and labeling schemes not covered by other more specific agreements, are sufficient, their implementation only needing to be enhanced and enforced?
- Whether, given the private nature of most of the schemes, WTO can add any value to the work carried out in other fora, such as ISO?

Summary of main positions from key delegations

The EC submitted two papers to the CTE (EC 2002 and EC 2003a), plus a draft Decision in July 2003 (EC 2003b) proposing Ministers agree on further work on requirements for environmental labeling and the initiation of a positive dialogue with governmental and non-governmental schemes. Three "CTE dedicated sessions" were proposed to take place during 2004, with a report back to the regular session of the CTE towards the next Ministerial Conference post Cancun. The proposed Decision was supported by Switzerland, the Czech Republic and Hungary. It should be noted that the EC proposal is mainly directed at type 1 environmental labeling, according to ISO terminology, i.e. operating through the life cycle of products. Thus the EC proposal concerns only a subset of ECL. Nevertheless, as mentioned above, there is a general understanding that what may be adopted concerning a subset could be easily expanded to all ECL initiatives. This is in this perspective that the EC position is important for ISEAL and its members.

Although the proposal was finally rejected, the documents offer a sense of what the EC considers priority issues. This included the study of existing voluntary eco-labels and:

- Review how they can foster trade in environmental friendly products, originating in DCs
- Identification of instruments to facilitate applications for eco-labels from companies located in DCs as well as increase market access opportunities for sustainable produced goods from DCs
- How to enable DCs governments, producers and stakeholders to access the definition and operation of such schemes, in particular technical assistance in designing eco-labeling schemes and in participating on international standardization process
- Measure to ensure that eco-labeling schemes are developed and administrated in a non-protectionist, non-discriminatory, transparent and participatory way (e.g. ISO rules), and evaluate how to enhance transparency of schemes, including private and voluntary ones, and their application of the TBT's Code of Good Practice
- Study tools to support co-operation between different eco-labeling schemes and consider the issue of mutual recognition/equivalency agreements for voluntary eco-labeling schemes
- Work on voluntary eco-labeling schemes should be carried out in close co-ordination with relevant international organizations (GEN, ISO, UNCTAD, UNEP, WTO TRTA, Capacity-Building Task Force on Trade, Environment and Development, etc).

According to different sources, the proposals got rejected because developing countries feared the discussion may lead to additional barriers to trade. This position may be shared by US, which has been particularly weary not to give any support to the GMO labeling requirements of the EC.

For **Japan and Canada**, the EC proposal could be a good basis for discussion after Cancun.

The **EC and Switzerland** agree that CTE has received the mandate to lead the work on environmental labeling, but recognize that the TBT Committee and the CTE could work in close collaboration (i.e. towards devising guidelines or interpretation of the TBT agreement with respect to labeling requirements for environmental purposes) (Switzerland 2002).

The main opponents are **USA, Australia, Brazil, China, Hong Kong, Indonesia, Malaysia, the Philippines and Thailand**, who consider that life-cycle analysis (as proposed by EC) approach is too close to the issue of PPMs, and that sessions would duplicate ongoing work in the TBT Committee (ICTSD and IISD 2003); but the EC argue that "labeling is not currently a focus of the TBT Committee and that only 10 percent of life-cycle elements were related to PPMs" (Amos et al 2002).

Many developing countries, particularly **China, Egypt, India, Indonesia, Malaysia and Thailand** do not want the CTE Program of Work to be reviewed.

Most **Developing countries'** concerns focus on the following issues:

- recognition of the equivalency or mutual recognition of their own certification systems
- eco-labeling acting as a non-tariff trade barrier
- needed harmonization of certification systems
- the obstacle of accreditation (which seems to be left behind while being an barrier as certification itself)
- needed agreed rules on standards to govern technical and methodological tools to avoid trade conflicts.

In the margin of WTO negotiations, several meetings happened in the context of OECD (2001, 2002) and UNCTAD (2002a, 2002b, 2003) in relation to trade access and commodities. These meeting have also provided a forum for governments, particularly from developing countries to express similar concerns. More importantly, they offered a capacity building and awareness raising opportunity for government officials.

Environmental goods and services

WTO Members agreed in Paragraph 31 (iii) of the Doha Ministerial Declaration (WTO 2001) that:
"31. With the view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

...(iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services"

At the negotiations in the CTE, Members decided to divide this mandate on liberalizing on Environmental Goods and Services (EGS) into Environmental Goods (EGs) and Environmental Services (ESs) and shift the issues respectively to the Negotiating Group on Non-Agricultural Market Access (NAMA) and the Council for Trade in Services special sessions (CTSSS). However, the CTE special sessions (CTESS) will contribute to the negotiation and maintain a

monitoring role, particularly in examining the aspects related to the definition and scope of EGS (ICTSD and IISD 2003).

The negotiation of liberalizing EGSs could become crucial for ISEAL and its members. By contrast to what happened with the issues under the Doha Mandate para.32 on market access and labeling, para.31 (iii) commands the 'negotiation' rather than the simple discussion and recommendations. This means that the developments on this front may have a 'fast track' effect over the labeling issues, bringing it faster to the negotiating table.

The mandate on EGS is taken by many supporters of the development agenda for developing countries as a command to speed up negotiations on liberalizing "environmental" good and services faster than the normal liberalization talks on goods and services (see Sugathan 2003, Chaytor 2003 and Dufey 2003). According to Sugathan (2003), this interpretation could have important repercussions on the impact of EGS liberalization on sustainable development, particularly in developing countries. It could provide opportunities for enhancing local capacities, including infrastructure, jobs and incomes through attracting foreign investment and strengthening comparative advantages through government procurement.

While the notion of EGSs traditionally refers to industrial plants (e.g. sewage treatment), the interpretation could be extended to commodity goods produced in an environmentally responsible manner. This extended interpretation could prove interesting for some developing countries, particularly from Latin America and Africa because they have a comparative advantage in this field. This is the case of goods such as timber from well-managed forests, organic agricultural products and fair trade products⁶. The inclusion of these goods has been particularly promoted by the EC. If they make their way into the negotiations on market access, it will lead to a discussion on how to differentiate environmental from non environmental products, which will renew the issue of non product related production and processing methods.

Key Issues

Important issues on this negotiation relate to:

1. The definition of EGS. Negotiation has not progressed too far because to date no comprehensive international definition of "environmental goods" and "environmental services", nor any international agreed criteria for their classification exists. This issue is of crucial important for Members. Without a clear definition/classification it is very difficult to address the negotiations about their liberalization. Therefore, most of the countries have strong interest in negotiating around the definition and classification of EGS in the WTO lists. The CTE met again in special session to attempt to get an agreement on the lists in questions.

According to Chaytor (2003) definitions and classifications differ from country to country. Since the environmental industry, which is growing fast, can benefit both industrialized countries and developing countries, there are important interest in play depending on which are the goods and services selected. Developed countries have advantage in what relates to environmental equipment, technologies and services. In turn, developing countries have developed during the last decade a growing and expanding exporting base in relation to environmental friendly goods. A comparative advantage seems clear for products like organic agriculture, timber and non-timber forest products (NTFP) from good forest management, or socially responsible product from fair trade, etc. Most importantly, this nascent industry is based mainly on SMEs and very disadvantaged and poor communities.

⁶ Most fair trade labeling schemes have environmental requirements.

2. The classification lists. On environmental goods, two illustrative lists have been discussed. The OECD have developed a classification of EGS, which includes solid, wastes, noise, air, soil, water, natural resources, and miscellaneous services. Industry activities are classified in pollution management, cleaner technologies/products and resource management. This last one includes sustainable forestry, fisheries and agriculture.

There is also a list of EGs compiled by the Asia Pacific Economic Co-operation (APEC) that operationalize the OECD classification and which includes catalytic converters, water purifiers, water treatment systems and recycling equipment. This list/classification is based on 'end-use' approach rather than production characteristics.

Currently most of the discussions are based on definition/classification based on OECD and APEC lists. However some developing countries such as Colombia, Kenya and India have informed that they are working on developing their own list in response to the Chair invitation to members to come forward with their own suggested list (ICTSD and IISD, 2003).

In terms of environmental services (ESs), most of the discussions are based on the Services Sectoral Classification list (W/120) of GATS, which is based on the United Nations Provisional Central Product Classification (CPC). This list includes four categories of environmental services: sewage, refuse disposal, sanitation and similar services and 'other' environmental services (which include environmental services like cleaning of exhaust gases, noise abatement services, nature and landscape protection services and other not included elsewhere).

Dufey (2003) has suggested the importance for developing countries to consider the list made by UNCTAD on EGS, even if it does not relate to the WTO, since it included:

- EGs used to provide an environmental service
- Environmental preferable products (EPP): products whose production, end-use and/or disposal cause significantly less 'environmental harm' than substitute goods providing similar function/utility.
- ESs are divided into four groups: environmental infrastructure services, air pollution control services, remediation services and support services.

Current state of the negotiations and positions from main groups

The issue of the reduction or elimination of trade barriers depends on a great extent on the trade interest for members. Until now the negotiations on EGs have tend to focus on the OECD/APEC definition and classification lists, which favor end-of-pipe pollution treatment equipment and capital-intensive environmental equipment, technologies and services in which developed countries are very strong.

The EC, US, Canada, Switzerland, Japan and Australia have expressed their preference for a broader OECD definition/classification list. For them, the current WTO classification system (W/120) is too narrow and does not reflect the current market realities. Given their competitive advantage on environmental services, they have a particular interest in a broader classification.

However, the EC has been pushing the notions of equivalency between DCs and developed countries and the benefit that definitions and liberalization could bring to DCs. Many members have opposed the inclusion of products made in environmentally friendly manner proposed by the EC.

On environmental services, the EC considers the definition and classification issues to be pivotal to the negotiation of further trade of environmental services. In contrast to the US proposal, the EC classification does not include personal services such as design, engineering, research and development and consulting services. The US has also particular interest in capital-intensive environmental equipment and a wider scope of environmental services where their national industry is very strong.

