

**EUROPEAN UNION ENVIRONMENTAL REGULATIONS AND THEIR
POTENTIAL IMPACT ON MARKET ACCESS FOR AFRICA'S EXPORTS**

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1. AFRICA AND THE URUGUAY ROUND-CONSTRAINTS, ACHIEVEMENTS AND HOPES

1.1 General Introduction

Africa's participation in the Uruguay Round negotiations was constrained by economic, social, infra structural and political factors. The negotiations took place during the period when most countries were undergoing structural adjustment characterised by public sector and civil service reforms. The public sector had been the traditional source of reliable revenues, which could be used to fund, among other things, participation in the negotiations themselves backed up by inter Ministerial co-ordination and appropriate and adequate information. Resources were not in place to facilitate these processes. Besides, civil service reforms took place during the same period of the negotiations. They involved retrenchment of labour and the emphasis was more on cutting numbers than preserving critical skills¹. Some of the skills, which could have enhanced the continent's bargaining role in the negotiations, were shed off during the restructuring process.

In spite of the capacity problems African governments undertook and are still undertaking serious reforms and establishing the necessary institutions to enable their countries to participate in the emerging world trade regime. They have done this at a very high cost and against many odds. Some of the old problems, which have reduced market access for Africa's products, still continue. These include among others, import restrictions, rigid quotas, unreliable commodity agreements, subsidies, pricing mechanisms and rigid regional trade arrangements. These will continue affecting market access for Africa's products for a long time to come.

In addition to the old familiar barriers to trade, new ones have emerged which promise to have a longer and deeper impact on Africa's trade. They have emerged during the same period of the Uruguay Round negotiations and early period of implementation. These are the technical barriers to market access contained in the new environmental regulations. They are based on international conventions on the utilisation of natural resources² and also international environmental agreements on the protection of human and animal health³. Some arise from mandatory⁴ and some from non-mandatory treaties and recommendations⁵. Although the majority are of a regional nature such as those of the EU

or the OECD, their impact is global because they emanate from the world's biggest trade partners⁶. This makes these trade partners not only the pace but standard setters and once they implement them within their own national borders, those seeking to trade with them have either to comply with them or adopt them in their own countries.

This chapter seeks to evaluate the impact of these regulations on the potential for market access of Africa's products to the European market. The chapter is divided into five main parts. Part 1 of which is introduction forms part, examines the factors that constrained Africa's participation in the Uruguay Round, the traditional obstacles to market access and what African countries have done to increase their market access to European and other markets. Parts 2 and 3 will examine the nature, content and requirements of the new environmental regulations and practices, which have been introduced by the European Commission. Part 4 is devoted to consumer standards and international codes of conduct on responsible management and development of natural resources. Part 5 raises policy issues and conclusions.

1.1 Africa's Limitations During the Uruguay Round Negotiations

The Uruguay Round of negotiations could not have come at a less opportune time for African countries. Institutional, economic, organisational and information related obstacles grossly reduced the continent's capacity to influence the negotiations and outcomes significantly. The major institutional constraints were lack of mobilisation capacity at regional level. While the African countries were organised into sub-regional blocks, some of the regional economic organisations such as the Southern Africa Development Community (SADC) and the East African Co-operation (EAC) were being given form, vision and orientation. Some of the older economic organisations in the Central African sub-region were beginning to get affected by the rising tensions and conflicts in the Great Lakes while on the West African side the Economic Community of West African States (ECOWAS) was devoting all its resources to the conflict in Liberia.

At national level most governments were carrying out civil service reforms, which included reducing the number of ministries, retrenching supposedly excess labour, introducing new management practices and reforming local government structures. While these reforms were shrinking the size of governments and the labour force, they did not contain

contingency problems for handling new challenges. Environmental management, climate change and the emergence of the World Trade Organisation (WTO) were among those new challenges. The African governments were, in the majority of cases not only ill prepared but also ill equipped to address them. This was further complicated by the fact that with regard to the WTO, the issues involved were wider than conventional trade issues. During the negotiations it became very clear that most issues, which lay outside the jurisdiction of the ministries of trade, were trade issues. Agriculture, tourism, environment, immigration, education, culture, manufacture, intellectual property etc. were each covered by separate negotiations during the round. At national levels they were still under the jurisdiction of non-trade government departments. Co-ordination of information and negotiating positions required not only experience and skills but also the civil service stability and predictability, which did not exist in many countries.

