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**THE IMPLICATIONS OF THE WTO TRADE AND
ENVIRONMENT COMMITTEE RECOMMENDATIONS
AND ISSUES UNDER NEGOTIATIONS ON TRADE
IN THE ESCWA MEMBER COUNTRIES:**

THE CASE OF THE AGRO-FOOD INDUSTRY IN LEBANON

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**The implications of the WTO Trade and Environment Committee
Recommendations and Issues under negotiations on trade in the
ESCWA Member Countries:**

The case of the agro-food industry in Lebanon

Submitted by Kai Radtke and Fadi Atallah

Abbreviations

AFTA	Arab Free Trade Area
APEC	Asia-Pacific Economic Cooperation Council
BST	Bovine Somatotropin
CAC	Codex Alimentarius Commission
CTE	Committee on Trade and Environment
DPG	Domestically Prohibited Goods
DSU	Dispute Settlement Understanding
EST	Environmentally-Sound Technologies
EU	European Union
FAO	Food and Agriculture Organisation
GATT	General Agreement on Tariffs and Trade
GMO	Genetically Modified Organism
IGO	Inter-Governmental Organisation
MRLs	Maximum Residue Levels
MEA	Multilateral Environmental Agreement
MERCOSUR	Southern Common Market (South America)
MTS	Multilateral Trading System
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PPMs	Processes and Production Methods
TRIPs	Trade Related Aspects of Intellectual Property
SME	Small and Medium Enterprises
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
WHO	World Health Organisation
WTO	World Trade Organisation

SECTION I: The CTE work programme and agenda

Introduction to the debate on Trade and the Environment in the WTO and the creation of the CTE

The Committee on Trade and Environment (CTE) was established by the WTO General Council in January 1995. The Marrakech Ministerial Decision on Trade and Environment of April 15th 1994 contains the CTE's terms and mandate. Three main directions constitute these terms:

- "The need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them;
- The avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12;
- Surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures."¹

The CTE mandate included the submission of a report to the biennial Ministerial Conference in Singapore in 1996. The ten Items listed in the Decision structure the CTE's work and several of them were built on discussions that took place in 1992-93 in the GATT Group on Environmental Measures and International Trade (EMIT) and in 1994 in a Sub-Committee on Trade and Environment. All WTO Members may be CTE Members; observer governments as well as inter-governmental organisations observers were invited to participate in CTE meetings.

¹ The Report of the Committee on Trade and Environment (CTE) adopted to the WTO Ministerial Conference in Singapore in December 96.

The following analysis will be conducted along the following grid. Some titles will be omitted when not applicable. Technical notes and expressions from the Report are used in this section, as it is the exclusive reference.

Item 1: The relationship between the provisions of Multilateral Trading System and measures for environmental purposes, including those pursuant to multilateral environmental agreements (MEA)

General presentation

Trade measures destined to pursue public policy objectives (including environmental preservation) are allowed under WTO as long as they do not disrupt free trade with discriminatory or arbitrary measures (generally dealt with under Article XX). Most WTO members seem to believe that trade measures pursuant to multilateral environmental agreements (MEAs) could be efficient instruments for environmental protection and could therefore be desirable only if they are not arbitrary and discriminating and are used prudently. This item is concerned mainly with **the use of unilateral trade measures** by nations to address environmental problems that lie outside of their national jurisdiction.

More importantly, trade measures applied pursuant to MEAs raise the issue of their consistency with WTO principles (namely non-discrimination, national treatment and the most favoured nation clause) and provisions (particularly Article XX).

Specific propositions to support the issues raised by item 1

There is a complex debate within the WTO, and more specifically the CTE, on the ways to render trade provisions included in MEAs consistent with those of the multilateral trading system. Although WTO members would like the organisation to support environmental preservation through MEAs, there is a vague consensus that the primacy of the WTO strict discipline must prevail over the exceptions proposed by MEAs. It has been noted that a limited number (20) of MEAs have trade-related measures and no cases of dispute involving the use of one of these measures has occurred to date.

The WTO rules allow the use of certain trade-related measures to reach policy objectives (several exceptions regulated by Article XX). The WTO secretariat should play an active role in co-operating with those of MEAs and notify its Members on trade-related measures being considered or adopted in MEAs.

The efforts to ensure the consistency between MEAs and the WTO could be applied before the conclusion of negotiations of MEAs (*ex ante*) or for minimising the conflict between them and the WTO (*ex post*). They can be roughly synthesised as follows:

Ex ante measures

- Another set of issues raised are the trade measures applied by parties to an MEA against non-parties, that are, on the other hand members of the WTO. The reference body for dispute settlement in this case would be the WTO whereas it would be that of the MEA if both countries were parties to it.

Brief analytical synthesis

Many clarifications remain to be made on the real sense and scope of WTO provisions as they relate to the application of trade measures pursuant to MEAs, particularly on article XX (e.g. does it include the concepts of effectiveness, proportionality, necessity, least trade restrictiveness, etc). In other words, the conceptual framework (within the current multilateral trade system) in which to develop mutually supportive free trade and environment policies still has to be clarified.

WTO members participating in the CTE seem to agree, to some extent, on the role of trade measures in supporting the resolution of environmental problems and they are trying to provide the instruments to ensure that trade measures pursuant to MEAs are consistent with those of the WTO and to avoid unilateral actions by governments.

The primacy of WTO principles must be preserved to continue the promotion of open markets and non-discriminatory trade.

General implications on government policy

Reinforce the knowledge of trade and environment issues, particularly by national decision-makers involved in one or the other of the policy fields. They must ensure that they understand the constraints that the multilateral trade system poses on their ability to use trade-related measures for environmental protection purposes. In other words, pursuing environmental goals and the means to achieve them has become explicitly constrained by the obligations of states to the multilateral trade system.

They must also develop a global approach to environmental problems; a global approach implies the understanding of the scope of the problem and its impacts on the parties involved, the identification of potential partners based on common interest, and the promotion of a multilateral co-operation with them. The point is to avoid unilateral actions by WTO members states that could cause the disruption of the multilateral trade system and hurt its credibility and predictability.

General implications on market access

The market access for products which production is covered by MEAs (such as the Montreal Protocol and the production of on CFC related products) might be limited or denied.

On the other hand, producers/exporters and their governments have the right to examine the consistency of a trade measure pursuant to an MEA with WTO principles of non-discrimination, national treatment and most favoured nations and other trade rules.

General implications on government policy

Impacts on government policies regard mainly the trade dispute settlement process. Item 1 discussed above deals with the avoidance of disputes through multilateral approaches and increased co-operation between environmental and trade policy-makers.

General implications on market access

No direct impact

Specific recommendations (item I&5)

The CTE recommended that MEA's secretariats that so desire, should be granted an observer status in WTO bodies and invitations to attend the CTE discussions should be extended. It is noteworthy to note that in the symposium on Trade, Environment and Development organised by WTO in Geneva on March 15 and 16, 1999, included the participation of a large number of NGO and representations of MEAs.

Item 2 The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

General presentation

This item deals with the relationship between environmental charges and taxes and the provisions of the WTO.

Specific propositions to support the issues raised by item 2

The fullest implication of this trade and environment policy review would mean -according to some proposals- to "analyse the flexibility of trade principles to accommodate current and emerging environmental policies", to determine whether they prevent the internalisation of environmental externalities, and whether the trade rules contribute to integrated sustainable development policies. Principles to be reviewed include : the principle of sustainable development, Principle 12 of the Rio Declaration, MFN and National Treatment, transparency, the concepts of least trade-restrictiveness, proportionality and equivalence, special and differential treatment for developing countries, common but differentiated responsibility, sovereignty over environmental resources, fair and equitable sharing of benefits, and the special needs of developing countries, in addition to the principles of the obligation to co-operate, the

- used in the transportation and production of other taxable goods such as taxes on energy, advertising, machinery and transport;
- Taxes on product and non-product-related PPMs.

In addition, the valuation of environmental resources for the purpose of taxation and the impact of environmental taxation on the trade of developing countries were discussed. The reference in WTO rules against which these taxes are evaluated is the Border Tax Adjustment (BAT) provision in a 1970 GATT report.

Sensitive issues raised by item 3(A)

The discussions at this point were preliminary and no in-depth debate raised sensitive issues.

Brief analytical synthesis

The compliance of each specific environmental taxation with the BAT provisions will likely be raised and debated.

General implications on government policy

Still very vague.

General implications on market access

Still very vague.

Item 3(B) The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations packaging, labelling and recycling

General presentation

This item is mainly related to the WTO Agreement on Technical Barriers to Trade and its link to environmental regulations such as eco-labelling schemes (environmental labelling on either product contents or process and production methods, PPMs) but also environmental packaging and waste handling requirements.

Eco-labelling schemes as applied by different countries are very diverse and are generally voluntary.

Specific propositions to support the issues raised the item 3(B)

- The principles for eco-labelling standards that are either common to trading partners or that would allow to minimise their effect on trade;
- There is no consensus on the relationship between the Agreement on TBT and the implementation of mandatory eco-labelling schemes (i.e. how WTO rules deal with them)
- Eco-labelling raises many issues in the trade relations between developed and developing economies, the latter being suspicious of the use of these schemes to create barriers to limit their access to developed markets; as they would involve additional cost and know-how to comply with the schemes: Not to mention the weight of the overall level of economic development in a developing society in adjusting to the regulations of developed economies.

Brief analytical synthesis

If the concept of eco-labels is consistent with WTO rules and provisions, its applications are much more complex and controversial.

The eco-label can either be voluntary or mandatory, in which case, it would include the imposition of a country's own standards (i.e. subjective interpretation) on products originating from other countries which have a different evaluation of the products' environmental aspects.

The eco-label can also be product-related (i.e. product specification) or PPM-based (i.e. the way it is produced). The product specifications are allowed for eco-labels by WTO rules but PPM related eco-labels are problematic.

General implications on government policy

The introduction of eco-labelling schemes has to abide by specific principles in international trade, particularly in the Agreement on Technical Barriers to Trade. Governments must support its industries when they are subject to a restriction in market access whether by following up the issue in the WTO to ensure its compliance with TBT provisions or by supporting the industries in acquiring the green label required by providing technical support.

General implications on market access

Eco-labelling, as discussed above are a primary source of market access limitations and the WTO is concerned with its trade restrictiveness. Eco-labels create an edge to green label products in the perception of the consumer and could hurt the non-labelled exporter, particularly as distributors tend to follow market trends and limit the exposure of the product. Complying with a product eco-labelling scheme can be cumbersome and costly for the producer, particularly if the procedures are not transparent.

Item 4 The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures which have significant trade effects

Brief analytical synthesis

Transparency is an important tool for avoiding clashes on trade-related environmental measures and hence, trade disputes.

The existing transparency mechanisms introduced by the Uruguay Round should suffice to cover the introduction and the implementation of trade-related environmental measures but could prove to be limited in some cases; there is a need to clarify the existence of these gaps and propose ways to fill them.

There is still a need to clarify to what extent the transparency provisions of the WTO cover newly introduced trade-related environmental measures and to develop a set of mechanisms to cover all aspects of trade-restrictive measures, including environmental ones.

General implications on government policy

Governments have to establish mechanisms to systematically notify other WTO and MEA members of trade-related environmental measures that they could introduce (according to the TBT procedures for WTO issues). They should also try to make available information on trade limitations in export markets to their own exporters and provide them with assistance to adjust to them.

General implications on market access

Exporters need to double-check the constraints or limitations on the export of their products to each national market as the accessibility could be linked to a trade-related environmental measure.

Recommendations

The CTE recommends that the WTO secretariat should collect all modifications of trade-related environmental measures in a single database. Co-operation between the WTO and other IGOs such as the ITC and UNCTAD should be promoted.

Item 6 The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

General presentation

This item deals with the issue of obstacles to trade posed by the adoption by some countries (particularly of developed ones) of stringent environmental standards, particularly with regards to exports generating from developing or less developed countries. More specifically, it discusses the internalisation of environmental costs in the cost of goods and the constraints that these place on developing economies.

developed countries.

For the purpose of avoiding the proliferation of environmental standards and their use as non-tariff barriers to trade, the adoption of environmental regulations should be subject to sound science, transparency, and equity and must be compatible with the open, equitable and non-discriminatory nature of the trading system. The use of environmental principles such as the precautionary principle and the principle of proportionality between environmental benefits and economic costs should be weighed against the impact of trade restrictive measures on the trade of developing and less developed countries. Others feel that environmental measures should be weighed against the safeguard of existing market access opportunities of less developed nations.

Some believe that the removal of remaining trade barriers in sectors which are of interest to developing countries such as **textiles** and clothing, leather products, footwear, forest products, fish products, minerals and mining products, agricultural products, etc. could help increase environmental benefits. This point was not conclusive and further studies on the environmental benefits of liberalising trade should be conducted.

To increase the environmental benefits through trade, the following channels exist:

- Removal of trade restrictions on environmentally-friendly goods and environmental services;
- Removal of restrictions on the transfer of environmentally-sound technologies;

The removal of trade restrictions can eliminate the artificial incentives to produce certain goods and shift the resources to other areas that would put less pressure on the domestic environment.

As for agriculture, it is thought that subsidies to the sector has increased the pressures on environmental resources including intensified land use, increased application of agro-chemicals, the adoption of intensive animal production practices and overgrazing, the degradation of natural resources, loss of natural wildlife habitats and biodiversity, reduced agricultural biodiversity, and the expansion of agricultural production into marginal and ecologically sensitive areas. In that perspective, the reduction of agricultural protection would represent a “win-win” situation for trade and environment. But this point did not manage to create a consensus as the agricultural sector is extremely more complex and a case-by-case analysis should be conducted to understand the dynamics between trade and environment in agriculture. In addition, many members of the CTE did not feel it appropriate for the CTE to focus on agricultural issues as these are to be debated in the WTO negotiations on the liberalisation of agriculture.

The questions of whether price adjustments for agricultural products was integrating all costs of production including environmental costs, was also debated. In other words, only the full internalisation of environmental costs could lead to systematic sustainable development particularly in agriculture, and that is recognised as a difficult aim to achieve.