On EGs the **US** proposes to establish two lists of goods, separating those on which every body agrees from the other proposals. Each sub-category would be subject to different liberalization commitments. It is not clear whether the natural resource conservation category in the US classification would match the OECD sustainable agriculture, fisheries, sustainable forest management and eco-tourism categories.

On ESs the US is supportive of liberalization in 'core' ESs, which are those from the W/120 list, as well as related services that might include construction, engineering and consulting. Canada agrees with this approach.

Most developing countries consider that discussions should focus on 'products of export interest to developing countries' (para 16.) and take fully into account the special needs and interest of poorest countries.

Some EGs like sustainable products and environmental preferable products in which DCs could have export advantages are not included (e.g. organic agriculture, sustainable forest management, non-timber products, etc) and there is no agreement among them if they should be included. They are concerned about introducing the process and production method (PPM) criteria to the WTO.

Non-traditional EGs, specifically renewable energy, require more specifications regarding their identification in the international trade context (Borregard *et al.* 2002).

Kenya and Colombia have stated a possible export interest in organic agricultural products. The Colombian classification of EG refers to the identification of the preferred products, which involves necessarily PPMs. **African countries** have pointed out their comparative advantage in agricultural based EGs. They insisted that the para 16 of the Doha Declaration should also apply to EGs in the sense that attention should be paid to products of export interest to developing countries. They have also posed the question of how and under which negotiating group these will be dealt with (ICTSD and IISD 2003). **Malaysia** has warned that negotiations on EGs should not imply any agreement on environmental standards.

On ESs **Asia** and **Latin America** have expressed the preference for focusing on liberalizing services on sectors of export interest to developing countries. **Developing countries** in general have not made specific proposals on environmental services, but have emphasized pollution control and waste management. They are very wary of the inclusion of products, which are distinguished on the basis of their PPMs" (Chaytor 2003).

II. ISO and Related Conformity Assessment Bodies

A. Conformity Assessment Within ISO⁷

General Description/Scope

Established in 1970, ISO's conformity assessment committee (known for short as CASCO) produces International Standards and guides that provide information and general requirements on conformity assessment procedures. The voluntary criteria contained in these documents purportedly represent an international consensus on what constitutes current best practice.

CASCO's objectives are to:

- Study means of assessing the conformity of products, processes, services and management systems to appropriate standards or other technical specifications.
- Prepare standards and guides relating to the practice of testing, inspection and certification of products, processes and services, and to the assessment of management systems, testing laboratories, inspection, certification and accreditation bodies, and their operation and acceptance.
- Promote mutual recognition and acceptance of national and regional conformity assessment systems, and the appropriate use of International Standards for testing, inspection, certification, assessment and related purposes.

Governance and Membership

CASCO membership is open to all ISO member bodies and currently has 54 Participating countries and 38 Observer countries in the committee. The committee liaises with ISO's standardization partner, the International Electrotechnical Commission (IEC), and also has a number of external liaisons with international organizations concerned with various specific aspects such as accreditation and testing. The aim underlying many of these liaisons is to promote cross-border mutual recognition agreements (MRAs) between conformity assessment bodies, including accreditation bodies. CASCO also maintains internal liaisons with the ISO technical committees most closely concerned with producing standards and other publications relevant to conformity assessment – mainly TC176 (quality management), TC 207 (environmental management), and ISO/IEC JCT 1 (information technology).

CASCO underwent a leadership change in January 2003, when Mario Wittner of Argentina became Chair of the committee (effective until the end of 2004). Its present Secretary, with ISO Central Secretariat, is Mr. Graeme Drake, who joined CASCO in April 2002.

Drivers and Agenda

CASCO has been undertaking some strategic planning efforts that are noteworthy for ISEAL. Since 2001 CASCO has been working to develop a more simplified and readily applicable portfolio of documents, taking into account current global conformity assessment trends. At its 2001 plenary CASCO endorsed its first strategic plan for 2002-2004: *Serving the needs of global trade*. The plan addresses four key areas of action - market relevance, leadership, communication, and optimization.

⁷ The descriptive text below is drawn extensively from the ISO website.

New leadership of CASCO is working to address the committee's perceived weaknesses and is also taking it in a more policy-related direction. CASCO's 2002 plenary concluded with a discussion of the future challenges facing the committee. In carrying out their work, the delegates agreed to pay particular attention to implementing the common elements in CASCO standards, effectively applying the functional approach, appropriately using ISO 9001:2000 quality management system requirements in CASCO standards, and enhancing stakeholder representation in CASCO work.

In 2002 CASCO passed a resolution that created two Ad Hoc Groups for the period of 2003 to study and suggest further actions that ISO could take on the issue of credibility of certification bodies, as well as the credibility of suppliers providing declarations of conformity. However, at its March 2003 meeting, ISO's governing body (The ISO Council) resolved that CASCO halt the establishment of these groups, and give time for the ISO Council Standing Committee on Strategies to consider the issue of "ethics" in ISO from a broader perspective.

Currently, there are extensive activities occurring within CASCO, some of which have particular relevance for ISEAL:

Code of good practice for conformity assessment

On the basis that conformity assessment practices have changed substantially since CASCO published its first code of good practice in 1994, Guide 60 (ISO/IEC 1994), CASCO Working Group (WG) 22 is working to support WTO/TBT activities by revising Guide 60 to continue to ensure maximum openness, transparency, order, coherence and effectiveness in conformity assessment practices worldwide. Currently, the text of the reviewed Guide 60 is in editing before release to ISO and IEC members for the enquiry stage ballot (Draft International Standard level). It will be released early in 2004 for a four-month ballot as ISO/IEC Guide 60. If the vote is successful, then it will be published in the last quarter of 2004, and will be usable in conjunction with other CASCO Guides and International Standards.⁸

Single accreditation standard

CASCO WG 18 is developing a single accreditation standard (ISO/IEC 17011) to combine the requirements for accreditation of laboratory, inspection and certification bodies on the basis of ISO/IEC Guides 58 (ISO/IEC 1993) and 61 (ISO/IEC 1996a) and of ISO/IEC TR 17010 (ISO/IEC 1998).

Common standard for management system certification

CASCO WG 21 is developing a single management system standard, based on ISO /IEC Guides 62 (ISO/IEC 1996b) and 66 (ISO/IEC 1999), that would support the current trend towards multi-field certification, i.e. including an organization's quality and environmental management systems in the same certification process. This standard will be called ISO/IEC 17021, General requirements for bodies operating assessment and certification/registration of management systems.

⁸ The details of the process to be followed to reach this stage can be found in the ISO/IEC Directives Part 1 and Part 2, which are available at: [http://isotc.iso.ch/livelink/livelink/1162544/Part_1_\(Procedures_for_the_technical_work\)\(4th_ed.\)_\(RTF_format\)?func=doc.Fetch&nodeid=1162544](http://isotc.iso.ch/livelink/livelink/1162544/Part_1_(Procedures_for_the_technical_work)(4th_ed.)_(RTF_format)?func=doc.Fetch&nodeid=1162544)

Standard for peer assessment

CASCO Working Group 19 is developing ISO/IEC 17040, General requirements for peer assessment of conformity assessment bodies. Peer assessment (or peer evaluation or peer review) is a process in which members of a group of conformity assessment bodies, including accreditation bodies, build mutual confidence in the reliability of the results of their work by evaluating each other's activity.

Standard for use of marks of conformity

The proliferation of marks of conformity is one area of concern for CASCO. Thus, CASCO WG 12 is developing ISO/IEC 17030, Marks of conformity and their use, which will provide a basis for better control by conformity assessment bodies.

Further guidance on product certification

ISO/IEC Guide 65 (ISO/IEC 1996c) sets out the general requirements for third-party product certification bodies but does not provide guidance on the ideal choice of certification system or on how it should be used, by whom and for what purposes. CASCO WG 14 is developing ISO/IEC Guide 67, Fundamentals of product certification, which will give guidance on product certification systems and schemes and facilitate their international recognition by identifying the various elements of product certification based on current practices. It will also give additional guidance on implementing ISO/IEC Guide 65.

B. IAF and EOTC

General Description/Scope

The International Accreditation Forum (IAF) is a world association of national conformity assessment accreditation bodies and other organizations interested in conformity assessment, mainly to ISO 9000 and ISO 14001. Its primary function is to encourage the development of a single worldwide system of mutual recognition of conformity assessment certificates, with an end goal of the elimination of non-tariff barriers to trade.

The European Organization for Conformity Assessment (EOTC) is an independent, non-profit European body that was established in April 1990 by the European Commission, the European Free Trade Association (EFTA) and the European standards bodies. EOTC acts as a focal point for conformity assessment in Europe, but does not itself test or certify products and services. The EOTC vision is to contribute towards the achievement of a Single Market within the European Union and, in line with WTO principles, to contribute towards the worldwide reduction of unnecessary technical barriers to trade. The EOTC tries to achieve its mission through the development, overview, assessment and promotion of mutual recognition agreements in the voluntary sector. It also focuses on the promotion of one-stop testing in both Europe and worldwide, and the nationalization of marks of conformity and of statements of conformity.

Governance and Membership

Accreditation body membership of IAF is open to organizations that accredit other organizations for certification and/or registration of quality systems, products, services, personnel, and

environmental management systems or similar programs of conformity assessment. In addition to national accreditation bodies, the IAF allows industry representatives and accredited certification/registration bodies as observers. Applicants declare their common intention to join the IAF Multilateral Recognition Agreement (MLA), recognizing the equivalence of other members' accreditations to their own. Regional Group Membership is open to regional groupings of Accreditation Bodies whose aims include the maintenance of Regional Multilateral Recognition Agreements, which recognize the equivalence of their members' accreditations. Both accreditation body and certification/registration body members are committed to base their own conformity assessment procedures upon standards or guides developed by ISO/CASCO, and adopted in accordance with ISO/IEC rules.