Human and financial resource constraints obstacles deprived many countries of the opportunity to even be represented in Geneva. Many countries still do not have permanent missions in Geneva where most of the negotiations took place. Some of the missions in Geneva are inadequately resourced and have to provide services to several other countries in Europe in addition to attending to WTO issues. These constraints made and still make the contributions of African countries to the shaping of the world trade regime very limited. During the preparations for the new round, the OAU UNCTAD, and UNDP made a big effort to mobilise regional economic communities and the African missions in Geneva to take a proactive approach, prepare positions on key issues and be ready to spend time and resources in the new round⁷. It is hoped that some of the problems of marginalization and passive participation, which characterised Africa in the last round, will this time be reduced or removed altogether. The Canadian Parliament⁸ and the Dutch Government⁹ have expressed the same hope.

1.2 Traditional Barriers to Market Access for Africa's Products

For the last three decades, Africa's share of the world's export market has remained very low and almost insignificant. It has even been declining. In 1970 it was 0.8% of the global total. In 1995 it had dropped to 0.3%¹⁰. Blackhurst and Lyakurwa¹¹ have observed that tariff cuts instituted during the implementation of the Uruguay Round Agreements are

not likely to increase market access for African products significantly because of various reasons. Some of the reasons relate to the nature of the products themselves and the export orientation and policies of African countries. Others relate to the import policies and practices of Africa's trade partners.

The nature, concentration and destination of African products tend to determine their access conditions. The nature of exports is characterised by a single commodity dependency¹². Some countries have a dependency of over 90% on one export commodity for example Angola (94.5% on minerals), Gabon (99% on oil), Nigeria (94.5% on oil) and Zambia (99% on minerals).¹³ Most of these are minerals whose quotas are fixed and whose prices are unstable. They are exported crude and unprocessed to specific traditional importers. Competition within the supply market for these products is very high. Control of demand and destination by multinational corporations is very well established. Suppliers have very little say on the conditions, which shape market access for these products.

The composition of export products also affects market access. Most countries have not changed the nature, composition or even quality of their products for decades. Ghana for example has always exported cocoa, cocoa butter, gold and wood products. Kenya and Uganda have always relied on tea, cotton and coffee and to that list Tanzania has always added sisal, diamonds and pyrethrum. Botswana consistently exports beef and diamonds and the same composition of exports can be ascribed to many other African countries. Due to this static composition, efforts have always been made to step up production without accompanying strategies for increasing processing capacity. Increased production without diversification has led to over-production in some cases thereby resulting into stagnant market access and in most cases reduced prices¹⁴. This has led to the problem of the decline in the contribution of traditional exports to GDP. In some countries such as Kenya, this decline has been very sharp for example from 70% of the GDP in 1980 to 47.6% in 1996¹⁵.

The trade practices of Africa's trade partners have a significant impact on its market access. Tariffs are still a major obstacle. Although on the EU market they were already low and in most of the traditional African product destinations they have been significantly slashed after the Uruguay Round, some non-traditional markets have retained very high tariffs. Coffee, cotton and rubber exports still attract very high tariffs in China and several

other Asian countries. Cotton, cotton yarn and textiles encounter stiff tariffs on the North American market. Exports of cocoa, cocoa butter, garments and tinned fish are also subjected to high tariffs in Latin America especially Brazil and Argentina, the biggest markets in that region¹⁶. Furthermore, while substantial reductions in tariffs have been recorded for major products of interest to Africa, they were marginal on fish and fish products, textiles and clothing and generally on processed or semi-processed goods¹⁷.

Tariff peaks, nuisance tariffs and tariff escalations have always and still continue to reduce the access of African products on markets of developed countries. Most of these tariffs are on products, which have had value added to them through processing or manufacture or even simple quality improvements. They have become a powerful instrument in the hands of the OECD countries to maintain a primary commodity export syndrome in developing countries. They are used as a mechanism of protectionism and serve to perpetuate the current world division of labour. It has been predicted by Njinkeu and Monkam¹⁸, that while the average ordinary tariffs facing imports from the developing to developed countries will be as low as 12% in the Post-Uruguay period, tariff peaks for important products will rise to an average of 350%. The most devastating impact of tariff peaks and tariff escalations will be in the area of processed foods and textiles. Mweha and Muga have argued that developed countries are using these as instruments for establishing trade enclosures. Kenya, Mauritius, South Africa and Zimbabwe are already beginning to absorb the impact¹⁹.