Sensitive issues raised by item 6

- The use of environmental measures as non-tariff barriers to trade against imports from developing country;
- The full internalisation of environmental costs raises the issue of the capabilities of developing and less developed countries to afford the improvements of their environmental performances in order to maintain their market access;
- The nature of the relationship between liberalisation of trade and environmental preservation

Recommendations

The CTE recommends that governments should conduct further studies to evaluate the impact on the environment of specific activities (such as agriculture) and the optimal conditions under which liberalisation could lead to the sustainable development of the sector while maintaining or increasing its market access and profitability. Analytical and empirical studies are needed particularly for agriculture.

Inversely, the environmental benefits of liberalising trade of a specific sector (such as textiles) mainly produced in developing countries should be investigated as these could be positive or negative in each case.

With regards to agriculture and its relationship with environmental degradation, there is a need for a case by case analysis taking into account “differing geographic and environmental conditions between countries, different levels of socio-economic development, and other “factors”... Environmental externalities associated with agriculture are not always negative and it can contribute positively to preserve the ecological system.

Item 7: The issue of exports of domestically prohibited goods

General presentation

The export of products that are prohibited for sale or use in exporting countries (generally developed economies) raises concerns in import markets (generally developing and less-developed countries) on the hazards associated with these products, particularly in terms of environmental protection (in addition to health, animal and plant lives).

Generally, this issue is dealt with by multilateral environmental agreements but again, their relationship with WTO provisions is in question.

Specific propositions to support the issues raised by the item

The Basel Convention, the Prior Informed Consent (PIC) procedures in international trade, the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their disposal and the draft of the Protocol on Bio-Safety are multilateral instruments to deal with the exports of domestically prohibited goods (DPGs).

The role of the WTO, according to some should stay limited to filling the gaps in existing multilateral agreements and support the implementation on these multilateral instruments. These gaps mainly concern prohibited goods not covered by multilateral agreements as well as exports of DPGs from one WTO member not contracting of the MEA in question. Special emphasis should be placed on DPGs including consumer goods, cosmetics, foodstuffs and certain pharmaceutical products. To others, the WTO should limit itself to the collaboration with other international institutions covering the subject such as UNEP and WHO.

Linked to the issue of the export of DPG is the question of transparency, as notification of these

In order to further understand the role of WTO regarding trade in DPGs, the CTE recommends that the WTO secretariat presents the information available in the WTO on trade of DPGs; and that Members make a contribution of all information that could be beneficial to draw a comprehensive picture on the role of the WTO.

Item 8: The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights

General presentation

This issue focuses on the relationship between the Trade Related to Intellectual Property Rights (TRIPs) and

- 1) The environment in general;
- 2) The generation of, access to and transfer of environmentally-sound technologies (EST);
- 3) Environmentally-unsound technologies;
- 4) Indigenous and traditional knowledge;
- 5) Certain MEAs in particular the UN Framework Convention on Biological Diversity.

Specific propositions to support the issues raised by item 8

Relating to the environment in general, the CTE has not reached a consensus yet on the role of the TRIPs agreement in supporting the objective of sustainable development.

The objective of TRIPs is to “strike a balance between [:]

- The rights and obligations of IPR (Intellectual Property Rights) holders on the one hand and IPR users on the other hand, and
- ... promoting the generation of EST (Environmentally-sound technologies) on the one hand and ensuring access to it and its transfer on the other hand”

Some believe that the TRIPs Agreement disposes of mechanisms to support this balance by allowing the use of measures to prevent holders of IPRs from placing unreasonable restraints on the international trade or on the transfer of the technologies. Others believe that additional measures must be developed to promote the dissemination of ESTs in order to support environmental preservation and sustainable development, particularly in developing countries.

These countries need capacity-building to identify technologies needed for their development projects, in addition to financing mechanisms to facilitate their access to it, particularly to support the implementation of environmental measures, including those mandated by MEAs.

The third question of importance regards the effect of certain technologies on the environment, particularly regarding the “patenting of micro-organisms, genes, genetic materials and genetically-engineered crops and plants, which [...] raises ethical, moral and religious problems, and [also] the patenting of life forms which may lead to biodiversity loss and so create environmental and development problems.” Beef hormones and GMOs are here of a primary concern.

The Intellectual Property Rights regime represented by the WTO's TRIPs Agreement poses many questions in terms of the dissemination of environmentally-sound technologies (EST); particularly to developing countries.

Technology has an important role to play for the protection of the environment either through the use of technologies in the production process and that are more suitable for the preservation of environmental resources, or through the use of new technologies that would facilitate the implementation of MEAs. In both cases, there is a balance to be struck between innovations and the development of new ESTs on the one hand, and the dissemination of these technologies to users of IPRs, particularly in developing economies. The question is whether the TRIPs in its present form strikes a balance between the two.

In addition to an IPR regime and financing, other factors of technology transfers are economic and political stability in the country of destination, the level of infrastructure and the availability of skilled labour, domestic policies concerning investments, market access, services and environment regulation, etc.

On the other hand, this item raises issues of the protection of biodiversity and allowing the indigenous communities that contribute to the development of new technologies through their traditional knowledge to benefit from new technologies they have helped create.

General implications on government policy

Developing countries must make efforts to develop their capacity to identify the right EST necessary for their development needs and thrive to get them by relying on the provisions of international treaties and of the TRIPs Agreement.

General implications on market access

Limited impact on market access.

Item 9: The work programme envisaged in the Decision on Trade in Services and the Environment

General presentation

The relationship between trade in services and the environment is still unclear and the CTE was asked to "examine and report, with recommendations if any, on the relationship between services and the environment including the issue of sustainable development".

Specific propositions to support the issues raised by item 9

The discussions within the CTE remained exploratory at this stage and clarifications were still

Organisation (FAO), the International Trade Centre (ITC), the Organisation for Economic Cupertino and Development (OECD), and the European Free Trade Association (EFTA), the UN Industrial Development Organisation (UNIDO), the World Customs Organisation (WCO) and the International Organisation for Standardisation (ISO).

The need to respond to public concerns regarding free trade and environmental considerations and provide “a clear idea of what is happening at the WTO...”

On the other hand, NGOs are recognised to have a potential positive impact on the integration of environmental concerns into the trading system by bringing their knowledge and expertise on environmental matters to it. This point is still under discussion as involving NGOs in the WTO would imply certain practical difficulties.

The other sub sections do not apply to this item that is more of a CTE organisational aspect.

Article 2 - Basic Rights and Obligations

2.1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

2.2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

Article 3 - Harmonisation

3.1. To harmonise sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

3.2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3.3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5. Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

Article 4 - Equivalence

4.1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

4.2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

Article 5 - Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

5.1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or

Article 2 - Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

2.2. Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.

2.3. Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4. 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 fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.6 With a view to harmonising technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardising bodies of international standards for products for which they have either adopted, or expect to adopt, technical regulations.

The TBT Agreement makes no specific mention of the Codex Alimentarius or its Commission, which nonetheless would be clearly covered by the definition of international body given above.

Dispute Settlement

Trade disputes (including those related to national trade-restrictive policies) between two or more trading parties members of the WTO, are regulated by the Dispute Settlement Understanding (DSU) which governs the establishment of a panel, the publishing of a Panel Report outlining the issues related to the dispute and the ruling of the panel as well as an appeal mechanism to review the ruling of one or more parties ask it to do so.

The role of Codex Standards in the trade and environment debate

History of the Codex Alimentarius⁸

⁸ Information for the following section is based on the Codex Alimentarius Web page as well as from Jukes

“Since 1995 the Codex Alimentarius has recognised that the enhanced status given to it by the World Trade Organisation must be met by improved procedures and by the greater use of science and of risk assessment techniques. Both of these are specifically required under the SPS Agreement.”¹¹

The role of the Codex Alimentarius in the agro-food trade

The participation of member to Codex decision-making and establishment of standards has become an important policy issue for governments, particularly of countries that are or have the potential of becoming agro-food exporters. Majority votes are increasingly replacing consensus since 1995, as consensus on sometimes-sensitive issues has become difficult to reach. The attendance to Codex meetings for the establishment of standards has increased, particularly for developing countries. Majority votes and alliances make the participation and the identification of potential allies (based on common interest) of primary importance for agro-food trading countries.

The 162 members of the CAC are not legally-bound to accept Codex standards as such. These standards are to be used as a basis for common standards and as the case of the EU ban on hormones demonstrated (see below), governments have in principle the right to establish stricter standards than those of Codex, provided they are based on sound scientific evidence and do not cause unnecessary discrimination to trade.

In harmony with the SPS and TBT agreements, Codex rules make explicit the use of science and other factors (in particular labelling) as a basis in its decision-making mechanism.

“The food standards, guidelines and other recommendations of Codex Alimentarius shall be based on the principle of sound scientific analysis and evidence, involving a thorough review of all relevant information, in order that standards assure the quality and safety of the food supply.

When elaborating and deciding upon food standards Codex Alimentarius will have regard, where appropriate, to other legitimate factors relevant for the health protection of consumers and for the promotion of fair practices in food trade... In this regard it is noted that food labelling plays an important role in furthering both these objectives.”¹²

In 1997, further stress was made on the role of risk assessment –scientific risk assessment techniques developed by the CAC- particularly that there are important provisions in the SPS agreement (Article 5.1) on that matter:

“Health and safety aspects of Codex decisions and recommendations should be based on a risk assessment, as appropriate to the circumstances.” and “Food safety risk assessment should be soundly based on science, should incorporate the four steps of the risk assessment process, and should be documented in a transparent manner.”

¹¹ Ibid

¹² Codex Alimentarius Commission (1995), Report of the Twenty-first Session, ‘Statements of Principle Concerning the Role of Science in the Codex Decision-making Process and the Extent to which Other Factors are Taken into Account’, page 61

The EU being a major commercial partner of the Lebanese agro-food industry, both in terms of provider of input and of export market (this will be discussed below in section II), it is important to note that several EU directives refer to the Codex Alimentarius as the basis for their requirements.

Although the Arab Free Trade Area (AFTA), recognises the principles of the WTO and has provisions to allow member governments from excluding specific products from intra-regional trade on the basis of religious, national security, health and environmental reasons, it does not mention the Codex specifically as a reference the establishment of standards.

Codex areas of work

Each Codex area of work is presented in a document, available on the CAC website, outlining the aim of the Committee and its action guidelines, principles or procedures.

Food labelling

The CAC has published the revised labelling standards adopted by its members in 1999 (first passed in 1981 and modified). These standards are internationally recognised and present in a uniform way the information related to the content and packaging of agro-food products. They facilitate the consumers' access to essential information regarding food products.

Inspection and certification

The CAC proposes a set of principles and guidelines for inspection and certification procedures in order to facilitate the trade in agro-food while protecting the consumer by ensuring the quality of the products. "Inspection systems may be focused on the foodstuff themselves, on the procedures and facilities employed in the production and distribution chain, on the substances and materials which can be incorporated into the or contaminate foodstuff"¹⁴

The principles governing these procedures can be listed as follows

- Fitness for purpose;
- Risk assessment;
- Non-discrimination;
- Efficiency;
- Harmonisation;
- Equivalence;
- Transparency;
- Special and differential treatment
- Control and inspection procedures
- Certification validity

These principles and guidelines are the internationally accepted standards that the SPS Agreement wishes as the reference for the establishment of national standards and inspections procedures.

¹⁴ CAC, Food import and export inspection and certification systems, Codex Alimentarius Commission

Cases of disputes in international trade linked to food safety and the environment

The EU Beef hormone ban case

US scientists give cattle both naturally occurring and synthetic hormones to boost the amount of top quality beef the animals produce without increasing the amount of food they are fed. By adding the female sex hormones estrogen and progesterone to cattle, scientists can stimulate the animals to produce extra muscle and fat.

European scientists admit that there is insufficient evidence to accurately assess the danger. The EU says beef from cattle reared using growth hormones is not safe for human consumption, blocking all imports. What the United States consider as protectionism. WTO has in a recent ruling allowed the US to impose trade sanctions on EU products worth \$116m – far less than the original US demands of up to \$900m.¹⁷

The EU has made it clear that it will not allow American hormone-treated beef into Europe until it is sure the meat is safe. Its own scientific research has dragged on for a decade without reaching a definite conclusion on the issue. It will maintain its ban based on fears that the growth hormones could cause cancer, nerve disorders and other health problems - an argument rejected by the United States. The US accused the EU of 'misleading reports' which will make the dispute harder to settle and is now preparing a detailed list of European products subject to punitive sanctions. Braked by the WTO ruling, the US has refused a compromise settlement by the EU and wishes to maintain the pressure on the EU to accept imports of US beef.

Hormones are widely used in US agriculture, with more than 90% of American cattle producers implanting them into their cattle or adding them to the food.

In 1989, the United States has promised to export only hormone-free beef to Europe because of the EU's ban. But earlier this year, EU experts discovered that some of the US beef labelled "hormone free" did in fact contain banned growth hormones.

The case of MRL (Maximum Residue Limit)

The issue related to the adoption of a Maximum Residue Limit (MRL) for 5 growth hormones was dealt with at the 21st session in 1995 of the CAC, after much discussion and in a secret ballot. The majority voted for the adoption of MRL. A decision that later formed the basis of the complaint by the United States and Canada that the EU banning of beef import injected with growth hormones is contrary to the SPS agreement¹⁸.

¹⁷In late March, US trade officials had published a preliminary list of EU food and other products worth more than \$900m that could be hit with 100% punitive tariffs. The list includes products as diverse as pork, raspberry jam and scooters.

¹⁸ Jukes

indicate the absence of GMOs in their products and eventually, fight their introduction into the food chain.

In these four dispute cases, Codex standards have been officially used as a benchmark on which WTO rulings are based. This reinforces the legitimacy of Codex's work as well as the credibility of its scientific approach.