A General Assembly (GA), with a Board of Administrators responsible for developing policy and strategic planning, runs the EOTC. EOTC members are national and European government bodies, organizations and companies with a stake in conformity assessment. While the EOTC is focused specifically on Europe, it has an interest in listening to any organization that may be able to forward the goal of professional conformity assessment in the EU. The EOTC Chairman is known to a few members of ISEAL and has already stated that ISEAL could try for Membership of EOTC in the future.

Drivers and Agenda

In recent years there have been discussions between the International Accreditation Forum (IAF) and the International Laboratory Accreditation Cooperation (ILAC) regarding merging the two organizations. And CASCO has been working with the IAF and ILAC in recent years under the rubric of the "Joint Working Group on Image and Integrity of Conformity Assessment." The JWG agreed at its March 2003 meeting that it should continue in its present form indefinitely and to formalize existing joint initiatives between IAF, ILAC and ISO (both with CASCO and other ISO technical committees, such as ISO/TC 176 and ISO/TC 207) through the development of a "*Memorandum of Understanding (MOU) Concerning Co-operation and Mutual Assistance on Accreditation as Part of Conformity Assessment between IAF, ILAC and ISO.*"

According to the JWG's September 2003 report to CASCO, the MOU is a formalization of the following activities:

- "Joint statements on the transition period for ISO 9001:2000 in 1999 and 2003 between IAF, ISO/CASCO and ISO/TC 176;
- The results of the one-day meeting in 2000 on guidance documentation for CASCO normative documents between CEN/CENELEC/TC1, IAF, IEC/CAB (IECEE), ILAC, and ISO/CASCO;
- The formation in 2000 and subsequent operation of the IAF-ILAC-ISO/CASCO Joint Working Group on image and integrity of conformity assessment (IIJWG);
- The creation in 2001 of the ISO 9001 Advisory Group between IAF, ISO/TC 176 and ISO/CASCO;
- the creation in 2002 of the Good Auditing Practice Group between IAF and ISO/TC 176; and
- the joint statement in 2002 between IAF, ILAC and ISO/CASCO on the objectives and roles of accreditation and certification in laboratories."

The JWG report goes on to note:

“In practical terms the MOU establishes that IAF, ILAC and ISO will continue their current cooperation through the following methods:

- a) Involvement of representatives in each other's technical work. As such the normal liaison and observer rules and procedures for input shall apply;
- b) To achieve the identification, preliminary analysis, coordination, and division of responsibilities for dealing with issues, the parties agree to join together to maintain a Joint Working Group (JWG) that will act as a central clearinghouse;
- c) The preparation, implementation and maintenance of mutually agreed procedures for sharing and appropriate resolution of:
 - (i) complaints related to accreditation and accredited conformity assessment bodies and services;
 - (ii) improvement strategies; and
 - (iii) feedback to the parties and other appropriate organizations.
- d) Attendance of an ISO representative(s) at the IAF and ILAC General Assemblies and related technical meetings, and attendance of IAF and ILAC representative(s) at the ISO/CASCO plenary (and other ISO technical committee plenary meetings if a formal liaison with those technical committees has been established) free from the payment of attendance fees.”

C. ISO and CSR⁹

General Description/Scope

Since mid-2002 ISO has been deliberating on whether to develop standards on CSR and in September 2002 it created an advisory group to systematically investigate the matter. At first, ISO appeared to be moving at a very rapid pace to move into this field, however, after the ISO's CSR Strategic Advisory Group (SAG) met a couple of times, the brakes seemed to be applied.

After meeting a couple of times, the SAG in March 2003 (ISO 2003a) recommended the following:

- “1) ISO should produce a Technical Report that will: a) map existing SR initiatives, and b) list any other issues that ISO must address prior to developing SR management system guideline standards;
- 2) Upon completion of the Technical Report, the SAG should undertake a justification study for a SR management system guideline standard, which specifically excludes the use of the standard for certification purposes; and
- 3) ISO should undertake a review of its processes to ensure that they are suitable for SR standardization.”

ISO's governing body (the ISO Council) approved the SAG's recommendation and officially gave the ISO Technical Management Board (TMB) all management and oversight responsibilities for the CSR-related work within ISO.

In July 2003, the SAG met in Sao Paulo, Brazil to lay out a detailed work plan and timeline for the Technical Report (TR) and Justification Study (JS) it had been charged by ISO to prepare. At the meeting, the group also agreed to support ISO's preliminary proposal to host an

⁹ Information below on the activities of the ISO Strategic Advisory Group on CSR was drawn extensively from reports provided by Tom Rotherham of International Institute for Sustainable Development, who represents IISD on the group. IISD's electronic updates can be found at: http://www.iisd.org/standards/csr_documents.asp

international conference on Social Responsibility, in order to provide an opportunity for external parties to provide input on ISO's prospective role in the field. Lastly, the SAG discussed the composition of its membership, and decided to ask ISO to add three representatives: one each from an international environmental NGO, an international human rights organization, and an industry group (ISO 2003b)

The ISO TMB at its September 2003 meeting, however, significantly modified the SAG's work plan. The TMB decided to "downgrade" the formal TR to an internal "working report." It did this so as to expedite the completion of the analysis, as the new work product does not require comment and vote by all ISO member bodies. The TMB also revised the ISO Council's resolution that the SAG should undertake developing the JS immediately after the completion of the technical report. Instead, the TMB took more direct responsibility for that work, and agreed that it would decide after the completion of the working paper whether to initiate a JS, and if so, assign who should do it.

As for the international conference on CSR and additional member appointment, the TMB accepted both of the SAG suggestions. An invitation has been issued by ISO to WWF International and Human Rights Watch requesting them to serve as the ENGO and human rights group representatives, respectively. With the TMB's revisions, the new timeline is:

- Submission of the first draft working report - January 2004
- Completion of the final draft working report – end of April 2004
- International CSR meeting – immediately prior to the TMB's June 2004 meeting
- TMB makes decision on future steps including whether to initiate JS – June 2004

Drivers and Agenda

Initially, COPOLCO, ISO's consumer policy committee, was the primary driver for ISO's foray into CSR. In May 2001, the ISO Council requested that COPOLCO consider the viability of International Standards on this subject. Based on the report on the "Desirability and Feasibility of ISO CSR Standards" prepared by a Working Group in COPOLCO, it passed a resolution recommending that ISO consider new standards work in the area of CSR. The report concluded that ISO management system standards (MSS) pertaining to CSR are both desirable and feasible, and could be built on the existing ISO 9000 and ISO 14000 management series.

Governance and Membership

ISO's attempt via the SAG to assemble a diverse group of stakeholders to help provide input on how ISO should proceed on this issue of CSR is laudable, particularly when considering ISO's past practice for new standards development, which has been notably insular. However, because this is a precedent-setting endeavor within ISO, there are many uncertainties around how the SAG itself will come to decisions, and also the degree to which ISO will feel obligated to accept the SAG's recommendations in their entirety, or even parts thereof.

Certification Approach

The SAG's March 2003 recommendation (ISO 2003b) specifically states that the possible development of ISO CSR management standard should include a process for self-declaration of conformity and exclude conformity assessments involving third-party certification. This is a troubling development because it means that, unlike ISO 14001, for which the market has

demanded independent verification, this effort within ISO may ultimately enable companies to simply state their conformity to the prospective CSR standard.

By way of background, the initial COPOLCO report to ISO states that the self declaration option enables firms to implement CSR at a lower initial cost than third party professional accreditation and auditing, thus increasing the attractiveness of such standards to the full range of firms including SMEs and organizations in developing countries. As an alternative to third party certification, the report suggests the use of second-party verification, by involving a firm's stakeholders in compliance verification activities. The report states, "the process of stakeholder engagement and the requirement of transparency and accountability associated with the ISO Corporate Responsibility (CR) management system approach is designed to create an environment of trust, openness and genuine commitment which may diminish the need for third party verifications."

III. Mapping and Analysis of Emerging ECL Initiatives¹⁰

Over the last two decades, NGOs have been working successfully with other stakeholders to develop numerous tools for the “regulation” of trade and sustainable development that are based on expanded concepts of corporate environmental and social responsibility. The market success of these voluntary initiatives has prompted the proliferation in recent years of a broad array of certification and labeling systems.

This growth of voluntary ECL schemes was in part spurred by a general dissatisfaction with government-led “command and control approaches,” which helps explain why private self-regulation predominates the field of ECL today. It also sheds light on why we are increasingly witnessing the proliferation of initiatives taken by different private sector organisations to deal with the issue of sustainable development from their perspective. ECL programs have had an impact on business partly because of a long-term movement to promote social and environmental change, which has had success in reaching a certain (and now growing) percentage of consumers. And it was to a larger degree through these “vanguard” consumers that pressure could be applied effectively on business and international bodies. In this sense it was not only the failure of governmental processes, but an obligation to address this continued and growing consumer demand that has fuel the spread of ECL.

A. Retailer and Brand Initiatives

Partly as a response to NGO-led labeling and certification schemes that have had bottom-line impacts for businesses in targeted sectors, retailer/brand initiatives represent industry taking a proactive role in determining standards and compliance systems that better suit their needs. Due to the often poor stakeholder balance in these initiatives, it is possible that they will result in standards and conformity assessment procedures that are not as meaningful to civil society as ISEAL members’ programs. Yet these industry groups are in the driver’s seat because *they are the market*. And as a result, the question to be answered for ISEAL is how to best influence these initiatives to ensure their end credibility (and compatibility) with ISEAL member systems.

Eurepgap

General Description/Scope

Eurepgap started in 1997 as an initiative of retailers belonging to the Euro-Retailer Produce Working Group (Eurep). The aim was to agree on standards and procedures for development of good agricultural practice (Gap) of horticultural products (e.g. fruits, vegetables, potatoes, salads, cut flowers, and nursery stock). Formally speaking Eurepgap is a set of specification documents suitable to be accredited according to international certification norms.

Eurepgap’s key goals are essentially to reduce the risks of food safety lapses in agricultural production and to objectively verify best practice with some reference points so that it is done systematically and consistently throughout the world. It seeks to achieve this through the protocol and compliance criteria.¹¹

¹⁰ A large percentage of the background information in this section is taken verbatim from the respective initiative websites.