Although the EU hormone ban (both for beef and BST) and to some extent the other cases presented above have reinforced the strict application of the Codex standards and the respect of the discipline of the WTO rules and associated agreements such as the TBT and SPS agreements, they also indicated to some observers in the EU that²⁰:

- 1) The EU had the right to establish a level of consumer protection it considers appropriate and which is higher than the level resulting from international standards, provided it is based on a **sound scientific assessment** of the case (the legality of the EU ban was rejected by the WTO because not enough scientific evidence related to the consumption of beef treated with hormones was presented);
- 2) The ban is consistent with other EU policies (hence acknowledging that the ban did not cause trade discrimination); and
- 3) The ban must be based on a risk assessment, which is not currently the case (hence the EU has to re-conduct a risk assessment because it is the basis upon which governments can impose a sanitary protection higher than that of the Codex Alimentarius or any other international standards.)

These conclusions are important in clarifying the rights and obligations of members under the SPS Agreement as the beef hormone is the first case of such a scope.

²⁰ WTO Ruling on EU Hormone Ban, Press release, Delegation of the European Commission in Canada (see references)

which was explicitly included in previous GATT practices (Article XX), has become extremely limited with the SPS Agreement²².

In the next WTO Ministerial Meeting to be held in Seattle (USA) in November 1999, the work programme of the Millennium Round is expected to be proposed and adopted (the Millennium Round is the next negotiation cycle to follow that Uruguay Round, concluded in Marrakech in 1995). According to the Swiss negotiators, (see previous page) negotiations shall aim at²³:

- foster economic growth through further trade liberalisation;
- promote sustainable development;
- strengthen the rules-based WTO system;
- increase the responsiveness of the WTO system to the global economic evolution;
- better integrate developing countries and countries in transition;
- foster **coherence** at the national and international level **between trade policies and other policies interacting with trade**.

In the next section, we will examine how the evolution of the WTO and its specific agreements, the CTE and the Codex Alimentarius will impact the agro-food industry in Lebanon both in terms of policy and industrial strategy.

²² The application of the SPS Agreement in the Beef hormone case annulled the exception originally permitted in Article XX of the GATT.

²³ Taken from the Swiss Communication to the WTO on the subject. See press releases on the WTO web site

Notwithstanding the obstacles to its growth, the agro-food industrial sector has been developing to take an important role in the post-war Lebanese economy. Most of the newly established firms in 96 were involved in metal products (28%), followed closely by food products (20%).²⁸

National production sectors and trade

Exports and Imports for the Agro-food 1997			
Sector*	Exports (Millions of LBP)	Imports (Millions of LBP)	
16 Meat and Fish Products	911	76,056	
17 Sugar and Sugar Products	8,641	75,389	
18 Cocoa and Cocoa Preparation	3,618	39,953	
19 Preparation of Cereals Flour and Starch	1,702	80,608	
20 Canned Fruits and Vegetables	17,902	59,722	
21 Miscellaneous Food Preparations	21,840	101,759	
22 Alcoholic and Soft Drinks, Vinegar and Mineral Water	13,522	44,312	
23 Animal Feed	322	63,009	
24 Tobacco	30,224	329,985	
Total for Agro-food Industries	98,682	870,793	
Total Overall Lebanese Figures	989,958	11495,014	

Source: Lebanese Customs Statistics

*according to the Harmonised System used by the Customs

As for agriculture, its contribution to the GDP has varied throughout the years, particularly affected by the war²⁹:

Year	%
74	9%
90	23%
91	19%
93	9%
95	7%
96	8%

In 1995 agro-food imports represented about 10% of total imports (i.e. almost 572 million \$US).³⁰ The exports of canned food are about 50% of the total production and in some cases, they can go as high as 70%.³¹ The agro-food sector is an important source of foreign currency earnings.

²⁸USAID/Lebanon, SRI and LAU, p.46.

²⁹The Lebanon Report: number 3 fall 1998, p.10.

³⁰LCPS, strategic options for Lebanon's agro-food industry, annex, p.1.

³¹Al Iktissad Wal Aamal, April 98, p.36.

To date, Lebanon has signed bilateral trade liberalisation agreements with Syria, Egypt and Kuwait, all three agreements being within the framework of the Arab free trade agreement, implemented since January 1998. Lebanon is also in the final stages of negotiations with the EU for the signature of the Euro-Med Association Agreement (the follow-up to the Euro-Med Barcelona declaration of principles). Some differences between the two parties persist, particularly regarding the assistance package, the fiscal policy reforms, and trade in agricultural products.

Lebanon's effective trade policy has somewhat lacked transparency and the information regarding the signed or planned agreements have not been fully disseminated. In addition, the Lebanese media have not extensively covered the contents and implications of the signed accords. Government officials in various Ministries were not all informed of the negotiation and implementation stages of the various trade agreements. Therefore, the collection of sufficient and reliable information and analysis of the trade agreements has been somewhat arduous.

It is important to note that the exclusion of some products from the Arab Free Trade Area based on environmental considerations has been increasing at a fast rate reaching 77.1% of total exemption cases.

Reasons for Trade Exemption in the AFTA			
<i>Religion</i>	<i>Health</i>	<i>Security</i>	<i>Environment</i>
25	45	17	293
Total Number of Exempted Categories			380

Critical factors hindering the modernisation and growth of the industry³⁵

Seven major factors affect the competitiveness and growth of the agro-food sector in Lebanon:

- Local agricultural inputs;
- Operating costs and distribution of local products;
- Local packaging;
- Industry structure and production factors;
- The role of Government;
- Exports;
- Standards and Quality.

Local agricultural inputs

The increase in agricultural and agro-industrial imports reflects the failure of domestic food production and processing systems to keep pace with domestic consumption patterns. Lebanese agriculture is not yet sufficiently industrialised to produce quality products to be used as raw

³⁵ This analysis is based on our knowledge of the industry as well as recent research on it quoted herein, The Lebanon Report, USAID/Lebanon, SRI and LAU and Al Iktissad Wal Aamal, April 98

campaigns. These practices limit the industry's ability to develop and implement long-term policies, develop new product mixes, and comply with international standards.

The lack of skilled labour is also a major hurdle to the modernisation of the production capabilities and the introduction of modern machinery. Technical personnel is potentially available (such as agricultural and agro-food engineers, marketing specialists, etc.) but the university curricula are often outdated and field training programmes are lacking. Industrialists have made little efforts (in terms of increased salaries, training, joint industry/institution programmes, etc) to participate in the modernisation and upgrading of the Lebanese labour market.

Roughly 65% of the firms have Research and Development (R & D) activities, which is usually rudimentary (local testing lab, etc.). This has resulted in a lack of the know-how needed to increase the quality of the processed food, to face of multinational producers that have a strong knowledge base and innovation.

Absence of affordable capital for long term investments as financing costs and terms are not fit for industrial investments. The available capital is short term with high interest rates and requires high collateral, which reflects a business mentality which is more based on commercial activities than on industrial long term investments.

Producers lack market information as market research and public statistics have been newly introduced into the Lebanese system. Company data are also extremely limited due to the nature and structure of the corporate world in Lebanon, mostly family-owned business that do not publish market and sales reports. In addition, exporters lack information on foreign markets, particularly at pertaining to regulations and product standards.

The role of Government

The protection of intellectual property in Lebanon is quasi absent. The recent government introduced some measures to protect copyrights of computer systems and other artistic property but Lebanon is still far from having a comprehensive protection system. This factor could limit innovations in the field as the return on investment in the development of new product development and techniques could be unsatisfactory.

Despite its traditional liberal approach to public policy, the Lebanese government intervenes in setting support prices to basic commodities produced locally such as sugar, beet, tobacco and imposes purchase requirements of wheat for millers. This price distorting policy has negative impact on the competitiveness of the agro-food as it raises the cost of inputs.

Transportation infrastructure, particularly that destined to support exports is still lacking for major production centres. Air transport from the Bekaa valley - where agricultural and agro-food production is concentrated- and refrigeration facilities at Beirut port are still absent. Existing transport and port services are inefficient and their fees are very high.

Potentialities for the Lebanese Industry

The agro-food sector can produce good quality agricultural goods. It is geographically close to markets in the Gulf area as well as the EU. The Lebanese pound is stable, the economic growth moderate and the inflation rate is low. The industry has the necessary skills to establish and position itself in export markets. These factors should reinforce the opportunity to improve the quality and through it, to expand exports.

The confidence in the industry is stable: 359 new firms were registered between 1994 and 1997. These firms invested 58 million \$US in the sector and employed 2,889 persons.

Given the high number of Lebanese living abroad and the reputation of Lebanese cuisine, the potential for steady exports has materialised but there is still the opportunity to expand ethnic food products to a larger consumer base in export markets.

Lebanese agriculture enjoys several natural advantages and physical resources, including fertile soil, a diverse climate, and abundant water resources. Four season climate and a range of microclimate including elevation, sunshine and water that helps in increasing the diversity of products.

Lebanon's location provides it with an easy access to markets in the Near East, the Arabian Gulf and the European Union, reinforced by the presence of an important Lebanese business community in these countries. Regional free trade agreements (i.e. the Arab Free Trade Area and within in, the Lebanese-Syrian, Lebanese-Egyptian, Lebanese Kuwaiti bilateral agreements) are already signed or are currently being negotiated by the Lebanese government, reinforce the regional opportunities for Lebanese products and could constitute a strong basis for the expansion to other, eventually more regulated, foreign markets.

The input of the limited local raw materials could be compensated by the availability of products in the regional economies in the Middle East and Europe.

In its long tradition of business and entrepreneurial culture, Lebanon has fostered a business-oriented multilingual environment, with low direct taxes and maintained an open trading system. On the other hand, the other negative factors discussed above have to be dealt with seriously as some of them are determinant for the future of Lebanese industry in general and of agro-food in particular.

International standards and Lebanese agro-food regulations

In examining environmental regulations in the agro-food sector, we will first start by examining the food standards, based on the Codex Alimentarius and currently under review by LIBNOR,

The participation of the private sector to the process

No regulations are implemented without the approval of the industrialists who have a technical committee reviewing them as they are issued, which gives industrialists an active role in the process. The Codex is the general guideline and industrialists only need to pursue regulations for products that are not listed in the Codex (i.e. the case of the Haléwé, which is a Lebanese typical product). New regulations that the Lebanese government has issued are not directly related to environmental standards but deal more specifically with nutritional additives.

Cases of Lebanese products rejected on export markets

There are some cases where Lebanese products have been rejected in export markets due to environmental reasons but the information about these cases is still scattered:

- Case 1: Some food was rejected due to unacceptable additives.
- Case 2: The absence of a bar code on the label.
- Case 3: The cover of water bottles were not designed to be screwed and unscrewed as the export market required, but had a simple closing mechanism.

Strict regulations in export markets were encountered by the mineral water industry that had to apply to ISO standards.

To summarise, Codex standards are not mandatory for products. The only regulations to be applied are the Lebanese standards derived from the Codex. Gradually, the Lebanese equivalent of the Codex is being introduced.

In order to export to foreign markets, the Codex can be used as a guideline. However most countries might have their own regulations that must be complied with.

Referral to the Codex becomes necessary when in new regulations about environmental issues arise.

Environmental regulations³⁷

In general, the main pollution concerns of agro-food production are water usage and waste water generation³⁸. The use of water in agro-food production in Lebanon is known to be very inefficient as the price of water has not been properly integrated in the total cost of production because of the particular structure of the Lebanese socio-economic system. With the implementation of free trade agreements and the gradual rationalisation of the Lebanese economy, pressures will increase on the agriculture and agro-food production sectors to reflect the price of the input in their final products (by anti-dumping measures).

³⁷ This section is a brief summary of the more extended analysis in the Case Study on Trade and Environment, p. 67

³⁸ See our more detailed analysis of environmental concerns of jam production in "Free Trade and the Environment in Lebanon: Case Study on the Chemicals and Agro-food Industries", conducted by Envirotech for UNDP Capacity 21 Program and the Ministry of Environment in Beirut (see references)

Challenges and recommendations to the agro-food industry in Lebanon

We will conclude this analysis with an outline of the challenges facing the Lebanese agro-food industry and corresponding preliminary recommendations, addressed to the private as well as the public sectors to deal effectively with issues of trade and environment. These challenges and recommendations are derived from the study of the following factors conducted above:

- The CTE's work and discussions on each of the 10 items;
- The analysis of the WTO's mechanisms related to trade and environment and particularly the TBT and SPS Agreements;
- The role of the Codex Alimentarius in public safety and international trade;
- The present situation of the Lebanese agro-food industry, including its strengths and weaknesses in dealing with international trade;
- Environmental legislation in Lebanon and the capacity of the Lebanese government to deal with these same issues.

Challenges

To the industry

As discussed in the case study on trade and Environment and the Lebanese agro-food industry (see references), this industry has to deal with a commercial challenge to increase its competitiveness in the light of the integration of Lebanon into the global economy. Several free trade agreements signed or being implemented by Lebanon with neighbouring countries will put more pressure on agro-food industrialists, first and foremost resulting from international competition both on the local and export markets. Briefly, the industrialists will have to:

- Improve their productivity and competitiveness in order to maintain their market shares in local and international markets. This has to be done through a rationalisation of production, a more efficient use of resources and a control of the growth of operating costs;
- Secure a better access to capital and investment has to be secured whether through local sources (in partnership with the banking sector and support from the government in terms of policy) or through international sources.

More specific to the trade and environment debate, industrialists have to deal with an increasingly complex framework of regulations and standards in international markets relating to agro-food products and in some cases, to agro-food PPMs. To date, very few cases of market regulatory limitations to Lebanese products have been notified but with the increasing integration of markets globally and regionally (the Lebanese markets but also the export markets of the Lebanese industry in the Gulf and other countries), and the adoption of the Codex standards as a legal reference by the WTO for agro-food trade, product standards and regulations will definitely have a considerable impact on Lebanese agro-food production.