¹¹ For more on Eurepgap’s standards development process and role in trade facilitation, see: http://www.iied.org/docs/cred/stdndrstdy_stic.pdf

Drivers and Agenda

Initially, the primary driver for the creation of Eurepgap was the desire to reassure consumers; principally on issues of food safety following food safety scares with BSE (mad cow's disease) and the rapid introduction of GM foods. A lot of the members are global players in the retail industry and purportedly could not afford to operate double standards for produce sourced from different parts of the world, hence the need for a common internationally recognised standard.

In terms of moving forward, Eurepgap believes that its prospect[s] for growth by providing international verification frameworks across a wide range of agricultural production sectors is by any estimation quite outstanding. Eurepgap is in the pole position to become the global player in agricultural production standards and verification frameworks for fruits and vegetables. Retailers are resourcing globally and are facing increasing competition, pressure on profitability and an ever-tightening regulatory environment. Food safety has lately become a top priority for many retailers. At the same time producer organizations from all continents have applied for Eurepgap membership and look for integrated and cost effective solutions delivering reassurance on food safety.

Governance and Membership

Eurepgap is almost entirely industry run, but is no longer driven solely by retailers. Membership presently consists of the entire supply chain, including retailers, suppliers/growers and associate members from the input and service side of agriculture. The associate members have a responsibility to primary producers and agriculture and they contribute to the development of better processes, but they are not part of the Eurepgap decision-making process. Decisions are made by the Eurepgap Steering Committee, which consists of retailers and supplies and is chaired by an independent Chairperson. The standard documents and certification system is approved by a Technical and Standards Committee. Both committees have 50% retailer and 50% grower representation.

Certification Approach

Eurep's structure for communicating with certification bodies (CBs) in order to harmonise the certification process (e.g. criteria, interpretations, changes, feed back of operational problems, etc.) is as follows:

CBs have to nominate a "Eurepgap Scheme Manager," who is publicly known and operates as official contact to Eurep and its bodies. Formal communication is through them, followed up by a contractual requirement of CBs to pass on this information to the certified growers.

Communication is structured on three different levels:

- On a web-based intra-net application, where CBs, the TSC and the Eurepgap Secretariat are linked into, for collecting feed-back and criteria interpretation variation as well as discussing these issues for harmonisation on that medium and in obligatory CB seminars.
- Email to members and contract partners for communicating changes
- Publishing on the website of Eurepgap and general info letter for communicating general changes.

The implementation of changes is assured via modifications of the contractual certification agreements between Eurepgap and each CB.

Sustainable Agriculture Initiative (SAI) Platform

General Description/Scope

The SAI Platform is an international pre-competitive food industry initiative concentrating on mainstream agriculture. Three large food corporations – Groupe Danone, Nestlé and Unilever – founded it in October 2002. The Platform aims to communicate about, and contribute to, the development of sustainable agriculture, by involving all stakeholders in the food chain. The SAI Platform works in four main directions: 1) Involving stakeholders; 2) Improving & managing knowledge; 3) Communicating & raising awareness on sustainable agriculture; and 4) Supporting implementation of sustainable agricultural practices. SAI is currently conducting specific work on cereals, coffee, and palm oil.

SAI Platform's main work consists of animating a series of working groups aimed at defining and implementing sustainable agricultural practices. Concretely, each member company interested in a specific commodity or horizontal issue is welcomed to propose the launch of a new working group on this subject. Companies can take the lead of working groups, and benefit from the assistance of the SAI's staff for technical, as well as administrative work. On top of these activities, the SAI Platform watches developments within sustainable agriculture and communicates them to its members, as well as external stakeholders through meetings, its website, quarterly newsletter etc.

Drivers and Agenda

Food industry relies on long-term supply of quality agricultural raw materials as the basic ingredients for their products, i.e. for their sustainable business. The food industry felt the need to create the SAI Platform to enhance sustainable agriculture and to better cope with the following facts; various quality and safety problems in the food supply chain that affect consumer confidence in everyday food products; population growth and the increase of expandable income that will have to be met by growing agricultural productivity; adverse effects and pressure of agriculture on natural resources and the environment that affect agricultural productivity, the future availability of raw materials and the affordability of food products for consumers. One of the major future plans of SAI is to develop sustainable agriculture practice guidelines.

Governance and Membership

The organization structure of the Platform is the following: SAI members (central body formed by food industry representatives), Executive Board, and Advisory Council, Affiliates, Platform Manger and Working Groups.

All food industry companies which agree with SAI Platform's principles and are committed to support sustainable agricultural practices within their field of business can join the initiative. The definition of food industry company is taken in a broad sense, including companies manufacturing and marketing food & beverages, food service companies and trading companies. SAI current members are Groupe Danone, Nestlé and Unilever - the founding members - as well as Campina, Coberco, Danisco, Dole, Ecom, Efico, Findus, Kraft,

McDonald's, McCain Europe, Neumann Kaffee Gruppe, Tchibo and Volcafe. The members are also asked to support SAI financially.

Certification Approach

The SAI Platform is planning to develop sustainable agricultural practices guidelines. Once the guidelines are completed, it will rely as much as possible on existing auditing systems to ensure/verify production compliance with sustainable agriculture guidelines. Certification procedures could be an option for certain commodities and companies, but they are not the main purpose of the platform.

B. Coffee-specific Initiatives

GTZ Common Code for the Coffee Community

General Description/Scope

The Common Code for the Coffee Community (CCCC) project was launched in January 2003 as a joint project of Deutscher Kaffee-Verband e.V. and Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) together with the coffee trade & industry, producers, trade unions and NGOs. The project's overall objective is the transparent and participative formulation of a global code of conduct for a sustainable coffee industry. The initiative is intended to result in an internationally accepted basis leading to long-term cooperation of the global coffee community.

The project identifies three dimensions that make up sustainability in coffee growing:

- Economic dimension – reasonable earnings over time, for all in the coffee value chain, market access, and sustainable livelihoods;
- Ecological dimension – protecting the environment and conserving natural resources;
- Social dimension – human rights and social standards, decent standard of living, and decent income and working conditions.

Drivers and Agenda

There are two major drivers. First, there was recognition that the current overproduction (and the resulting crisis) increased the need to promote and establish sustainable coffee production. Secondly, there was a perception that existing standards and guidelines either cannot be approved by all of the interested parties, or are not applicable to mainstream coffee production. Moreover, the belief was that the majority of existing initiatives focus on specific aspects (social conditions, ecological requirements, special regions, etc.), and that there was a need for universally applicable and comprehensive standards.

The first phase of the project is planned to finish December 31st 2004. The first steering committee meeting took place in May 2003, with second meeting held in September 2003. A number of pilot programs, aiming to achieve one or more aspects of sustainability, have been started in cooperation between stakeholders. While these efforts are outside the financial scope of the present project, the stakeholders will use existing pilot programs to bring experiences to the CCCC projects and to test preliminary results from the project. After development of the Codes, the next phase of the project will be to draw up the criteria for their implementation as well as a system of monitoring and verification.

Governance and Membership

The project is guided by a tripartite steering committee consisting of representatives from 1) producers, 2) traders and processors, and 3) trade unions and NGOs. Current members of the committee include: 6 producers, 7 traders and processors, 5 NGOs and unions, and 5 extraordinary organizations that include government agencies and international organizations, such as ILO. The steering committee set up expert working groups that are developing the elements of the code and the guidelines. They too have representation from the three stakeholder groups. A secretariat coordinates the activities of the working groups, maintains communication with both the steering committee and the other groups involved, and guarantees transparent processes. The secretariat is also responsible for the planning of the project and the management of resources and personnel. The project partners - DKV and GTZ - contribute equal levels of funding, part of which covers the activities of the secretariat.

Certification Approach

The goal of the first phase of the project is to develop the Code of Conduct: the development of the formal monitoring and verification scheme is anticipated to take place in the next phase of the project after the completion of the Code. However, consideration is being given to verification issues during this phase of the project and the ideas will be tested in the pilot initiatives.

Utz Kapeh

General Description/Scope

The Utz Kapeh foundation (the name is Mayan for "good coffee") was founded in 1999 by the European coffee and supermarket giant, Ahold Corporation. It offers coffee retailers, farmers and roasters the chance to certify their coffee as "Certified Responsible Coffee." Purporting to address the growing coffee crisis, the foundation claims that it targets the mainstream coffee market by working with farmers to produce coffee that can be sold at market prices instead of at the premium prices charged for Fairtrade coffees. Unlike Fairtrade, however, the scheme does not guarantee a minimum price for farmers. Instead, it relies on a looser market mechanism that assumedly pays "better price for better product." The Utz Kapeh foundation acts as a "broker" between farmers and retailers/roasters that are interested in certified responsible coffee, and donors/partners that can fund the implementation of Utz Kapeh's environmental and social criteria.

Utz Kapeh currently has 23 certified producers (cooperatives, groups of farms, and farms) in nine countries worldwide. A head office in Delft, Netherlands was opened in August 2002 with the task to market the Utz Kapeh concept among coffee buyers, to inform roasters, NGO's and governments about the initiative and to raise funds for programs to support producers.

Drivers and Agenda

Growing interest and awareness in Fairtrade and environment-friendly coffee led Ahold launch this initiative to tap a new market by providing mainstream and economically competitive alternative of sustainable coffee. Utz Kapeh claims that even though the consumers in Western countries are ever more concerned with the situation for the workers, their environment and food safety, more than 90 percent of them are unwilling to pay for Fairtrade coffee that could cost double the price of regular coffee. The Utz Kapeh initiative aims to establish its Code for good

agricultural practices in coffee farming as a “ticket to entry” to an emerging market for mainstream certified responsible coffee.

In addition to recruiting roasters and retailers to join the initiative, Utz Kapeh has joined the Common Code for the Coffee Community (CCCC) steering committee. It also has released the revised version of the Utz Kapeh Code of Conduct in 2003. Utz Kapeh states its ultimate goal be “to become the worlds leading program for mainstream certified responsible coffee.”