Industrialists are faced with a series of challenges and obligations resulting from the signature by the government of multilateral environmental agreements. The obligations resulting from the

serious challenge to the Lebanese industry. Biotechnological innovations are often controversial (such as the cases of GMOs, the use of hormones and other veterinary drugs, etc) and could have considerable impacts on production and trade, and in some cases, on public safety (such as the case of the mad cow disease, resulting from the introduction in the food-chain of new types of nutrients). In that respect, the Lebanese agro-food industry must ask the following questions: are any input to the industry subject to these new trends? Are there any opportunities to increase the efficiency by relying on accessible innovations without compromising current and potential market access (particularly in the EÜ)?

Also related to product standards is the emerging issue of eco-labelling, dealt with distinctively in Item 3(B) of the CTE programme. As discussed in Section II, Lebanese products are typically ethnic products that are not in direct competition with those of other major agro-food manufacturers in developed economies (usually where eco-labelling schemes are introduced). Nonetheless a specific eco-label can affect –even incidentally, if it concerns an input to the final product- a non-labelled Lebanese product (on the use of GMOs or pesticides in raw materials or hormone beef for instance) and give consumers a negative perception of it. Questions regarding this issue are: Are there any eco-label likely to affect Lebanese products? What are they based on (product v/s non product criteria) their requirements and how can industrialists adjust?

To the public sector

As presented throughout this report, the issues related to trade and environment in general, and particularly agro-food are extremely complex and might imply sensitive choices and even constraints on national policy-making, in terms of limitations to economic development policies or environmental protection options. The implementation of WTO agreements, and more specifically the TBT and SPS Agreements will limit the option, or at least the scope of actions, traditionally undertaken by the government to protect consumer preferences and the specifications of national industries, and to provide incentives to the latter to improve their environmental performances by preserving environmental resources and internalising their cost in the production process.

Lebanese policy-makers and negotiators are faced with very complex issues related to market access and economic and environmental policy choices. Entering into free trade arrangements with the EU and with the rest of the world- through the participation to the WTO- has important policy implications for Lebanon, that will have to develop implementation of follow-up mechanisms. Failure to effectively implement these obligations will result in trade sanctions usually attached to these agreements. The current participation of Lebanon as an observer to the WTO will allow the government to grasp the complex reality of international trade, familiarise with the limitations to national sovereignty and understand the dynamic behind policies related to trade and environment in the developed economies and with the rights and obligations that the multilateral system can provide, as well as to identify obligations such as notification mechanisms, etc.

In addition, free trade agreements will have profound effects on the structure and the competitiveness of the economy and on the survival or decline of some sectors in it. The case of

Recommendations

To the industry

First and foremost, the industry has to address its low competitiveness. Industrialists have to pursue a common strategy as well as individual efforts to increase their productivity. For that purpose, the interest of the industry (in conjunction with other industries that share the same structural problems) must be presented to the government and joint development programmes must be defined.

More specifically to trade and environment, the industry has to develop a pre-emptive strategy to face the outlined challenges (increasing standards, new biotechnologies, more competition from neighbouring industries, new production practices and technologies, environmental constraints on PPMs, etc.). The elements of this strategy have to be developed to respond to these challenges.

A first strategy element for Lebanese producers is the need to develop their access to quality raw materials at reasonable cost, either through encouraging the cultivation of high quality and competitive fruit and vegetable items locally (i.e. support for agriculture, possibly through industrial investments and government support) or through more productive animal husbandry and fishing activities in Lebanon, or by developing access to quality raw material from the international markets or from neighbouring countries depending mainly on their compliance with product standards to be developed (see below).⁴¹

An other strategic element is to take into consideration consumer preferences and concerns and improving the quality and reliability of food safety by establishing common industry standards and quality labels, increasing the product information available to consumers, etc.

For the implementation of this strategy, the industry represented by its association, must propose joint programmes with the government with the support of international organisation and NGOs present locally. Joint private/public research programmes to enhance food safety and quality. Legislation for the respect and protection of intellectual property will encourage innovations in the industry. Finally, joint training programmes (with the Lebanese University for instance) could address the lack skilled personnel in the industry.

Despite the cost it might entail, increased quality and safety measures will benefit Lebanese producers by increasing their credibility and perceived value of Lebanese products to international consumers. These measures include the support for the implementation of inspection and certification infrastructure, for every product out of a Lebanese factory. Government support for this infrastructure is essential, particularly when quality and safety

⁴¹Taken from the Report by USAID/Lebanon, SRI and LAU p.28.

1. The evolution of the multilateral trade system and the potential results of the next Millennium Round of negotiations;
2. The work of the CTE including positive recommendations when available and hurdles encountered for the other items;
3. Environmental policies that could be related to the production and trade in agro-food products and more particularly, trade-related measures in environmental policies that could be at stake or challenged in the WTO;
4. WTO Principles that have an impact on policy-making and the rights and obligations of states participating to the multilateral trade system.

Lebanese decision-makers and negotiators must analyse the implications of the TBT and SPS agreements, the Codex standards and the use of science and risk assessment techniques in agro-food production and trade. More importantly, these rules have to be translated into national policies to support the implementation of free trade agreements, particularly those with developed economies (i.e. the Euro-Med. Agreement and at a later date, the WTO). Furthermore, and in co-operation with the agro-food industrialists, an effort to identify labelling schemes in Lebanon's export markets must be deployed. These schemes must be compliant with the TBT and SPS provisions and if they are, a support must be provided for Lebanese industrialists to help them abide by them.

With the support of Intergovernmental Organisations and NGOs, the government must establish a clean production centre, with a focus among other industries on the agro-food sector to identify, in collaboration with the industry, environmentally sound technologies (EST) that could be introduced in the sector. The clean production centre could also support the adaptation of Lebanese products to international standards, particularly when it necessitates technical expertise.

Finally, and in order to promote its role as a services economy (which is the main economic policy headline of present Lebanese governments), Lebanon should play a leading role in the emerging topic of trade in services in the WTO, and particularly within the CTE.

- WTO High Level Symposium on Trade and Environment, <http://www.naftaworks.org/papers/ldcengl.htm>
- OECD, Processes and Production Methods (PPMs), Conceptual Framework and Considerations on Use of PPM-based Trade Measures, (OCDE/GD (97)137), OECD web site
- The Royal Institute of International Affairs, Trade And Environment: an Update on The Issues, <http://www.riia.org/briefingpapers/bp35.html>
- WTO bulletins on the Environment, <http://www.wto.org/wto/envIRON/bulletin.htm>
- About Trade and Environment in the WTO, <http://www.wto.org/wto/envIRON/envIRONm.htm>
- EU threatens WTO action on US textile rules, <http://europa.eu.int/comm/dg01/ip97194.htm>
- News, Agriculture and Bio-Diversity News, U.S. Debates about Agro-Biotechnology Trade Policy, http://www.newsbulletin.org/bulletins/getcurrentbulletin.cfm?bulletin_id=58&sid=
- WTO Ruling on EU Hormone Ban, <http://www.eudelcan.org/english/15-2-3.cfm>
- WWF International, Centre for International Environmental Law (US), Oxfam-GB and Community Nutrition Institute (US), in "The WTO Original Dispute Panel and Appellate Body Decisions", Discussion Paper, May 1998; <http://www.panda.org/resources/publications/sustainability/wto-98/fourth-3.htm>,
- News on CODEX / FAO / WHO / WTO Food Law, <http://www.fst.rdg.ac.uk/foodlaw/fao-news.htm>
- Jukes, David, Department of Food Science and Technology, The University of Reading, The Codex Alimentarius Commission - Current Status, <http://www.fst.rdg.ac.uk/foodlaw/codex-1.htm>
- An Environment Guide to the World Trade Organization, <http://www.sierraclub.ca/national/trade-env/env-guide-wto.htm>
- ITD Website, Environmental Labeling in the Trade & Environment Context, <http://www.itd.org/issues/essay2.htm>
- Sustainable Developments, WTO Ministerial Conference, <http://www.iisd.ca/linkages/wto/sdvol3no6.htm>

Appendix 1 Free Trade areas around Lebanon

The Arab Free Trade Area, including the Lebanese-Syrian, the Lebanese-Egyptian and the Lebanese-Kuwaiti Bilateral Agreement

The initiative for an Arab Free Trade Area was approved in 1985 by the Arab League and was ratified by most member states, except Egypt, which was excluded from the League following the Peace Treaty with Israel. The agreement was never implemented as such and the Arab States wished to revitalize the Agreement recently, including Egypt's re-admittance as a full member. The form in which the Agreement had been negotiated in 1985 did not suit some members, particularly Egypt which claimed that the Agreement countered some of its obligations to the WTO. For practical reasons, the Agreement as such was not amended (to avoid it being approved again by legislative authorities in all member countries individually), but an Implementation and Follow-up Agreement #59 that suited all member states was passed in February 1997. The implementation date was planned for 1st January 1998, with a 10% annual tariff reduction over a 10-year period. Lebanon started effective and retroactive implementation on 31st December, 1998, reducing its tariff barriers by 20% for 1998 and 1999. The Arab market is expected to give the industrialists access to a market of more than 250 million people for agricultural and industrial products.

The Implementation and Follow-up Agreement comprises tariff reductions on most agricultural and all industrial products, except those that can negatively affect the environment, public order, religion and health in one of the member states. A committee is in charge of studying the exceptions presented by member states and specific criteria are being applied to statute on these exceptions (table 2.1).

The Lebanese-Syrian Bilateral Agreement

- The one-page agreement, signed on 7th February, 1998, within the framework of the Arab free trade agreement, states that tariffs on all industrial goods will be eliminated by 25% yearly, over a 4 year period.
- Lebanese industrialists will eventually have free access to the Syrian market of 16 million people, creating a combined market of 20 million people.
- As customs duties on similar products were much higher in Syria than in Lebanon and Lebanese products were highly priced in Syria, it is expected that the Agreement will give Lebanon an impetus to penetrate the Syrian market.
- The competent authorities of the two countries are meeting periodically to support the implementation of this agreement, particularly with regards to the access to the Syrian market by Lebanese exporters, as this market has traditionally been very restrictive on the imports of foreign goods and the transfer of funds. The penetration of the Lebanese market by Syrian exporters has been somewhat easy, because of the traditional openness of Lebanese borders to imports and the historical ties between the two countries. Syrian products occupy the shelves of many supermarkets in the capital and surrounding regions.

Appendix 2: Structure of the Codex Alimentarius

- Volume 1A - General requirements
- Volume 1B - General requirements (food hygiene)
- Volume 2A - Pesticide residues in foods (general texts)
- Volume 2B - Pesticide residues in foods (maximum residue limits)
- Volume 3 - Residues of veterinary drugs in foods
- Volume 4 - Foods for special dietary uses (including foods for infants and children)
- Volume 5A - Processed and quick-frozen fruits and vegetables
- Volume 5B - Fresh fruits and vegetables
- Volume 6 - Fruit juices
- Volume 7 - Cereals, pulses (legumes) and derived products and vegetable proteins
- Volume 8 - Fats and oils and related products
- Volume 9 - Fish and fishery products
- Volume 10 - Meat and meat products; soups and broths
- Volume 11 - Sugars, cocoa products and chocolate and miscellaneous products
- Volume 12 - Milk and milk products
- Volume 13 - Methods of analysis and sampling

Collectively, the volumes contain general principles, general standards, definitions, codes, commodity standards, methods and recommendations. The contents list of each volume is well organised for ease of reference. For example:

Volume 1A - General Requirements

1. General Principles of the Codex Alimentarius
2. Definitions for the Purpose of Codex Alimentarius
3. Code of Ethics for International Trade in Foods
4. Food Labelling
5. Food Additives - including the General Standard for Food Additives
6. Contaminants in Food - including the General Standard for Contaminants and Toxins in Foods
7. Irradiated Foods
8. Food Import and Export Food Inspection and Certification Systems

Commodity Committees convene as necessary and go into recess or are abolished when the Commission decides their work has been completed. New committees may be established on an ad hoc basis to cover specific needs for the development of new standards.

Appendix 3

CAC Horizontal and Vertical Committees

General Subject Committees are so called because their work has relevance for all Commodity Committees and, since this work applies across the board to all commodity standards, General Subject Committees are sometimes referred to as "horizontal committees". There are nine such committees:

- Committee on General Principles, hosted by France
- Committee on Food Labelling, hosted by Canada
- Committee on Methods of Analysis and Sampling, hosted by Hungary
- Committee on Food Hygiene, hosted by the United States
- Committee on Pesticide Residues, hosted by the Netherlands
- Committee on Food Additives and Contaminants, hosted by the Netherlands
- Committee on Import/Export Inspection and Certification Systems, hosted by Australia
- Committee on Nutrition and Foods for Special Dietary Uses, hosted by Germany (a General Committee for the purpose of Nutrition)
- Committee on Residues of Veterinary Drugs in Food, hosted by the United States

Among other things, the General Subject Committees develop all-embracing concepts and principles applying to foods in general, specific foods or groups of foods; endorse or review relevant provisions in Codex commodity standards and, based on the advice of expert scientific bodies, develop major recommendations pertaining to consumers' health and safety.

Commodity Committees have responsibility for developing standards for specific foods or classes of food. In order to distinguish them from the "horizontal committees" and recognise their exclusive responsibilities, they are often referred to as "vertical" committees. There are 16 such committees:

- Committee on Fats and Oils, hosted by the United Kingdom
- Committee on Fish and Fishery Products, hosted by Norway
- Committee on Milk and Milk Products (formerly the FAO/WHO Committee of Government Experts on the Code of Principles for Milk and Milk Products), hosted by New Zealand
- Committee on Fresh Fruits and Vegetables, hosted by Mexico
- Committee on Cocoa Products and Chocolate, hosted by Switzerland
- Committee on Sugars, hosted by the United Kingdom
- Committee on Processed Fruits and Vegetables, hosted by the United States
- Committee on Vegetable Proteins, hosted by Canada
- Committee on Cereals, Pulses and Legumes, hosted by the United States
- Committee on Processed Meat and Poultry Products, hosted by Denmark
- Committee on Soups and Broths, hosted by Switzerland
- Committee on Meat Hygiene, hosted by New Zealand
- Committee on Natural Mineral Waters, hosted by Switzerland

The Lebanese-Egyptian Bilateral Agreement

- Trade between Lebanon and Egypt was \$65 million in 1998 (respectively, 17 million US \$ and 48 million US \$ in exports for the two countries), down from \$74 million in 1997.
- It is expected that the treaty will reduce the negative trade balance in Lebanon, because Egyptian products, which could be potentially, imported are cheaper than the ones currently imported from Europe.
- In addition to that with Syria, the agreement with Egypt will place Lebanon strategically in a region of 80 million people. Lebanon thus aims at attracting foreign firms to establish their headquarters in the country.
- Nevertheless, the implementation of the Agreement is still pending as the text still has to be ratified by the Lebanese Parliament.

The Lebanese-Kuwaiti Bilateral Agreement

- The Agreement has had little or no media coverage and analysis.
- Lebanese-Kuwaiti free trade agreement was signed in September 1998 and was to be implemented as of 1st January, 1999.
- This agreement led to a total removal of all tariff barriers relative to a pre-established product list. Furthermore, the same accord was to allow a 25% yearly reduction on all tariff barriers related to the following sectors: Oil and chemical industries, steel productions, spinning, leather and clothes industries, printing, publishing, and paper production and its derivatives; agro-food and wood industries.

The Euro-Med Association Agreement

- Europe's market is composed of 350 million high-income consumers and represents tremendous trading opportunities for Lebanese exporters.
- Lebanon has enjoyed a preferential treatment by the EU, which had awarded Lebanon the Most Favoured Nation clause in 1977. Lebanese industrial goods have had an easy market access since that time, but the war prevented the Lebanese industry from benefiting from these advantages to increase its exports. By promoting the Euro-Med Association Agreements, the EU is seeking what it considers as "a fair play" with its trading partners.
- Euro-Med free trade is vertical as tariff barriers will, in principle, only be lowered between each Third Mediterranean Country (TMC) and the EU, and not between TMCs.
- The present government has stated that signing the Association Agreement is among its priorities. The last hurdles to its adoption are currently being discussed and are expected to be resolved.

Appendices

- Appendix 1 Free Trade areas around Lebanon**
- Appendix 2 Structure of the Codex Alimentarius**
- Appendix 3 CAC Horizontal and Vertical Committees**

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standards abroad differ from national ones as equivalence of standards is possible (and included in the SPS) if the exporter can demonstrate that his own standards can provide foreign consumers with the same protection.

To the public sector

In the context of –or in relation with- the negotiation team in charge of the WTO file, the Government has to appoint an official body to handle the Trade and Environment theme. The Ministry of Environment has been involved as a trade and environment Task Manager for the past two years in the context of the Mediterranean Commission on Sustainable Development (MCSD). It could preserve its position as the leader but a wider team, involving members of the Ministries of Economy and Trade, of Industry, of Agriculture, LIBNOR, as well as representatives from the main industrial sectors in the economy, particularly the agro-food. We propose this body to be called the Trade and Environment Commission in Lebanon (TECL).

In an effort to promote a sustainable development, the TECL should conduct a thorough assessment of national agro-food production, and more particularly its environmental aspects, in terms of abundance by environmental standards and PPMs. An action plan destined to control the pollution generated by the industry –namely the use of water and the generation of waste water- would should be based on the obligation contracted under the Barcelona Convention and its related Protocols.

The second aspect of the TECL's work should be to conduct a comprehensive policy review of environmental aspects of agro-food production and trade, with focus on the impacts and use of raw materials in the production process as well as on the compliance of Lebanese products with international standards (the Codex Alimentarius or its Lebanese equivalent, once completed), eco-labelling schemes, and the trade-related measures of MEAs. A close contact should be maintained with the CTE which has recommended the study of these measures on a global scale.

In terms of capacity building to support this role, the TECL must develop the following capabilities:

- A strategic cell that would have a thorough knowledge of the trade and environment dynamic in the WTO and that would guide the work of the TECL;
- More specifically to agro-food, an expertise in regulatory policy and food standards. A policy review regarding emerging trends in biotechnology in the agro-food industry with a focus on GMOs, veterinary drugs such as hormones, pesticides and fertilisers, etc. is needed. This will strengthen the capacity to monitor imports of raw materials according to specific standards;
- Monitoring of domestically prohibited goods (DPGs) in international markets and recommendations to competent authorities on whether specific products should be banned, restricted or allowed into the Lebanese market;

The TECL must initiate training programmes for policy-makers, negotiators, government staff in different ministries and institutions as well as for semi-public such as the Chamber of commerce and industry, etc. in order to promote the knowledge of the following topics in trade and environment:

jams (ref. Case study on agro-food) had demonstrated the uncertainty that industrialists themselves feel regarding the competitiveness and the prospects of their industry in the light of free trade. In this context, the introduction of the Lebanese-Syrian free trade agreements and the Arab free trade agreement as a whole were conducted hastily, without thorough examination of their impacts on the agricultural and industrial sectors, and with minimal consultations with the private sector. Industrialists expressed their worries in one-on-one interviews as well as during several seminars involving industry stakeholders in Beirut throughout the year.

The same applies for MEAs. Past experience, such as the case of the Barcelona Convention, shows that Lebanon (following the example of several developed and developed Mediterranean countries), has not always taken into account recommendations and provisions of the agreements, particularly when those were not legally binding (see the Case Study on Trade and Environment quoted earlier in this text). Furthermore, some MEAs contain important trade-related measures that could potentially have an impact on Lebanese exports, as discussed in the analysis of the CTE programme above. The analysis of the impacts of these measures in terms of input of raw materials, of market access to Lebanese agro-food products and agricultural and industrial practices (Production and Process Methods), is important to avoid potential crisis in the industry.

As discussed in the analysis above, the implementation of environmental legislation with an effective and comprehensive policy to complement industrial development is the best method to pursue and support a sustainable development of developing economies. The Lebanese environmental law is still pending in Parliament for ratification and Lebanon has no policies to preserve environmental resources in the wake of the post-war reconstruction effort.

Globalisation, the complexity of the agro-food industry and the increasing sensitivity and scope of public health and safety issues (such as the cases of mad cow disease in Europe, the Coca-Cola contamination in Belgium, etc.) has incited governments in developed economies to intervene actively in safeguarding the quality of the food production and distribution through, among other means, the establishment of standards for product approval and consumption. Furthermore, through its support for R&D, fiscal policies and other regulations, industries were directed to the production of certain products that are considered more suitable for the public. Other products were banned for local consumption i.e. DPGs. Lebanon, with a growing and relatively important local agro-food industry has yet to develop the same type of regulations for the sake of public health and safety and monitor more efficiently the import of DPGs into the country.

Barcelona Convention and its associated protocols for instance, have been completely overlooked by the Lebanese authorities and industrialists, mostly because this Convention has been non-binding to date. The strengthening of international environmental protection movements are pushing developed states to deal more seriously with transboundary environmental issues and might reverse the relatively laxist stance they have adopted to date. The obligations resulting from the Convention (and other MEAs by the same token) might therefore be increasingly pursued and eventually linked to the co-operation policies between developed and developing nations. The implementation of these MEAs and associated obligations will then be burdensome on industrialists and threaten their future prospects. The questions that industrialists need to ask in this regard are: what are the MEAs with trade-related measures that might affect trade in agro-food products in the coming years? Is any measure directly related to the production and market access of a product currently or potentially exported from Lebanon? What are the WTO provisions regarding that product and what are the solutions to preserve market access? Is there a case where these standards have been successfully challenged in the WTO by other exporting economies (such as in Asia or the US) and on what basis?

In addition to international obligations resulting from MEAs, the implementation of national legislation (currently pending in Parliament for political reasons) will put pressure on industrialists to internalise environmental costs in their total production costs. These costs could result from either specific PPMs or from the introduction of new product standards. In concrete terms, this could include environmental impact assessments, the rationalisation of the use of resources, particularly of water, the installation of waste water treatment plants, the modification of the inputs or the production process in order to meet specific standards, etc.

The removal of agricultural subsidies (the hottest topic in the Millennium Round and object of the CTE discussions) and liberalisation of trade in agro-food products would seriously endanger the very existence of Lebanese agriculture (known to be non-competitive). This would threaten the potential integration it might have with the agro-food sector (50% of raw material for canned food is from local sources) and thus endanger the quality –actual and potential - of Lebanese agro-food products.

On the other hand, and in the light of the increasing complexity of regulations and standards, the import of agro-food final products as well as intermediary and raw materials is not done according to a comprehensive and clear regulatory framework, as there are no effective monitoring and control of the import of raw materials, DPGs or GMOs, and import standards are not yet available (including a systematic MRLs) for all products. As the output of the industry might be affected by the quality of the products used for its production, questions regarding this issue are: Are inputs to the Lebanese industry (from local sources and more particularly from foreign and neighbouring sources) subject to standards in export markets, such as MRLs and other bans on specific contents in terms of veterinary drugs, pesticides or fertilisers? Are any current practices of the industry in contradiction with those being introduced in export markets? Subsequently, are there inputs and practices in agriculture or the input procurement strategies that need to be modified and eventually regulated?

Also with regards to inputs, the application of biotechnology throughout the food chain, and more specifically on primary products used as raw materials in agro-food production, poses a

As for waste water, the main pollutants in it are known to be Biological Oxygen Demand (BOD), Chemical Oxygen Demand (COD) and suspended solids (SS). Regulation for pollution control usually tends to fix limits for the concentration of these factors in waste water (or in some cases, limits to total quantities generated allowed). These pollutants, although not exclusive to agro-food production nor the only pollution issues of agro-food, will be considered for the purpose of this analysis.

The Lebanese industrial sector is mainly concerned with the Ministerial Decision #52/1 destined to regulate the effluents and emissions of industrial activities, and issued by the Ministry of Environment (MoE). In addition, Lebanon is a signatory to the non-binding Barcelona Convention that aims at controlling the pollution in the Mediterranean.

The table below reflects the limits of pollutant levels allowed by these two regulations.

Summary of legal obligations on agro-food producers in Lebanon (based on a study on jam producers)		
	Barcelona Convention (LBS Protocol)³⁹	MoE's Decision #52/1
Waste water (WW) in general	By 2005, industrial facilities would dispose of the WW in conformity to national legislation (hence with Barcelona Convention)	Not mentioned
BOD	Mentioned in Strategic Action Plan, to be reduced by a certain % through WWTP	60ppm ⁴⁰
COD	Mentioned in Strategic Action Plan, to be reduced by a certain % through WWTP	100ppm
SS	Not mentioned but depends on type of SS	60ppm

It is important to note that none of these two regulations is being implemented as the Barcelona Convention is non-binding and the Ministerial Decision is destined to set a reference for industrialists but does not have the power of a law (as it is not passed by the Parliament). The Convention is destined to offer a reference for national authorities in developing their own national environmental policies; It is a common goal set by the members to the Convention.

³⁹ The Land Based Sources (LBS) Protocol deals with pollution generated from land-based sources around the Mediterranean, such as industries and other waste generating activities. It was adopted in 1980 and is attached to the Barcelona Convention. The Protocol is supported by a Strategic Action Plan developed in 1980. It has been revised in 1996, and is currently in the adoption process by member-states to the Convention.

⁴⁰ WWTP or Waste Water Treatment Plant. Parts per million (ppm) is a concentration ratio.

the institution in charge of establishing national standards, and then we will briefly summarise the environmental regulations that have an impact on agro-food production in Lebanon.

The role of LIBNOR

Work has started less than two years ago with LIBNOR³⁶ being revived by the government. There is still a long way to go before regulations covering the complete agro-food sector are adopted. Modifications to the Codex Alimentarius can cover topics such as special labelling, relative to the meat content of products (pork free), or equivalence, relative to the weight of the product (ounces vs. grams), or even translations of labels (to Arabic), etc. Codex is the reference and every country would customise it according to its needs and regulations.

Lebanese standards are based on the Codex Alimentarius but a need for modification might exist and comes under different circumstances such as cultural needs or sometimes specific cases relative to the general diet of the local population.

The strategy for the implementation of the Codex in Lebanon

Work is still being conducted on some regulations that might need modifications according to Lebanese needs. About 30 regulations have been completed but hundreds of regulations exist in the Codex that need to be reviewed in correspondence with specific Lebanese needs.

The Codex is in place and industrialists have to comply with its regulations when exporting to foreign markets. For products destined to internal consumption, they only have to comply with the new modified regulations that have been officially published in the newspapers. This means that Codex Alimentarius regulations are not mandatory for locally consumed products but are necessary to penetrate export markets.

Usually Lebanese exporters rely on the Federal Drug Administration (FDA) and not just on the Codex, when exporting to the United States, and on EU rules when exporting to Europe. Furthermore all Arab League countries have their own regulations if products are to be exported to them. In general all those regulations are variations from the Codex, particularly for less developed countries that have little administrative and technical resources to develop their own specifications. Codex is used when exporters have no other specific information to rely on.

In some cases, a *certificate of origin* is required in the importing country if the product received is not listed in the Codex. To obtain a *certificate of origin* the country of origin has to issue a regulation relative to the product in particular before export.

³⁶ LIBNOR (Lebanese Organisation for Norms and Standards) is a non-compulsory normalising body. Its constituting law under decree 8475 dates January 9, 1962 defines its mission as follows:

“Art. 3 – The Lebanese Organisation for Norms and Standards will define – for example, but not only – the national measurements and specifications as well as the norms and symbols. It also defines the products’ quality standards, the testing and analysis methods and validates the professional operations and rules of the technical installations”.

The institutional support for the promotion of exports is lacking both in terms of participation to international trade fairs as well as the activities of the commercial attaches to increase the visibility of the product/producer and consequently its market access. Also lacking is the support for R & D as well as for an easy and timely access to information on export markets to increase the exportability of the products.

Exports

Although Lebanon is geographically well located at the crossroads between Europe and the Middle East, it is surrounded by Syria and Israel, two economies sealed off to its products. Syria has been under a socialist style economy and has established policies limiting external influence in its internal economy such as prohibitive tariffs or outright bans on imports of products competing with its own productions. The Israeli market is not accessible to Lebanese products because of the war between the two countries, but it could potentially represent an attractive market for its products.