Governance and Membership

Utz Kapeh has a board with representatives mostly from coffee producers and coffee roasters. It has offices in Netherlands and Guatemala. Its income is derived from a fee (0.01 US dollar/kg) coffee buyers pay when they purchase Utz Kapeh certified responsible coffee. There are three parties that participate in the initiative: producers (farmers), brands (roasters and retailers) and sponsors. By complying with the Utz Kapeh Code of Conduct, producers become certified as responsible coffee producers. Buyers can either purchase from already certified producers, or can work with their own suppliers to make them certified. Sponsors fund the projects that promote and help the implementation of the Code. There are currently 23 certified producers, 15 brands, and five sponsors.

Certification Approach

The Utz Kapeh Code of Conduct is based on the Eurepgap Protocol for Fruits and Vegetables. Utz Kapeh translated the Eurepgap Protocol to the specific conditions of coffee production. Relevant chapters and criteria are added from the ILO (International Labour Organization) Conventions and the Universal Declaration of Human Rights. The Code was initially developed in 1999 by a consortium of Guatemalan grower-exporters together with the Ahold Coffee Company. The revised version of the Code was developed in May 2003 with the input from various stakeholders that includes coffee roasters, producers, NGOs, branch organizations and independent certification bodies.

In order to become certified producers, compliance with the Code has to be verified every year by a third-party assessor. Producers carry the cost of certification. Utz Kapeh then matches participating brands with certified producers. Brands are “encouraged” to pay suggested “sustainability differential” ranging from 0.05-0.07 US dollar per kg above the market price determined in NY market. Brands pay 0.01 US Dollar per kg to Utz Kapeh for the service and use of responsible coffee logo.

Other Coffee Standards

Clearly, the above sections of this chapter illustrate there is a growing interest in the area of sustainable crop production certification. In the area of sustainable coffee, there are quite a few NGO-led schemes that have developed or are developing standards and certification programs for sustainable coffee production other than the above-mentioned four initiatives that are driven by industry or government. These programs include ISEAL member initiatives (SAN (Eco-OK), FLO and IFOAM), and others. The attempts are being made among these NGO initiatives to harmonize their standards in terms of their contents and implementation and certification procedures. The challenge is how to differentiate credible NGO standards from less rigorous initiatives, as well as whether and how to come up with single standard that integrates all the programs by NGO, government and industry.

C. CSR Reporting Tools

The potential impact of CSR reporting tools is much broader than the food products sector initiatives discussed above. Generally, the reporting obligations on companies are nominal, which presents the greatest threat since companies may not be required to make any meaningful changes. ISO 14000 series standards can be lumped into this category (as can ISO CSR) and provide a useful example of how these tools can be used as greenwashing. The key issue is how ISEAL members can ensure that the content of their standards is not completely lost in reporting frameworks that allow companies to report against any criteria they develop.

SIGMA Project

General Description/Scope

The SIGMA Project - Sustainability - Integrated Guidelines for Management - was launched in 1999 with the support of the UK Department of Trade and Industry. The SIGMA project aims to provide clear, practical advice to organizations to help them make a meaningful contribution to sustainable development. The core of the SIGMA project is the development of a set of Guidelines, which have three components: 1) principles that help an organization to understand and navigate the parameters of sustainability; 2) management system framework that integrates sustainability issues into core processes and mainstream decision-making; and 3) tools and approaches that organizations can use to implement their sustainability goals.

Drivers and Agenda

The primary drivers for the development of the SIGMA Guidelines include: increasing awareness among organizations for the need to manage social and environmental and wider economic impact of their activities; fragmented approach and gaps in existing sustainability related initiatives; and lack of comprehensive tool that can be applied to every type of organizations worldwide. The Guidelines aim to provide clear and practical advice by bringing together environmental, social and economic sustainability standards, tools and systems.

The first Guidelines were published in June 2001. A draft version of the updated guidelines of was made available May 2003 for comment, and in September 2003 the Guidelines were officially launched. As a next step, the SIGMA Project attempts to internationalize its Guidelines and is currently working to find new ways of financing for expansion.

Governance and Membership

SIGMA is a partnership between the British Standards Institute, Forum for the Future (a sustainability charity and think-tank), and AccountAbility (an international consultancy), with the representatives from these organizations making up the Project Management Team. During Phase 1 of the SIGMA Project, an enlarged Steering Group of 20 members was formed to ensure that all significant stakeholder group are represented, including industry, civil society, government, and academia and that no single interest predominates. The Steering Group oversees the work of the Project Management Team, provides guidance regarding the overall management of the project, as well as advice on related external activities (e.g. reporting, business advice, training) that do, or could, impact on the Project.

In addition to the Steering Group, 21 organizational partners including 15 corporations participated in pilot programs to test and revise the Guidelines. Research and Development part of the SIGMA Project is carried by several organizations from academia and civil organizations. The results of the research in 6 issue areas - linkage and integration; economic sustainability; environmental sustainability; social sustainability; supply chain strategy and evaluation; and innovation, learning, and cultural change - were integrated into the draft Guidelines released in May 2003.

Certification Approach

The SIGMA Guidelines don't provide certification scheme, but they link into existing management systems and frameworks that are certifiable such as ISO 14001, IIP, ISO 9000 and AA1000. In the management framework section of the Guidelines, these standards were listed as a resource for how to implement the specific phase of the management framework. The Guidelines supposedly enable backwards-compatibility, helping organizations build on what they already have in place.

UN Global Compact

General Description/Scope

The Global Compact is an international voluntary corporate citizenship initiative with two primary objectives: mainstream the nine principles in business activities around the world; and catalyze actions in support of UN goals. Human rights, labor and environment are the issue areas covered in the nine principles. For the implementation of these objectives, the Global Compact lays out two major activities: participation/endorsement of the nine principles by corporations, and collaboration and information exchange among the corporate participants and different stakeholders representing UN, labor, and civil societies. The examples of the programs include multi-stakeholder workshops, creation of national/regional networks, and publication of case studies.

Drivers and Agenda

The Global Compact was first proposed by United Nations Secretary-General Kofi Annan in an address to the World Economic Forum in January 1999. Business leaders were asked to contribute to a more sustainable global market by implementing the nine principles. The initiative was formally launched in July 2000 at UN Headquarters. Since then the Compact grew rapidly to a network of more than 1000 companies and organizations.

In 2003, the Global Compact revised its strategic approach. The new strategy include: more emphasis on multi-stakeholder dialogues; requirement for the participating companies to describe the actions they are taking in support of the Global Compact and the nine principles in their annual report; publication of more business case studies; decentralization of the initiative through the promotion of local networks; and creation of performance framework to evaluate the effectiveness of the initiative.

Governance and Membership

The Global Compact is a network-based initiative. At its core are the Global Compact office, the Advisory Council, and five UN agencies (ILO, HCHR, UNEP, UNDP and UNIDO.) whose task is

to ensure the initiative. The Advisory Council was created in January 2002 to advise the Global Compact office on critical issues and is composed of 12 business and 9 civil/labor representatives. The companies interested in participating in the initiative are asked to submit a letter of intent to the UN secretary-General. Their name will then be listed as a participant in the Global Compact's website. They are then required to report on actions taken in their annual reports that can be linked in the initiative's website. There are more than 1000 companies that are listed as of July 2003. Over half of the companies are from the developing world, and 30% are small and medium sized enterprises.

NGOs, governments, academia, and other non-business participants can get involved in the initiative through the Global Compact projects such as policy dialogues, workshops, local networks and partnership projects.

As for its funding, the Global Compact relies primarily on the voluntary contributions of governments, which are currently all from EU countries. The Global Compact has a policy not to accept any funding other than governments and civil organizations.

Certification Approach

There is no formal monitoring or verification scheme in this initiative. Any company can become participant by submitting a letter of intent. It is not designed to regulate or enforce compliance, but rather to encourage change and solution finding through practices and actions based on leadership, dialogue and learning between the participating companies and stakeholders. Companies are required to report on actions taken in their annual reports or other public documents, and shareholders, relevant stakeholders and public at large are assumed to take a role to monitor the progress.

Since the initiative totally relies on the openness and transparency of the participating companies, there were some cases of misuse of UN logos and false claims of compliance. The advisory council recognized the problem and made a recommendation at its last meeting in July 2003 to create a task force to develop a process to address companies engaged in "egregious violations" of the Global Compact principles.

Global Reporting Initiative (GRI)

General Description/Scope

The GRI is a multi-stakeholder process and independent institution whose mission is to develop and disseminate globally applicable Sustainability Reporting Guidelines. These Guidelines are for voluntary use by organizations for reporting on the economic, environmental, and social dimensions of their activities, products, and services. The GRI carries out its work via active participation of representatives from business, accountancy, investment, environmental, human rights, research and labor organizations from around the world. Started in 1997 by the Coalition for Environmentally Responsible Economies (CERES), the GRI became independent in 2002, and is an official collaborating center of the United Nations Environment Programme and works in cooperation with UN Global Compact.

Drivers and Agenda

The Initiative was launched as a response to the rising interest in a generally accepted, international, voluntary, sustainability reporting framework. The demand for such harmonized reporting has dramatically increased, driven by several trends: globalization, market crises and corporate scandals, the explosion of Socially Responsible Investment (SRI), and rising interest in sustainable development in general. The ultimate goal of GRI is to make reporting on economic, environmental and social performance as routine as financial reporting is today.

After the publication of its first Sustainability Reporting Guidelines in 2002, GRI released the revised Guidelines in 2002, and its third edition is scheduled for release in 2005. In addition to the Guidelines, GRI continues to develop sector specific guidelines (Sector Supplements) and Technical Protocols that provide detailed definitions, procedures, formulae and references to ensure consistency across reports. There are currently about 300 organizations worldwide that uses the Guidelines for their sustainability reporting, which include a half of the Fortune 250 companies. GRI aims to increase the number of its users up to 600 by 2005.