Heavy investments in industrial facilities mainly in the Gulf countries over the past years have increased the competition to Lebanese products, particularly that the facilities enjoy a modern infrastructure and strong financial means.

Standards and Quality

Lebanese products do not abide by internationally adopted standards for product quality. There are no specific and imperative disciplines, quality measures and standards to control the quality of exports and make them acceptable to foreign consumers. These are necessary factors to underline the quality of the product and increase its exportability (only few Lebanese agro-food products have ISO 9000 certification and none is certified ISO 14000).

An essential factor for our study is that important health considerations related to local agricultural or processed products are sometimes neglected. These considerations result from unregulated pesticides use and increasing water contamination and poor treatment.

The case study conducted by Envirotech on trade and environment in agro-food in Lebanon has underlined the importance of water resources in this industry. Mismanagement of these resources is actually among the primary environmental concerns related to agro-food production. This factor has to be considered more seriously if the industry wishes to expand its export markets to Europe or other regulated economies.

In brief, the industry in Lebanon and particularly agro-food suffers from a lack of capital, poor knowledge resources and inadequate and expensive infrastructure and operating costs. Market information on consumer tastes and preferences as well as demand conditions are unavailable. The amount and cost of capital available to finance the production and expansion of the agro-food industry is either lacking or available only at very high costs.

material. Industrialists will still have to rely on foreign products to support agro-food production. In addition, available crop varieties grown locally are not always suitable for processing.

Operating costs and distribution of local products.

The cost of doing business in Lebanon is high. Operating costs such as electricity, telephone, steady water supply as well as other infrastructure investments such as land and buildings are high. In addition, distribution channels are expensive due to the lack of competition in the sector. The handling and transportation networks are inefficient.

High operating costs and inefficient distribution have forced firms to vertically integrate, hence assuming activities of suppliers and distributors. For small size companies such as those of the Lebanese agro-food industry, this vertical and horizontal integration is equivalent to an overstretching and results in poorly developed production and marketing systems. Hence many factories are under utilised as they are unable to optimise their potential.

Local packaging

Packaging is a critical factor in agro-food production and many provisions and regulations on packaging are included in the Codex Agreement and national legislation. Market access for agro-food products is therefore closely linked to packaging in terms of specifications on recycling, waste, safety etc.

The packaging industry in Lebanon is innovative and competitive and supports agro-food industry with a production of glass bottles, jars, nylon bags, corrugated cardboard, board, paper (Kraft), cans and tin cans, and labels. This industry is currently very concentrated and has the capacity to grow more. However, it has been unable to expand to new markets/products, as agro-food firms do not focus enough on labelling and packaging to provide it with this opportunity.

Industry structure and production factors

Family owned businesses are small and lack the internal resources to expand production and penetrate new markets, particularly those that are regulated such as Europe and the North America. In Arab markets, heavy investments has created a strong competition to Lebanese products.

Production and marketing practices of Lebanese producers tend to focus on supply management rather than on the development of domestic and export markets. Few firms are export-oriented since the majority cannot comply with international standards.

With 40% of firms' employees being unskilled labourers, there is a serious shortage in properly trained skilled labour and qualified supervisory staff. The same is true for managerial staff. Managerial practices are often determined on short-term basis and are not oriented towards the needs of the consumers. Agro-food firms in export markets carry out few promotional

According to Paul Masri, Engineer at the Ministry of Industry, the value-added is on average about 25% for the industry as a whole. A potential for higher value-added exists in specialised and niche products that Lebanese industrialists can produce.

Sources of raw material and major trading partners

Only 50% on average of the raw material used in the agro food business is supplied from Lebanon, the remaining is imported.

60% of Lebanese agro-food and agricultural products including those destined to final consumption are from the European Union.³²

Major import markets for Lebanese raw materials and consumption products are, in order of importance, Italy, the USA, Germany and France.

The major destination for Lebanese agro-food products is the UAE and Saudi-Arabia. Exports to Syria have declined by 70% in the recent years, which is attributed to the fact that Syria has developed its own agro-food industry.

Machinery and production techniques

Lebanese productions are considered to be primitive.³³ Lebanon's agriculture is not competitive and still lags behind the developments in the sector that have occurred in developed economies or even some neighbouring countries.

The industrial machinery is outdated and the replacement of old equipment has been relatively slow. However, according to local observers, Lebanese industrialists generally have the will to replace it.

Free Trade Agreements between Lebanon and its Major Trading Partners³⁴

It is Lebanon's stated objective to develop trade with neighbouring Arab countries, where Lebanese businesses have traditionally thrived, as well as with its first trading partner, the European Union.

The major hurdle to the adoption and implementation of free trade agreements in Lebanon is that 50% of the Government's total revenues are derived from customs tariffs. The elimination of tariffs on trade with its main trading partners would put the Government under the obligation to radically reform its fiscal policy and develop an efficient tax collection system to implement a value-added tax.

³² Al Iktissad Wal Aamal, April 98, p.37 and The Lebanon Report: number 3 fall 1998, p.10.

³³ The Lebanon Report: number 3 fall 1998, p.12.

³⁴ This section on free-trade areas is taken from Case Study on Trade and Environment.

SECTION II: Specific impacts on the agro-food industry in Lebanon

Profile of the agro-food industry in Lebanon and key issues

Overview of the industry: Structure and major factors to consider

In Lebanon, the Food and Beverage industry as a whole accounts for 4,456 firms.²⁴ According to some Lebanese agro-food industrialists²⁵, the size of the market of canned food is about 50 million cans of all sizes, produced by 5 main companies:

- Al Wadi Al-Akhdar
- Cortas
- Conserves Modernes Chtaura
- SONACO
- AVICO

The agro-food sector is very concentrated, 6% of firms contribute to 55% of total production and the 94% remaining contribute to 45% of the production and the largest market shares belong to the above mentioned 5 firms, which employ more than 50 persons. The remaining 97% of the firms are mostly family-owned and small in size as they employ less than 50 employees, and often less than 10. Agro-food firms represent 20% of total industrial enterprises.²⁶

The food and beverage sub-sector represents 24% of industrial production while employing between 22,107 and 30,670 workers²⁷, representing approximately between the fifth and the quarter of the workers of the industrial sector.

Growth of the industry

The agro-food industry has been experiencing high growth rates which has reached approximately 46% from 1993 to 1996, attributed to the post-war economic recovery.

Since 1996, the growth rate has stabilised. A series of obstacles related to high import duties on inputs, high-cost of transportation, inadequate labour conditions, regulatory obstacles or lack of adequate technology, are hindering the growth of the industry which still has to find a specific market niche for its manufactured goods. These factors will be detailed below.

²⁴USAID/Lebanon SRI and LAU, p.37.

²⁵Al Iktissad Wal Aamal, April 98, p.36.

²⁶The Lebanon Report: number 3 fall 1998, p.10.

²⁷Depending on the source of information. Respectively by the Ministry of Industry (1994 Industrial census) and USAID/Lebanon SRI and LAU, p.37.

Conclusion for Section I: Constraints on national environmental protection policies

The analysis of the CTE programme, the EPS & TBT Agreements, the role of Codex and its evolution, and particularly the beef Hormone ban case, all indicate that a series of constraints is placed on the implementation of national health and environment protection policies and measures.

These constraints are more complex than a simple abidance by the basic principles of the multilateral trade system, i.e. national treatment, non-discrimination and the most favoured nation clause, which were at the basis of the interpretation of previous cases in trade and environment, such as the shrimps & sea turtles and the Tuna/Dolphin cases.

The constraints based on policy developments can be summarised as follows²¹ :

Sovereignty “Restricted”: Member countries are sovereign in establishing their own levels of environmental protection but within the limits of observing the provisions of the SPS agreement.

Burden of Proof: “The burden is on the country defending a domestic [trade restrictive] health and environmental measure to demonstrate its compliance with the WTO rules.” In other words, for a particular product covered by the GATT, trade must be free unless scientifically proven dangerous.

Deference to International Standards: The primacy of international standards poses a serious challenge for domestic health and environmental protection efforts, i.e. issues of public participation in the establishment of these standards and of desired level of protection versus that provided by international standards.

Standards adopted internationally do not always represent the level of environmental or health protection desired by national and local communities (higher or lower) as public participation in their establishment is limited and the international consensus needed for their adoption limits their scope.

WTO Determines What An “Appropriate” Risk Assessment Is: The appropriateness of risk assessments to support a claim in a specific trade challenge such as the Beef hormone and the methods applied to them (based on scientific approach and evidence) is ultimately evaluated and judged by the WTO dispute settlement panel and Appellate Body.

No Environmental or Health Exception to WTO Rules in the SPS Agreement:

The SPS Agreement has the power to limit –or eventually overturn– a trade restrictive domestic policy if it doesn’t satisfy its strict provisions. The right to an environmental or health exception,

²¹This analyses was conducted in “The WTO Original Dispute Panel and Appellate Body Decisions”, WWF International, Centre for International Environmental Law (US), Oxfam-GB and Community Nutrition Institute (US), see references

The EU ban of Bovine Somatotropin (BST) ban case

Bovine Somatotropin (BST) is a genetically engineered hormone administered to dairy cows to increase their milk production. The BST trade controversy is about whether “other legitimate factors” than scientific findings can be considered for the support of an eventual prohibition of the hormone and the products deriving from its use, such as milk.

The Joint FAO/WHO Expert Committees on Food Additives (JEFCA) asserts that “no food safety or health concerns relate to BST residues in products such as milk and meat from treated animals.”¹⁹ However, the Codex principles allow the EU Commission to “have regard where appropriate, to other legitimate factors relevant for the health protection of consumers and for the promotion of fair practices in food trade.” The EU asserted that “other legitimate factors” existed and that the European Commission had the right to set limited daily intakes and a maximum BST residue limit in milk and edible tissues. These standards could then justify EU’s prohibition to use BST or to import treated products.

The Codex Committee did not come to any definite conclusion but some considerations were made in the report. Firstly the Committee rejected the EU’s request because the Committee’s decisions were strictly based upon food safety, as “other legitimate factors” could not take into account consumers preferences. It also rejected the use of the “precautionary principle” for food safety as it can only be applied when there is a lack of scientific evidence (which is not the case here). It also asserted that the over production of certain regions couldn’t justify the banning of a product that would increase international production. Finally, the BST prohibition would be more restrictive to trade than necessary, which goes against the WTO’s Agreement on Technical Barriers to Trade.

However the BST is still an open debate since Member governments don’t have the obligation to adopt Codex standards.

The EU ban on Genetically Modified Organisms (GMOs) ban case

The Biosafety protocol will tackle the trade in Genetically Modified Organisms (GMOs) and already opposes 2 groups of countries on issues such as eco-labelling on whether products contain GMOs, and other measures which may restrict trade. (Note: This is very relevant to agro-food in terms of competition with other products and consumer behaviour.

The US supported by GMO producing and exporting countries (such as Argentina, Australia, Canada, and Mexico) oppose labelling and other measures regulating the trade in GMOs as they claim this would increase handling costs by 20%.

African countries, Malaysia and some Latin countries favour a restrictive protocol, based on the precautionary principle as the full effects of GMOs are not yet clear and totally evaluated.

The EU is in the middle as it does not want to lag behind in biotech developments by restricting trade in GMOs, what its consumers, on the other hand, are requesting.

This issue has to be monitored closely as the import of GMOs as raw material by agro-food producers might limit their market access to some countries that are constraining the import of GMOs and products constraining them. It would also increase costs to comply with eventual labelling schemes and trade restrictions. On September 15 1999, a consortium of 12 major Australian agro-food companies announced that they would launch an eco-labelling scheme to

¹⁹ Bridges, , Year 2 # 6, September 1998, Codex discusses Trade and Food Safety, ICTSD.

Food Hygiene

The Codex Food Hygiene document proposes “provisions of an advisory nature in the form of codes of practice, guidelines, and other recommended measures to assist in achieving the purposes of the Codex Alimentarius” (CAC, Food Hygiene, Basic texts, preface).

This document includes a “set of principles of food hygiene applicable throughout the food chain (including primary production through to the final consumer”¹⁵ it is a sort of voluntary PPM applied to the food chain.

Ethics in international food trade

The CAC has included in the Codex Alimentarius a code of Ethics for International Trade in Food which aim is to “stop exporting countries and exporters from dumping poor quality or unsafe food on to international markets.” This code was updated to take in consideration the recent developments in relation with SPS and TBT agreements.

Evolution of Codex

The role of Codex in the multilateral trade system is likely to continue expanding and several new trends and factors will impact its activities:

- Scientific developments in fields relating to food;
- Changing attitudes of consumers;
- New approaches to food control;
- Changing perceptions of government and food industry responsibilities;
- Changing food quality and safety concepts.¹⁶

The application of biotechnology to food processing and production of raw food materials pose new challenges to regulators, and particularly to the CAC that has to foster an international consensus on sensitive issues (such as the Beef Hormone and BST cases) – see below- and maintain a leadership in developing new safety concepts to match these emerging challenges.

These factors, in addition to the importance of Codex in the multilateral trading system and the increasing involvement of developing countries and growing expectations of consumer organisations points to an increasingly important role for the CAC in the future.

¹⁵ CAC, Food Hygiene, Codex Alimentarius Commission

¹⁶ Codex and the Future, Codex Alimentarius Commission

As a result the adoption of the Codex Alimentarius by the SPS Agreement members of the WTO (i.e. most countries of Codex) are obliged in effect to consider Codex standards as the basis for their national controls when dealing with international trade issues.

With the new leading role of the Codex Alimentarius Commission in international trade, there are concerns over the politicisation of its decision-making process and a drifting away from science as a primary factor for the establishment standards, to implicitly take into consideration the commercial interests, of powerful members such as the US and the EU.

Codex and the facilitation of exports

As discussed above, the second element of the *raison d'être* of the Codex principles is the facilitation of trade through the establishment of international reference standards and ultimately, to foster the harmonisation of different national standards. The current annual volume of world food trade ranging between US\$300 billion and \$400 billion (CAC figures), this trade is of a factor primary importance for the stability of the international trade regime.

The General Principles of the Codex Alimentarius state:

“The publication of the Codex Alimentarius is intended to guide and promote the elaboration and establishment of definitions and requirements for foods to assist in their harmonisation and in doing so to facilitate international trade.”

This approach is in-line with SPS and TBT agreements that reckon the importance of standard harmonisation as a means to minimise the use of standard as barriers to trade and avoid dispute.

“In its pursuance of harmonisation, with regard to food safety the SPS Agreement has identified and chosen the standards, guidelines and recommendations established by the Codex Alimentarius Commission for food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice. This means that Codex standards are considered scientifically justified and are accepted as the benchmarks against which national measures and regulations are evaluated.”

The GATT/WTO have taken into consideration the emergence of regional economic groupings and supporters of global integration have come to realise that regional integration has had in general, a positive impact on the liberalisation of trade at a global level. Three major regional trade organisations after the EU (NAFTA, MERCOSUR and APEC¹³) have integrated WTO principles and have adopted provisions and measures consistent them, including the Codex standards.

¹³ The North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico; Southern Common Market (MERCOSUR) between Argentina, Brazil, Paraguay and Uruguay; and the Asia-Pacific Economic Cooperation (APEC) Council, grouping 18 countries in Asia and the Pacific.

The Codex Alimentarius is the international body established by the Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO) in 1962 to develop international food standards. Its official recognition came much later from the World Trade Organisation in 1995. The WTO Agreements consider that the standards developed by Codex should be regarded as providing countries with necessary protection in regards to the safety of food products. The secretariat of the CAC (Codex Alimentarius Commission) is based at the headquarters of the FAO in Rome.

Membership to the CAC is open to any country, which is a member of the FAO or WHO and currently numbers 162. Membership confers no obligations on countries (including that of implementing the Codex, in part or on its entirety) but enables them to contribute to the development of standards and to have their point of view taken into account. Procedures for the adoption of new standards are usually slow and can take up to 8 years. Urgent matters however (related to trade disputes or public health, etc.) can be accelerated with a majority vote.

There is three main groups of subsidiary bodies governing the Commission (these bodies are in effect committees in which most of the preparatory work is undertaken, see appendix for the structure of the Committees):

- World Wide General Subject Committees
- World Wide Commodity Committees
- Regional Co-ordinating Committees

The “horizontal” committees (General Subject) which involve consumer protection elements are currently gaining in importance whereas the “vertical” committees dealing with commodities seem to have completed their work and do not attract a lot of interest from members.

During the first 30 years its existence, the Codex has been closer to a forum for the discussion of international standards, rather than a prolific legislator of new standards. It has, on the other hand, been used by developing countries who were at a stage of initiating food regulations and laws. The Codex was a solid base on which they could build or incorporate local regulations based on their own beliefs, customs or needs. They expected that the adoption of Codex standards would facilitate their market access, particularly to regulated markets in developed world.

“This however has proved over optimistic since countries with established national controls, Europe and North America for example, were unwilling to modify their legal requirements. Codex standards were not a great success during this period.”⁹

The role of the World Trade Organisation in upgrading the Codex Standards

Since the adoption of the SPS Agreement, the profile of the Codex Alimentarius has been significantly raised. “No longer can its meetings be seen as an opportunity to have discussions but whose decisions can be ignored. Its standards are recognised as the basic standard upon which national measures will be judged.”¹⁰

⁹ Jukes

¹⁰ Ibid.

health, taking into account risk assessment techniques developed by the relevant international organisations.

5.2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

5.3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

5.4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimising negative trade effects.

The TBT Agreement

The Technical Barriers to Trade Agreement provides for situations which are not covered by the SPS Agreement and ensures that technical regulations and standards, including packaging, marking and labelling requirements and conformity assessments are not used deliberately or non-deliberately as disguised barriers to trade.

Definitions

Technical regulation - Document which lays down product characteristics 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, process or production method.

International body or system - Body or system whose membership is open to the relevant bodies of at least all Members.

Extracts from the TBT Agreement

Article 1 - General Provisions

1.3. All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.5. The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.

The WTO, the SPS and TBT Agreements and the Codex Alimentarius

Environmental and health exceptions in the multilateral trading system

In January 1995, the WTO was established by a 'General Agreement'⁴ and was supplemented by several more detailed agreements, including the Agreement on Sanitary and Phytosanitary Measures (the 'SPS' Agreement)⁵ and the Agreement on Technical Barriers to Trade (the 'TBT' Agreement)⁶, both of which aimed at preventing governments and actors in international trade from using measures primarily destined to protect consumer, animal and plant health as disguised barriers to trade. The SPS and TBT agreements are of a particular concern to the trade and environment debate. A brief outline of both agreements is presented below.

The SPS Agreement

The SPS Agreement acknowledges the right of governments to take health and environment protective measures, while subjecting those to the WTO principles of national treatment and non-discrimination. It also links these measures to sound scientific evidence to justify restrictions on the trade of a specific good.

Definitions⁷

Sanitary or phytosanitary measure - "Any measure applied ... to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or foodstuffs... Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety."

International standards, guidelines and recommendations - "For food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice."

Extracts from the SPS Agreement

⁴ See <http://www.wto.org/wto/legal/finalact.htm>

⁵ Available on-line at: <http://www.wto.org/goods/spsagr.htm> or a copy can be downloaded from: <http://www.wto.org/wto/legal/15-sps.wp5>

⁶ Not directly available on line but a copy can be downloaded from: <http://www.wto.org/wto/legal/17-tbt.wp5>

⁷ Included in Annex A to the SPS; The following definitions and excerpts of the SPS Agreement were partly quoted in Jukes, David, "The Codex Alimentarius Commission, Current Status", University of Readings, see references

needed to determine the specific trade in services to be dealt with in the context of the General Agreement on Trade in Services (GATS) and the trade in products associated with services that should be dealt within other WTO specific agreements.

It is not clear either to what extent the GATS is equipped to handle or to regulate environmental measures restrictive to trade (i.e. the equivalent of Article XX of the GATT).

Brief analytical synthesis

The introduction of free trade in services is new in the WTO and the GATS has not been completed to include all aspects of trade as well as non-trade considerations such as social and environmental issues.

General implications on government policy

As services will be increasingly addressed by free trade considerations at the WTO, governments will be compelled to apply the same principles of non-discrimination, national treatment and most favoured nation clauses to the trade in services and hence, that would limit their ability to impose environmental policies that contradict the free trade principles.

General implications on market access

Case studies need to be conducted to further understand the relationship between trade in services and the environment. Interesting areas of investigation include transport and tourism as well as the impact of environmental legislation on the growth of trade in services, such as in waste management.

Item 10: Input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organisations referred to in Article V of the WTO

General presentation

This item was discussed informally and revolved around the criteria for accepting organisations as observer members in the CTE.

Specific propositions to support the issues raised by item 10

No criteria for observer status were yet developed but *ad hoc* membership was extended to 14 Intergovernmental organisations including the United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the International Monetary Fund (IMF), the United Nations Environment Program (UNEP), United Nations Development Program (UNPD), Commission for Sustainable Development (CSD), the Food and Agriculture

The fourth concern in this item was regarding the right to use traditional and indigenous knowledge and the obligations deriving from it.

One group raised the issue that while traditional communities are at the source of many modern developments in agriculture and medicine, they still had to pay for patented products and technologies deriving from this same knowledge. Another group defended the right to access all available knowledge that is part of the public domain including “unrestricted and unpaid access to plant genetic resources for food and agriculture needs”, as these allow more and better research that contributes to the development of more productive crops and better food quality. Benefit-sharing and technological co-operation should therefore be reached through voluntary agreements involving firms, foreign governments and indigenous people. Some proposed modifications to the TRIPs Agreement require the “clear mention of the biological source material, the known country of origin and all known information pertaining to knowledge and practices of the use of the biological source material by indigenous communities in the country of origin.” In addition a Material Transfer Agreement would be signed with the country of origin doubled with an Information Transfer Agreement.

The CTE must examine to what extent these propositions do not diminish the incentives to development new EST. The CTE must also keep track of the development on that register in other international organisations.

The fifth area of concern is the relationship between IPR and MEAs containing IPR-related provisions. More specifically the Montreal Protocol prohibits the use of certain technologies that are environmentally-unsound in favour of alternative EST for which patent holders may “refuse to licence on reasonable commercial terms.” The consensus on whether this type of issues is properly dealt with in the TRIPs agreement was not reached and some members proposed modification or add-ups to the TRIPs Agreement in that sense.

Additional work would concentrate on the following topics:

- The generation, access and transfer of EST;
- The provision of incentives for the conservation and sustainable use of biological resources and the equitable sharing of the benefits of this use, including in relation to the knowledge, innovations and practices of indigenous and local communities embodying lifestyles;
- The treatment of technology that may adversely affect the environment.

Sensitive issues raised by item 8

The role of the TRIPs Agreement in allowing the abuse of IPRs by their holders in terms of their accessibility to developing and less-developed economies. Some technologies could be helpful in enhancing the developing countries’ competitiveness and limit their environmental degradation.

The issue is how to make ESTs more available to developing countries (at a reasonable cost and with technical and financial support) without putting too much pressure on EST producers and decreasing the incentives to develop new technologies.

Brief analytical synthesis

goods must be clear and available to all. In brief, WTO notification should not contradict other international instruments hence giving the WTO-notified product another treatment than if it were notified under another MEA. In addition, the level of detail notified could become cumbersome and counter-productive.

As for the responsibility of restricting the export of a DPG, it could lie in the hands of the exporter (by extending the ban on the domestic sale to export or to labelling), the importer (by verifying if the product contravenes local environmental regulations) or shared between both (by co-operating so that the decision to ban is implemented effectively).

In the latter 2 cases, a capacity-building for developing countries should be pursued to strengthen their ability to assess the risks associated with a particular imported product to the local environment. The WTO could support these efforts by providing technical or other assistance.

Sensitive issues raised by item 7

There is no consensus on the role of the WTO in regulating the trade in DPGs nor on the extent to which DPGs should be regulated from a trade point of view.

Brief analytical synthesis

The automatic ban on the export of DPGs is far from being a consensual issue at the WTO. The trade in DPGs is mainly regulated by MEAs for a series of products but must be supported by proper notification mechanisms and the capacity of importing countries to evaluate the risk that imported DPGs poses on their environment.

General implications on government policy

Governments in developing countries need to build their scientific and technical capacity in evaluating the risks associated with the import of goods, particularly those that are prohibited in the market where they originate. In addition, they should participate actively in MEAs that try to regulate the trade of DPGs and hazardous waste in order not to be the recipient of goods which consumption could pose a threat to their environment. Their capacity-building must also stress on their administrative capability to benefit from the WTO and other MEAs notification mechanisms to regulate the inflow of goods.

General implications on market access

Exporters must ensure that their exports won't be hindered by prohibition or restriction of the consumption of like-products in their export markets or by a MEA. They must also ensure to possess (effectively or potentially) the scientific and technical capability to adapt their products to new regulations in their export markets.

Recommendations

is not very clear. Does liberalisation of trade automatically improve environmental protection through an “efficient” reallocation of resources or are other policies necessary to regulate the production conditions?

- Liberalisation of agriculture and its impact on the environment are difficult to evaluate.
- Issues in this item were widely discussed as they concern the development opportunities of developing economies through international trade and market access.

Brief analytical synthesis

The introduction of environmental regulations and standards automatically leads to the increase of barriers to trade and a discrimination between suppliers whose products do not comply with the new product standards and those that do or that are in a position to adapt them. Developing and more so less-developed countries, are often part of the first category. Enhancing their environmental performance poses a serious burden on their activities. They often lack, particularly their SMEs, the financial, technical, administrative and technological capabilities to quickly and efficiently adapt their products to the new market rules in export markets. This is where trade-related environmental measures could distort trade and disrupt the open, non-discriminatory multilateral trade regime. More particularly, they could hinder the efforts of developing and less-developed nations to integrate the world market and lessen the support for the trade regime. The WTO is therefore concerned with this issue, as part of its mission to maintain an open and non-discriminatory trading system.

It seems widely perceived that trade liberalisation without the appropriate environmental measures and other policies may often have negative effects on the environment, i.e. liberalisation of trade solely does not ensure a sustainable development but measures to safeguard market access and support mechanisms for developing industries (such as financial, technical, administrative and technological expertise) are needed to promote it.

General implications on government policy

The liberalisation of trade, particularly in developing economies, needs accompanying measures to ensure that the increase in production level expected does not lead to further degradation of the environment. States should make efforts to analyse the potential impact of freer trade on their environment and implement policies that aim at internalising environmental costs into production processes. Developing countries can seek the support of several IGO (such as the UNDP and other UN institutions) in order to increase their capacity for policy making.

General implications on market access

Exporters and their governments should constantly monitor the implementation in their export markets of new trade-related environmental measures and be able to evaluate their consistency with WTO provisions. This calls for the development of a know-how and expertise in WTO rights and obligations and a capacity to link it to their export industries.

An important part of the discussions revolve around agriculture and the issues of trade and environment raised by the different national agricultural policies and the eventual liberalisation of trade in agriculture.

Specific propositions to support the issues raised by item 6

A set of principles at the basis of this debate are more or less consensual:

1. Poverty is a major source of environmental degradation and raising the income level is necessary to pursue environmental policies;
2. It is “unsustainable production and consumption patterns” that are at the source of environmental degradation and not trade per se;
3. The “common but differentiated responsibility” principle allows to approach the issue of development and environmental protection by taking into account each country’s level of development and its autonomy to establish the level of environmental protection within its territory that it can afford;
4. Policies aiming at the internalisation of environmental costs should not disrupt trade. In addition, measures taken by one country to improve its environmental protection should not shift the costs onto others. The polluter pays principle (PPP) was also discussed and confirmed;
5. International co-operation among members to promote an open economic system is also considered necessary to promote environmental protection. Development of trade should be accompanied by environmental policies in some cases in order to reach a higher level of sustainable development.