Governance and Membership

GRI has a multi-stakeholder governance and product development system run by business, foundations, labor groups, civil society organizations, and technical organizations. The GRI Board of Directors has fiduciary, financial, legal, and overall strategic responsibilities for the organization. Broadly representative advisory groups on policy (the Stakeholder Council) and technical issues (the Technical Advisory Council (TAC)) ensure that the GRI's core values of inclusiveness and transparency are sustained. The Stakeholder Council has sixty members comprising a balance of stakeholder and geographic constituencies, and meets annually. Once fully formed, the TAC will provide the GRI Board and Secretariat high-level technical guidance on the Guidelines revision process and the GRI technical work plan. The TAC will comprise ten to fifteen experts in the fields of the environment, human rights, labor, economics and finance, reporting, and/or accounting. The TAC is expected to be operational in 2004. The Secretariat coordinates and implements the Board's plans and advisory groups' work. The base of GRI governance structure is Organizational Stakeholders. Any organization interested in GRI's mission and implementation of sustainability reporting can become a member and elect the Stakeholder Council. Currently more than 5,000 individuals from over 80 countries participate in the Initiative.

Certification Approach

At this time, GRI itself does not assess the conformity of reports against its Guidelines nor evaluate their accuracy. Nor does GRI currently certify or recommend verification services among the many accounting, auditing, management consultancy, and NGOs that offer these services. Recognizing that sustainability report verification is at an early stage, GRI plans to track trends in verification, facilitate ongoing dialogue on the subject, and review its role in this emerging field. GRI does, however, have a system to identify "in accordance" users of the Guidelines. In order to become an in accordance reporter, the organization has to report all the core indicators and to include a statement signed by the Board or CEO attesting that the report is a balanced and reasonable presentation of the organization's sustainability performance.

GRI also encourages the independent assurance of sustainability reports and the development of standards and guidelines for the assurance process to be followed by assurance providers. However, independent assurance of a sustainability report is not a requirement for in accordance reporting. The Guidelines has a section that offers practical guidance on assurance provision and related processes to enhance report quality and credibility.

IV. Other Intergovernmental and NGO-Led Initiatives Relating to ISEAL's Work

A. United Nations Conference on Trade and Development (UNCTAD)

UNCTAD's work on standards is directed at promoting policy dialogue and research and strengthening the response capacity of developing countries (DCs) to new international standards. The work is carried out through technical cooperation and capacity building projects, expert meetings, and policy-oriented research. Specific activities include:

1. Exploratory activities for the creation of a Consultative Task Force (CTF) on Environmental Requirements and International Trade

General Description/Scope

The UNCTAD's Expert Meeting on Environmental Requirements and International Trade (2-4 October 2002) identified increased frequency, strictness, and complexity of environmental requirements in government regulations, industry standards and buyers' requirements as growing impediments to market access for DCs.

The UNCTAD's Commission on International Trade in Goods and Services (3-6 February 2003) mandated to the secretariat, to explore the creation of a Consultative Task Force (CTF) on environmental requirements and international trade. The exploratory activities include brainstorming sessions and stocktaking, as well as field studies. They will explore ways for improving dissemination of information notably on voluntary standards, analyze key trends, and review best practices in development and implementation of regulations and standards.

An open-ended brainstorming session will take place in early 2004 in Geneva to further define the issues, develop the concept and assess potential impacts of the CTF, get to know the activities underway by different organizations and improve coordination among different initiatives. A meeting of experts will take place in May 2004 to discuss the field studies and further develop the CTF concept. It is expected that the UNCTAD Conference in June 2004 (Brazil) would extend the mandate of the secretariat, so that the 1st official meeting of the CTF could take place at the end of 2004 or early 2005.

Drivers and Agenda

The main concerns the CTF wants to address are:

- Market access for developing countries;
- The risk that government regulations could lose their importance because importers and buyers set their own standards, and;
- The lack of international standards to guide the proliferation of private ones.

Governance and Membership

The exploratory activities and the CTF itself are thought as an open-ended multi-stakeholder forums of government, private sector and NGO representatives, including possible partners for co-operation such as UNIDO, International Trade Centre, OECD, European Commission, international standard-setting bodies (i.e. Codex Alimentarius, ISO/DEVCO), UNEP-UNCTAD Task Force on Capacity

Building, ISEAL, FAO/UNCTAD/IFOAM International Task Force on Organic Agriculture, International Development Research Centre, Ministry of Foreign Affairs of the Netherlands, several standard offices and research institutes from DCs, Centre for the Promotion of Imports, GTZ and IISD.

Funded by the Government of Netherlands
Contact: Ulrich Hoffmann, project -coordinator

2. International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF)

General Description/Scope

The International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF) was created by FAO, IFOAM and UNCTAD. It is a dialogue between public and private institutions dealing with organic agriculture and aims to facilitate international trade and market access by DCs for organic products. Its specific activities include:

- Reviewing the existing organic agriculture standards, regulations and conformity assessment systems, including their impact on international trade and mechanisms of equivalency and mutual recognition.
- Making proposals related to the opportunities for harmonization of standards, regulations and conformity assessment systems, for mechanisms for their equivalence and mutual recognition, and for measures to facilitate access to organic markets by DCs and smallholders.
- Advising stakeholders and providing information on developments following discussions of the above proposals.

The ITC has convened two meetings, in Nürnberg, Germany, 18 February 2003 and in Geneva, 20-21 October 2003, with the participation of UN intergovernmental organizations, OECD, WTO, IOAS, government and private sector representatives, and practitioners and certifiers from different countries. Heretofore, the ITC has set a work plan and discussed several draft papers mandated on the topics mentioned above.

Governance and Membership

The ITF is an open-ended platform. ITF members include intergovernmental, governmental and civil society representatives concerned with trade and regulatory activities in the organic agriculture sector. Participants take part on personal basis.

Funded by the Swedish government

Contacts: Ulrich Hoffmann, Project manager (UNCTAD), Nadia Scialabba, Project manager (FAO), Gunnar Rundgren, Project manager (IFOAM)

3. UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF)

General Description/Scope

The first phase of the CBTF was launched in 2000 and phase II in 2002. CBTF aims to strengthen the capacities of countries, particularly DCs, to effectively address trade, environment and development issues, to participate effectively in international negotiations, and to maximize the net development gains from trade and trade liberalization.

CBTF II work focuses on integrated assessment of trade liberalization and poverty alleviation, environmentally preferable products, synergies between Multilateral Environmental Agreements (MEAs) and the WTO and the subsidy reform, so as to enhance market access and reduce environmental damage. CBTF initiatives are implemented particularly at national and regional levels, with special attention to Africa. A workshop was held in Brussels (2002) to discuss policy options to promote production and trading opportunities for organic agricultural products from DCs.

Funded by Governments of Germany, Norway, Sweden, the United Kingdom, the United States and the European Commission.

Contact: Rene Vossenaar, UNCTAD and Charles Arden-Clarke, UNEP.

4. UNCTAD-FIELD II: Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues

General Description/Scope

This project is a follow-up to the UNCTAD/FIELD project on Strengthening Research and Policy-Making Capacity on Trade and Environment in DCs. The second phase of the project aims to build the capacity of selected DCs from Latin America and Asia to deal with trade, environment, and development issues in the post-Doha process, to improve policy coordination among members, and assist in their effective participation in WTO negotiations. It intends also to assist the core countries in developing legal and long term sustainable development policy initiatives. The project also targets representatives of Geneva-based missions responsible for negotiations in the WTO and MEAs, senior managers in the private sector, academics and NGOs.

Specific activities comprise multi-stakeholder policy dialogues at the country level with the involvement of the private sector and civil society. The Latin America countries are focusing the work on organic agriculture.

Funded by UK Department for International Development (DFID)

Contacts: Rene Vossenaar, overall project manager (UNCTAD) and Beatrice Chaytor, coordinator for Africa (FIELD)

5. Expert Meetings

UNCTAD's Commission on Trade in Goods and Services and Commodities has convened a number of Expert Meetings that have addressed standards-related issues.

General Description/Scope

The Expert Meetings bring together government-nominated experts and representatives from the private sector, academics and NGOs both from developed and developing countries. The aim is to provide practical recommendations for actions to be taken by national governments, the international

community, and UNCTAD. Expert Meetings of relevance to ISEAL (and standards development) include:

- Ways to Enhance the Production and Export Capacities of DCs of Agriculture and Food Products, including Niche Products, such as Environmentally Preferable Products. Geneva 16-18 July 2001
- Environmental Requirements and International Trade. Geneva, 2-4 October 2002.
- Market Entry Conditions Affecting Competitiveness and Exports of Goods and Services of DCs. Geneva 3-5 November 2003

B. Organization for Economic Cooperation and Development (OECD)

1. Round Table on Sustainable Development (RTSD)

General Description/Scope

The RTSD is a ministerial-level forum for international dialogue concerning sustainable development issues. The goal of the RTSD is to provide an informal setting where ministers and key international stakeholders can engage on discussions and coalition building without prejudicing negotiating positions. Of the discussions thus far, two meetings (2001 and 2002) have focused on the role of environmental labels in promoting sustainable development.

Governance and Membership

RTSD meetings are attended by OECD ministers, other key ministers and other representatives from DCs, intergovernmental organizations, and civil society. A research unit at the OECD undertakes analytical work on the main international issues and prepares the relevant background documentation¹².

Funded by The New Zealand Government.

Contact: Vangelis Vitalis, Chief Adviser, OECD.

2. Joint Working Party on Trade and Environment (JWPTE)

General Description/Scope

JWPTE started in November 2001 to address issues related to the impact of environmental requirements, including technical regulations, sanitary and phytosanitary measures, mandatory or voluntary labeling, packing and recycling requirements on exporters, particularly from DCs. The project intends to enhance understanding of the perceived and actual trade effects on DCs' exports from OECD members' environmental regulations.

¹² Documentation related to environmental labeling includes: "Trade and Environment: Environmental labeling and WTO rules"(2001), "Voluntary sustainability Standards and Labels (VSSL): The Case for Fostering Them"(2002), "Private Voluntary Eco-labels: Trade Distorting, Discriminatory and Environmentally Disappointing"(2002) available in the OECD web site: www.oecd.org

The first phase of this project developed case studies on a wide range of importing and exporting countries sectors' issues and types of environmental measures¹³. Relevant case studies related to environmental labeling include:

- Developing an international standard for “Green” tourism (international tourism industry group – DCs providing)
- Environmental labels for cut flowers (German NGO and flower industry – Colombia)
- Private certification of a fishery as sustainable (NGO – DCs exporters)
- Regulating “organic” food labels in the USA (USA - DCs exporters)
- Sustainability labels for food and wood products (The Netherlands – Malaysia and other exporters)

Contact: Ronald Steenblik, Trade Directorate, OECD.

C. United Nations Food and Agriculture Organization (FAO)

1. Expert Consultation on the Development of International Guidelines for Environmental Labeling of Fish and Fishery Products from Marine Captured Fisheries

In addition to the International Task Force on Harmonization and Equivalence in Organic Agriculture mentioned above, the FAO is looking at the development of international guidelines on fisheries.

General Description/Scope

An Expert Consultation was convened at the request of FAO Committee on Fisheries (COFI) (February 2003). The main objective was to consider draft elements for setting international guidelines on the environmental labeling of fish and fisheries. The meeting discussed recent trends in environmental labeling of forest and food products, including fisheries. It reviewed other relevant work from WTO, ISO, and CODEX Alimentarius. The possible elements of international guidelines for environmental labeling of fish were discussed along with special requirements for DCs to adopt environmental labeling. The outcome included draft guidelines, principles and criteria, as well as institutional and procedural matters, including minimum requirements for accreditation and certification bodies, whether they be governmental or private (FAO 2003).

The preliminary report will be presented at the next COFI meeting (February 2004) in order to determine next steps. It has been suggested that COFI should approve a mandate to undertake another expert consultation with special emphasis in developing countries, so that the next draft guidelines can be approved at the COFI 2005.

Drivers and Agenda

The Expert Consultation is a response of a request of FAO members to develop guidelines on environmental labeling base on of scientific information and governmental coordination. As for the activities dealing with organic agriculture, it seeks to address the market access problems from DCs and to ensure consistency among schemes by setting an international minimum framework requirement.

¹³ The results of the first phase of this project are presented in the OECD document “*The development dimension on trade and environment: Case studies on environmental requirements and market access*”. 19 Nov.2002 (COM/ENV/TD(2002)86/FINAL)

Governance and Membership

The Expert Consultation was composed of a small number of multidisciplinary experts and stakeholders, invited in their personal capacity from different regions.

D. Sustainable Trade and Innovation Centre (STIC)

General Description/Scope

The Sustainable Trade and Innovation Centre (STIC) is a partnership aimed at assisting developing country producers to respond to buyers' pressures to integrate environmental and social factors into their export strategies.

STIC's activities include partnership development, exchange of information between DC producers and buyers in developed countries, and promotion of new tools and techniques. Specific activities comprise of regional consultations and pilot projects in Africa, Asia, Latin America, and the Caribbean and Mediterranean regions. STIC also elaborates an annual review of sustainable trade issues including market trends and opportunities, codes and regulations in export markets, constraints faced by DCs, case studies and good practices from DCs.

Drivers and Agenda

STIC is intended to act as a platform for bringing together stakeholders from the North and South to achieve better environmental and social performance in developed and developing countries.

Governance and Membership

STIC operates as a network with a core office and various regional and sectoral partners. The members include experts from UNEP (France), Eco-tex Institute for Applied Ecology (Germany), Eco-operation (Netherlands), Centre for Sustainable Design (UK), Mauritius Chamber of Commerce and Industry (Mauritius), IISD (Canada), Nsamba Coffee Works (Uganda), Federation of Chambers of Commerce and Industry (India), Commonwealth Science Council (UK), European Partners for the Environment (Belgium), Office of the Prime Minister (Jamaica), and UNCTAD,

E. Foundation for International Environmental Law and Development (FIELD)

General Description/Scope

FIELD is an NGO composed of public international lawyers. It aims to empower marginalized countries and communities, so that they can make informed choices about trade rules and their effect on the natural environment and on development objectives (FIELD 2003).

Program on Trade, Investment and Sustainable Development (TISD)

TISD focuses on how international institutions (and their rules) dealing with globalization (WTO, EU and other trading blocks) impact sustainable development in DCs. TISD aims to make international trade and its processes more equitable transparent and participatory. Their work focuses on:

- Building the capacity of DCs to design domestic and regional trade policy and to participate in WTO negotiations,
- Supporting NGO to participate in WTO's dispute settlement, and
- Supporting multilateral negotiations for effective trade-related environmental measures.

Key projects include: Corporate Accountability and developing options for legally binding international legal framework and Environmental Goods and Services, focusing at defining the opportunities for EGS's negotiations to provide win-win options for DCs.

Contact: Beatrice Chaytor, coordinator (FIELD)

Drivers and Agenda

FIELD is concerned about voluntary mechanisms that do not provide sufficient incentives for corporate responsible behavior, and may in fact, provide an easy way out for unethical behavior.

F. International Institute for Sustainable Development (IISD)

IISD focuses its work on monitoring the transition to sustainable development (IISD 2003a). The organization designs and advocates international trade and investment policies relevant to DCs' concerns. IISD works through collaborative projects with global partners, focusing on research, capacity building in DCs and improved dialogue between North and South.

General Description/Scope

IISD's trade work seeks to find areas of synergy where trade, environment and development can be mutually beneficial, to help policy makers exploit those opportunities and to identify and minimize areas of conflict among these spheres. IISD programs include:

Developing Country Issues/Capacity Building: Trade Knowledge Network (TKN)

The TKN is a group of expert institutions developing thematic research to increase awareness, understanding and capacity in the sustainable development dimensions of trade. It utilizes policy workshops and other fora to inform and promote dialogue among policy-makers and stakeholders in TKN-member countries. The TKN has developed country studies relevant to standards and environmental labeling in Bangladesh, Chile, China, Pakistan, South Africa and Vietnam¹⁴. The TKN is managed in a collaboratively manner by IISD and the International Centre for Trade and Sustainable Development (ICTSD).

Funded by Rockefeller Foundation, Norwegian Ministry of Foreign Affairs, International Development Research Centre (IDRC), Swiss Agency for Development and Cooperation (SDC) and the Canadian International Development Agency (CIDA)

Contact: Tom Rotherham

Standards and Trade

Through this program, IISD addresses two main issues:

¹⁴ Studies available in TKN website: www.tradeknowledgenetwork.net

- The role of governments in promoting industry to improve social and environmental performance through voluntary initiatives (i.e. EMS, certification, public reporting on environmental and social issues).
- How to deal with the distrust of DCs with respect to environmental and social requirements and ensuring that standards do not become unnecessary obstacles to trade as suggested by the TBT Agreement.

To address these issues IISD sets its work into the following sub-programs:

International Standards Policy

IISD is involved in ISO TC 207's Future Vision Task Force,¹⁵ which developed a strategic plan that responds to the evolution of environmental management attitudes towards sustainable development and corporate social responsibility. Its activities comprised of a reconsideration of TC 207's mandate, guiding ISO at 2002 WSSD, and recommendations to ensure the permanence of ISO among user community. The output of this work was a final report and the establishment of a Strategic Planning Group for which IISD is a member. Through its participation in this task, IISD aims also to assist DCs and other NGOs to participate effectively in ISO.

Funded by The Canadian Department of Foreign Affairs and International Trade (DFAIT).

Standards for Sustainable Trade

This project focuses on the impact of voluntary environmental and social standards on market access and seeks to help DCs in build institutional and technical capacity to implement (and benefit from) sustainable development standards. Among other things, IISD is working to assess technical assistance needs relating to agriculture and forestry in three regions: South America (Brazil Chile, Paraguay), Southern and Eastern Africa (Kenya, Namibia, South Africa, Uganda, Zimbabwe) and South Asia (Bangladesh, India, Nepal, Pakistan). To do this, IISD works with partner organizations in the developing world. The regional research is being undertaken by the Bangladesh Centre for Advanced Studies; the African Centre for Technology Studies in Kenya, and RIDES from Chile.

Funded by European Commission DG Trade and the Norwegian Agency for Development Cooperation (NORAD).

Corporate Social Responsibility (CSR)

IISD participates in the work of the ISO Strategic Advisory Group (SAG) on Corporate Social Responsibility, which is described in Chapter 2

Contact: Tom Rotherham

Sustainable Commodity Initiative (SCI)

In partnership with UNCTAD, the SCI aims to develop global multi-stakeholder-based strategies to improve the social, environmental and economic sustainability of commodities production and trade. Through meetings and workshops, members intend to explore sustainability from both market structure and supply chain perspectives. It further explores opportunities for collaboration between

¹⁵ The Future Vision Task Force was established at ISO Technical Committee 207's 2001 Annual Meeting

existing sustainability initiatives and new global instruments for the sustainable management of commodities trade through public/private/civil society partnerships. (IISD 2003b)

A practical work of this initiative is being applied specifically to the coffee sector (IISD 2003c). The project intends to provide a forum for generating multilateral and multi-stakeholder cooperation towards sustainable practices within the coffee sector. This work builds upon existing initiatives such as International Coffee Organization, FLO International, Rainforest Alliance and the Sustainable Agriculture Network, UTZ Kapeh Foundation, GTZ, European Coffee Federation. Two international multi-stakeholder meetings have taken place along with a multi-stakeholder survey and a research of legal, economic and impact analysis.

Funded by International Development Research Institute (IDRC)

Contacts: Jason Potts, Project Coordinator (IISD); Amos Taporaira, Commodities Branch (UNCTAD)

G. PI Environmental Consulting and ECL Stakeholders

The ECL Space

General Description/Scope

In June 2003, a group of ECL stakeholders met in Geneva to discuss the growing threats facing ECL and to brainstorm possible measures to counteract them. The group came up with the idea of a “Space for ECL¹⁶”. It would be a place where ECL stakeholders, which would include practitioners, civil society, business, standardization and government representatives, from both developed and developing countries, could find a neutral ground for constructive discussions.