National policies to alleviate the environmental impacts of increased trade should be the responsibility of governments when these impacts are at a national level (in order to avoid the adoption of unilateral measures that would disrupt or distort the trade regime). Transboundary environmental problems should be dealt with through the negotiations of multilateral environmental agreements and not through unilateral action.

The adoption of PPMs as a trade restrictive measure is an example of the latter problem: the PPM adopted by one country might not suit the production conditions prevailing in another and might even be counter-productive economically and environmentally.

At the economic levels, high degrees of environmental protection can lead to positive results in terms of industry competitiveness (as it leads producers to be more efficient in the use of resources) and can stimulate the creation of new products, services and technologies, i.e. a market of environmentally friendly products.

Inversely, and taking into account the limitations and constraints of developing and less developed countries, compliance with environmental regulations, product standards (particularly eco-labelling and packaging requirements) whether in the export markets or in the local ones, could be burdensome. There is a need for accompanying financial, technological (including better access to environmentally-sound technologies), administrative, technical support and expertise to increase the national production capabilities, particularly those of small and medium scale enterprises (SME). In that perspective, environmental regulations are considered to cause the creation of non-tariff barriers to trade, particularly with regards to developing and less

General presentation

As discussed in item 3, transparency minimises the risk of trade frictions and ensures that producers and exporters have access to crucial information on trade related environmental measures (such as eco-labels or other product requirements) as well as on trade measures used for environmental purposes. The access to information helps avoid frictions and at a later stage, trade disputes.

Specific propositions to support the issues raised by item 4

The question whether all trade related environmental measures were covered by WTO transparency provisions and of how, where necessary, the improvement of such transparency would be achieved.

Transparency is linked to most issues related to the trade and environment debate (items 1,3,6,7,8 and 9). It is felt that the degree of transparency required has to match the expected effect of the trade related environmental measure; in other words, the more effect a measure has in terms of trade distortion, the more transparent it should be, as increasing the transparency could lead to additional costs, particularly the establishment of “national inquiry points”.

Inquiry points in member countries are mechanisms to provide information on specific environmental measures. The ones envisaged here are either WTO-based, to provide information under the TBT and SPS; or nationally-based, to provide information on measures introduced by national authorities and that are not covered by the TBT and SPS Agreements. They could inform exporters about the trade restrictions related to the objectives of environmental preservation.

National inquiry points would also provide information on market opportunities created by international measures, such as government incentives for the consumption of certain products, government procurement requirements which give preference to products that fulfilled voluntary environmental standards, and information on NGO programs for environmentally-friendly products.

Transparency is usually achieved primarily through the publishing of any newly introduced measure, and higher degrees of transparency can also be reached by *ex ante* and *ex post* notification, and the establishment of enquiry points as planned under the TBT and SPS Agreements.

The discussions on transparency concluded that no modifications to the WTO rules were necessary but that the CTE should keep under review the transparency provisions of trade-related measures of environmental policies.

Sensitive issues raised by item 4

- Whether existing transparency provisions at the WTO, particularly the ones planned under the TBT and SPS Agreements cover the trade-related environmental measures of MEAs;
- The establishment of mechanisms for notification of new trade-related environmental measures such as *ex-ante* and *ex-post* notification as well as the WTO-based and nationally based inquiry points (the establishment of which has to be considered from an efficiency/duplication cost perspectives).

Eco-labelling schemes are destined to attract consumers' attention to the environmental content and sometimes the environmental implications of the production of specific products. Their voluntary aspect has allowed them to be used by some NGOs, local and sometimes national governments as tools to support environmental preservation. Many countries oppose the imposition of mandatory eco-labelling schemes and would challenge them at the WTO.

There are intense debates on their role as technical barriers to trade and on their impacts on market access. The different existing schemes (around twenty world-wide) represent varied mixes of perceived environmental benefits and cost effectiveness. The CTE is still in the process of analysing their costs and benefits as well as their trade distorting nature.

Eco-labelling schemes applied by one country tend to reflect the "environmental conditions, preferences and priorities prevailing in the domestic market, and this can create market access difficulties" for foreign producers. Therefore, the application of a specific eco-label can be restrictive to a foreign producer by imposing on him conditions that do not reflect environmental concerns in his own market (and sometimes contradictory with it) and can limit his access to foreign markets, notwithstanding the cost of complying with an eco-label.

The CTE examined the relationship between the Agreement on TBT and voluntary eco-labelling schemes and raised these two issues:

- a) The application of the notification and other transparency provisions of the TBT agreement to the eco-labelling standards: Transparency plays an important role in avoiding trade disputes and increases the legitimacy of the labelling scheme by clarifying its restrictive aspect and application principles. Article 2.9 of the TBT Agreement obliges Parties to notify other WTO members of the requirements of any mandatory labelling scheme that they introduce, regardless of the information provided on the label (although there is no consensus on that issue).
- b) The applicability of the provisions of the TBT Agreement to voluntary eco-labelling schemes/programs based on life-cycle approaches, inter alia, on criteria of non-product-related PPMs: There is an objection to any attempt through the CTE's work on eco-labelling to extend the scope of the TBT Agreement to permit the use of standards based on non-product-related PPMs.

Transparency includes:

- The timely access to information regarding product group definition;
- The identification and elaboration of environmental criteria;
- Procedures used in the awarding of labels;

But developing countries fear that their limited resources will not allow them to benefit from transparency to its fullest extent and might end up reducing their market share.

The discussions at the CTE for this item focused mainly on the eco-labelling issue and did not address the packaging and waste issues in extensive manners.

Sensitive issues raised by item 3(B)

- The application of eco-labelling schemes and their effect in terms of restrictiveness of trade;

polluter pays principle, and the precautionary principle.

Preliminary discussions took place regarding policies to support the internalisation of environmental externalities such as: Property rights, market-making measures such as tradable emission permits, fiscal instruments, emission taxes, financial subsidies and soft loans, liability systems and bond and deposit refund systems, etc. often have significant trade effects (as they impact competitiveness of national industries relatively to other non-regulated industries). There was a wish to increase the knowledge and scope of these policies within the multilateral trade regime.

Sensitive issues raised by item 2

The extent to which the WTO is to get involved in the review of environmental policies is far from consensual.

Brief analytical synthesis

Item 2 has been very briefly discussed and it will involve a major review of principles and scope of policy-making (environmental and other). In other words, it would imply the definition of policies consistent with the multilateral trade system.

General implications on government policy

Still very vague.

General implications on market access

Still very vague.

Item 3(A) The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

General presentation

This item examined the impacts of environmental taxes and trade.

Specific propositions to support the issues raised by item 3(A)

Taxes reviewed were:

- Taxes & charges on imports (and rebating them on exports);
- Taxes not levied directly on products (i.e. on PPMs);
- *Taxes occultes* i.e. consumption taxes on capital equipment, auxiliary materials and services

Item 5: The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements³

General presentation

The main object of this item is to identify the competent forum “to settle the dispute which [would arise] between two WTO members over trade measures applied pursuant to an MEA”.

Specific propositions to support the issues raised by item 5

In its desire to support Agenda 21 of the Rio Declaration and sustainable development initiatives, it is a general wish that the WTO should not be used by member states that are also members to an MEA as a means to circumvent their obligation under the same MEA

Another issue raised was the possibility to integrate environmental expertise in the WTO dispute settlement proceedings and inversely, of trade expertise in the MEA settlement proceedings, when disputes are related to the application of trade measures pursuant to MEAs.

To avoid the increase of disputes as more trade-related measures are integrated into MEAs, efforts by national governments must be increased to avoid adopting treaties and obligations that contradict their existing WTO obligations.

The most common view is that conflict over trade measures taken pursuant to an MEA and involving two signatory of that agreement that are also WTO members should primarily be resolved in the MEA dispute settlement mechanism. Otherwise, if one of these two countries were not a member to the MEA, the WTO dispute settlement mechanism would be the right forum to settle the issue.

Sensitive issues raised by item 5

Environmental experts in the WTO trade dispute proceedings when dealing with environmental related cases. The independence of the WTO must remain unchanged, particularly if the proposition to involve is adopted.

Brief analytical synthesis

Member states must ensure that their obligations to a specific MEA are consistent with their other international obligations, namely the WTO's;

They must, while negotiating MEA, ensure an efficient dispute settlement mechanism. This mechanism must be used in the case of conflict and the WTO dispute settlement mechanism must be used only as a last resort.

³ This item was attached to ITEM 1 in the WTO documentation as their content i.e. relationship between trade and environmental agreements (ITEM 1) and dispute settlement (ITEM 5), were closely interrelated.

- In general, several propositions aimed at reinforcing the co-ordination between environmental and trade policy-makers, in order to ensure the consistency of trade related measures in MEAs with WTO free trade principles;
- Most of these propositions place an emphasis on the role of the CTE as a facilitator, as its knowledge of the WTO practices, limits and constraints would avoid contradictory trade and environment policies;
- The development by the WTO of guidelines as points of reference to support MEA negotiators in the inclusion of trade provisions into MEAs, in a way to increase their coherence with free trade principles.

Ex post measures

- Waivers vote in the WTO on trade measures included in MEAs for periodic and renewable lifting of a member's obligations under WTO (Article IX);
- Enhancing the transparency of the trade measure to be applied unilaterally (through information sharing, etc.);
- Notification to the WTO before application of the measure.

The Rio Declaration favours explicitly a multilateral approach to resolve global and common environment problems, versus unilateral actions by states. This approach converges with the WTO's.

Sensitive issues raised by item 1

- Trade measures pursuant to MEAs could undermine WTO principles and the adopted discipline to implement them and could also create loopholes for trade protectionism;
- They could allow the use of trade measures based on production and process methods (PPMs)² and not related to products, which are currently inconsistent with WTO rules;
- They could indirectly justify the use of unilateral measures, hence lead to their increase, which is counter-productive to the multilateral trade system.
- The use of **unilateral** measures under WTO (dealt with in Article XX of the general agreement) is not yet totally clarified, although most members seem to believe that they are not allowed.
- Too big a role for the WTO in environment related disputes could limit the effectiveness of an MEA and hence send the wrong signals to its signatory countries on the support of the WTO to the resolution of global and transboundary environmental problems;

² "Negative impacts of PPMs can be of two sorts. A process or production method can affect the characteristics of a product so that the product itself may pollute or degrade the environment when it is consumed or used (product-related PPMs). Alternatively, a process or method itself can have a negative impact on the environment through, for example, the release of pollutants into the air or water during the production stage (non-product related PPMs). Areas in which PPMs arise include the use of trade measures for environmental purposes, life-cycle approaches and their application to eco-labelling, economic instruments, and harmonisation of environmental policies and requirements, OECD, Processes and Production Methods (PPMs), Conceptual Framework and Considerations on Use of PPM-based Trade Measures, (see references)

Analysis and synthesis of each of the CTE's items included in its work programme

In this section, we shall examine each of the items in the Report of the Committee on Trade and Environment (CTE) adopted at the WTO Ministerial Conference in Singapore in December 96.

Introduction to the work programme: General grid for the analysis

CTE's work was mostly discussions and clarifications of the items proposed and reached very few specific recommendations for the modification of the WTO rules. Therefore the views exposed in each item of the CTE's Report are generally those of individual member states or a group of these states and do not constitute adopted resolutions or rules. To most of these views, there are generally counter views that oppose them, generally on the basis of their adequacy with WTO principles and provisions of specific agreements within it or, inversely, because of its weak defence of environmental agreements.

In general, there is always a group that defends the independence of the WTO, whether from environmentalists becoming panellists on WTO bodies (i.e. members of WTO Committees such as the CTE), or subjecting the WTO to external rules, such as those of a Multilateral Environmental Agreements (MEA), or even the harmonisation of its proceedings with those of an MEA.

In brief, the CTE's role is to discuss issues relevant to trade and environment and examine what contribution the WTO might make to integrate environmental concerns in the international trade regime and support the goal of sustainable development.

Throughout the discussions in the CTE, there is a systematic opposition that the WTO, and particularly the CTE, intervene in trade negotiations on the grounds of environmental protection whether that would be in agriculture, TRIPs or in the interpretation and negotiations of MEAs.

We shall focus in this analysis on:

- Major issues in each item (a synthesis of the views presented in the Report);
- Possible translation in terms of government policies;
- Possible translation in terms of industrial production and export capability.

The sub-sections to each item analysis will be divided as follows:

- *General presentation*
- *Specific propositions to support the issues raised by the item*
- *Sensitive issues raised by the item*
- *Brief analytical synthesis*
- *General implications on government policy*
- *General implications on market access*
- *Recommendations (if available)*

The present study aims at understanding the work of the Committee on Trade and Environment (CTE) established by the WTO and assess in a preliminary fashion, its impacts on the present situation of the agro-food industrial sector in Lebanon, as well as its evolution in the near future. .

In the first section of the present report, the 10 items on the CTE's agenda are analysed and a synthesis of the content of each item is presented. General impacts on government policies as well as on market access opportunities will be underlined. In addition, we realised that it was somewhat incomplete to understand the implications of the WTO/CTE discussions without stressing on the scope and role in international trade of the agreements on the 'Sanitary and Phytosanitary' (SPS) Measures and the 'Technical Barriers to Trade' (TBT), as well as of the food standards established by the Codex Alimentarius Committee (CAC). An analytical synthesis of these topics was also conducted in the first section, which is briefly concluded with four cases of disputes in international agro-food trade to illustrate the dynamic of trade and environment issues in this sector.

The second section will look specifically at the Lebanese agro-food sector and rethink accordingly the general impacts underlined above, taking into consideration the key factors related to the industry (such as the source of raw materials, the structure of the industry, production techniques and practices, the level industrial developments, the distribution of export markets, etc.). This section will identify challenges to the agro-food industry in Lebanon and will be concluded with preliminary recommendations addressed for both the public and the private sectors.

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