Following on to that meeting, a project was launched, which will start with an exploratory and development phase. Based on an issue mapping study for and by Southern country practitioners, this first phase will define more precisely in a participatory manner the objectives, the institutional and procedural matters. One of the important functions of the Space may be the design of generic guidelines for ECL, based on existing best practice. Other more immediate functions would include the establishment of a clearinghouse mechanism and building an intellectual case for ECL, maybe be a think tank in support of ECL.

The activities carried out in the development phase should enable the building of trust between the stakeholders, including Southern government representatives, NGOs and private sector. This in turn, when the Space is launched, should allow the identification of practices that will help ECL to be a useful tool and an opportunity for them, trying to overcome some of the problems currently identified with ECL, particularly in relation with market assess. A preparatory phase will start in February 2004, including the fine definition of the project through a multi-stakeholder process.

Funded by GTZ and the Rockefeller Brothers Fund.

Contact: Nancy Vallejo and Pierre Hauselmann

¹⁶ The wording “Space” was chosen to avoid as much as possible to provide a preconceived idea in term of size or organization.

Drivers and Agenda

The brainstorming discussion focused on three main issues: the impact of trade rules, the development of pseudo ECL schemes, particularly by ISO and the private sector, and the need to counteract the driving force that the negative view of ECL in DCs is bringing to create alternatives to (or control of) current ECL. The initiative is looking to mobilize multi-stakeholder buy in and to build the intellectual case in support of ECL.

H. Pacific Institute-Administered “International NGO Network on ISO”

General Description/Scope

Launched in 2002 with funding support from the Rockefeller Brothers Fund, the *International NGO Network on ISO (INNI)* was established to track, and to influence to the degree possible, the activities of ISO. The overarching goal of the INNI is to ensure that any ISO-created standards serve the public interest and protect the environment. The INNI’s Secretariat, the Pacific Institute, works toward that end by providing information and analysis to NGOs that have a stake in ISO’s work, but lack the capacity and resources to follow the standards development process first hand. Once armed with timely and credible information, network organizations can activate their members, provide guidance to (and lobby) decision-makers, educate the public, and shape the implementation of ISO standards by individual companies.

The Pacific Institute’s INNI-related outreach and education activities consist of two tracks for information flow: one provides more general (and innocuous) updates on ISO developments, which are done through the INNI website and via the electronic bulletins to the 400 plus individuals representing approximately 215 organizations from 40 countries around the world. The other “information track” provides detailed (and sometimes sensitive) information and strategic consultation and guidance to select, directly affected, high-level environmental leaders. This is done on an ad hoc basis as the need arises.

Drivers and Agenda

The INNI was formed in response to a concern that ISO’s move into the environmental and social policy realms has not been accompanied by a parallel shift in the representation of important stakeholders within ISO. Because of the technical complexity and low public profile of ISO, many public interest groups that have a direct stake in ISO’s emerging standards have been unaware of the organization and its impact on environmental and social policy. The Pacific Institute established the INNI based on the belief that ISO’s headlong rush into new areas of standardization can only be addressed by a more informed and coordinated response from members of the broader environmental protection and social justice communities.

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Appendix B - Excerpts from Relevant Trade Texts

1. Plan of Implementation of the World Summit on Sustainable Development

“... III. Changing unsustainable patterns of consumption and production

“15. Encourage and promote the development of a 10 -year framework of programmes in support of regional and national initiatives to accelerate the shift towards sustainable consumption and production to promote social and economic development within the carrying capacity of ecosystems by addressing and, where appropriate, delinking economic growth and environmental degradation through improving efficiency and sustainability in the use of resources and production processes and reducing resource degradation, pollution and waste. All countries should take action, with developed countries taking the lead, taking into account the development needs and capabilities of developing countries, through mobilization, from all sources, of financial and technical assistance and capacity-building for developing countries. This would require actions at all levels to:

(a) Identify specific activities, tools, policies, measures and monitoring and assessment mechanisms, including, where appropriate, life -cycle analysis and national indicators for measuring progress, bearing in mind that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries; ...”

(e) Develop and adopt, where appropriate, on a voluntary basis, effective, transparent, verifiable, non - misleading and non-discriminatory consumer information tools to provide information relating to sustainable consumption and production, including human health and safety aspects. These tools should not be used as disguised trade barriers; ...”

“18. Enhance corporate environmental and social responsibility and accountability. This would include actions at all levels to:

(a) Encourage industry to improve social and environmental performance through voluntary initiatives, including environmental management systems, codes of conduct, certification and public reporting on environmental and social issues, taking into account such initiatives as the International Organization for Standardization standards and Global Reporting Initiative guidelines on sustainability reporting, bearing in mind principle 11 of the Rio Declaration on Environment and Development; ...”

“19. Encourage relevant authorities at all levels to take sustainable development considerations into account in decision-making, including on national and local development planning, investment in infrastructure, business development and public procurement. This would include actions at all levels to:

(c) Promote public procurement policies that encourage development and diffusion of environmentally sound goods and services; ...”

“... X. Means of implementation

“99. Complement and support the Doha Ministerial Declaration and the Monterrey Consensus by undertaking further action at the national, regional and international levels, including through public/private partnerships, to enhance the benefits, in particular for developing countries as well as for countries with economies in transition, of trade liberalization, through, *inter alia*, actions at all levels to:

...(b) Support voluntary WTO-compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods and services, including organic products, which maximize environmental and developmental benefits through, inter alia, capacity -building and technical assistance to developing countries; ...”

Source: UN, 2002. Report of the World Summit on Sustainable Development. Johannesburg, South Africa, 26 August-4 September 2002. A/CONF.199/20

2. The Doha Mandate on Trade and Environment¹⁷

“6. We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakech Agreement. We are convinced *that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive*. We take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis. ...”

31. “With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
- (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
- (iii) *the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services*”.**

“32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) *the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development*;**
- (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights¹⁸; and
- (iii) *labelling requirements for environmental purposes*”.**

“33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. **We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level.** A report shall be prepared on these activities for the Fifth Session”.

¹⁷ World Trade Organization (WTO). 2001. *Doha Ministerial Declaration* (WT/MIN(01)DEC/1, 20 November 2001)

¹⁸ See also paragraphs 17-19 of the DDA

3. Agreement on Government Procurements

Of main interest in the Agreement on Government Procurement for ECL is probably article VI on technical specifications for products or services to be procured:

“1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Technical specifications prescribed by procuring entities shall, where appropriate:

(a) be in terms of performance rather than design or descriptive characteristics; and

(b) be based on international standards, where such exist; otherwise, on national technical regulations¹⁹, recognized national standards²⁰, or building codes.

3. *There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.*”

It is notable that this article refers specifically to labelling, gives a hierarchy between international standards, national regulations, national standards and building codes, and asks not to refer to a trade mark. It could be argued though, that the name of an international standard (e.g., SA8000) is not one, which could justify exploring how to present ECL standards as product related to some extent.

4. GATT

This box highlights some elements of GATT 94, the main legal text ruling international trade, as they can relate to ECL. For a full discussion, please refer to Mann and Porter (2003). The excerpts below are quotes from the original text. Emphasis is added.

Article I and III introduce the notion of “like products”, which has mostly been interpreted as meaning products that are physically similar and fulfill the same function, irrelevantly of their “non-product related production and processing methods” (PPMs)

“Article I - General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation [...] any advantage, favour, privilege or immunity granted by any contracting

¹⁹For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

²⁰For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

party to any product originating in or destined for any other country **shall be accorded immediately and unconditionally to the like product** originating in or destined for the territories of all other contracting parties.

Article III - National Treatment on Internal Taxation and Regulation

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. ...

4. **The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. ..."**

Article XX indicates 10 general exceptions to the non-discrimination of like products, b) and g) being the most relevant for ECL, as follow:

Article XX - General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;**
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;**
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

- (j) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this subparagraph not later than 30 June 1960.

5. International Standards and the Technical Barriers to Trade agreement

International standards

There is not an official definition of international standard. However, for WTO, international standards do not create unnecessary obstacles to trade. An important reason for this is the fact that they are deemed to be developed through an international consensus. They have precedence over national regulations, national standards, building codes.

Art. VI — GATT 94 Technical Requirements are divided on standards and technical regulations. They are define as:

Standards:

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Technical regulations:

Document which lays down characteristics of a product or a service [...] with which compliance is mandatory

Voluntary standards, particularly international ones, are given a great importance in international trade rules. The TBT request national governments to rely on the latter when establishing technical regulations.

Relevant aspects of the TBT agreement

In principle, TBT gives preference to international than to national regulations: Article 2.4 states:

“Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.”

TBT requests governments to have NGOs developing standards in their territories comply with the relevant aspects of the TBT, particularly its normative Annex 3, the Code of Good Practice for the Preparation, Adoption and Application of Standards. Article 4.1 stipulates:

“Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice[...]. They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice. In addition, Members shall not take measures which

have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice.”

In the Code of Good Practice the notion of like products, hence the issue of PPMs is introduced in substantive provision D:

“In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favourable than that accorded to like products of national origin and to like products originating in any other country”

The prominence of International standards is repeated under provision F:

“Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.”

Other provisions relate to avoidance of unnecessary obstacles to trade (E), harmonization (G), equivalence based on product performance instead of product design of characteristics (I).

The Annex 4 of the second TBT triennial review adds a few precisions concerning international standards that should comply with the following principles:

- Transparency, through inter alia publication of a work programme, early notice of work and provision of draft standards upon request
- Openness, including the participation by at least all WTO members at the level of policy development and every stages of the standard development process
- Impartiality and Consensus
- Effectiveness and relevance
- Coherence, avoiding the duplication of the work of other international standard setting organisations by participating in their work
- Development Dimension, particularly improving the participation of developing countries delegations in the standard development and provisions for capacity building and technical assistance