In addition the traditional import restriction policies and mechanisms continue to operate. Domestic pricing is still a serious barrier to less developed country products in developed country markets. Taxation regimes, industrial subsidies and environmental subsidies tend to reduce the price levels for domestic products in many commodities especially wood products, foodstuffs, animal feeds. Imports fail to compete because they do not enjoy the same level of tax preferences and subsidies. The preferential treatment given to local products also creates non-tariff barriers to imports. This is very common in the area of sugar, which cannot compete with beet sugar and in wines and beverages. Explicit restrictions are put on competitive imports through restrictive quotas. This culminates into import substitution policies by developed countries, which are at the frontline of dismantling such policies in developing countries. Dumping of cheap products from industrialised

countries is the final outcome of these policies. In the long run, dumping stifles agricultural development in importing countries and promotes demand dependency.

Direct import bans, regular quarantines or restrictions also affect market access for developing country products. In some cases, the reasons for the restrictions are not convincing. In 1998, the US, for example imposed restrictions on textiles from Kenya on the claim that Kenya was importing and re-exporting them. Rules of origin were used but there was no substantiation and due to power relations and lack of resources, Kenya did not avail itself of the dispute settlement procedures. Similarly regular bans of imports of fish from East Africa are imposed by the EU and the USA either on grounds of health or other sanitary standards or simply by invoking codes of conduct on responsible fishing or fisheries management.

Rigid quotas have been used in the Lome Convention and under the various commodity agreements, to restrict imports of commodities such as sugar and bananas. The quotas for sugar remained predictably static for a long time²⁰. This has suppressed the expansion of the sugar industry in Africa and other sugar producers. The USA was equally protective and limited the import of sugar, thereby almost stagnating the sugar industry in the Caribbean²¹.

While developed countries were enforcing those rigid quotas two things happened which further aggravated the access of Africa's products on developed country markets. The World Bank and the EU continued supporting African countries for crop production improvement even for crops whose quotas were already stagnant. Crop improvement programmes raised the level and quality of production while demand either shrunk or stagnated. Without a supportive increase in demand, the prices crumbled²². This coincided with the crumbling of the commodity agreements with products such as coffee and sugar, depended upon by many African countries, being affected most. The combination of rigid and static quotas, funding of over-production thereby depressing prices and the collapse of the commodity agreements is going to affect market access for a very long time.

Many African countries have not had a chance to examine the potential opportunity presented by the Uruguay Round against the historical and long established barriers to trade that may not be removed by the new trade agreements. As we shall see later, the EU while negotiating the new GATT agreements intensified legislation on environmental and

social standards. It took lead in establishing these new standards thereby providing precedents for the OECD countries, the transitional economies and other trade partners who have to cope if they want to remain partners. African countries have not taken serious note of these potential instruments of market exclusion. Instead they have concentrated on policy reforms. Before we examine these regulations and their possible lasting effects on Africa's future, it is essential to look at the reforms African countries have undertaken in preparing themselves to comply with the new world trade obligations.

1.3 Policy Reforms By African Countries

In attempting to comply with the expectations of the Bretton Woods institutions as well as the World Trade Organisation, African countries have undertaken deep and serious institutional and policy reforms. Exchange rate, import policy and tax reforms have been effected in almost all the countries²³. Some countries have even introduced deeper policy and institutional reforms in order to prepare themselves to participate in the world trade system. Ghana for example has introduced commodity-specific export promotion policies. In each of these covering the major traditional exports, institutions have been formed, incentive packages introduced, quality standards established and notification made to the WTO about these policy reforms and institutions²⁴.

Trade liberalisation has been taken seriously in many African countries. Crop marketing authorities have been either disbanded or privatised. The marketing of agricultural produce has been completely liberalised, prices deregulated and fertiliser subsidies removed²⁵. Regional economic communities such as the East African Co-operation, the Common Market for Eastern and Southern Africa and the Southern African Development Community are working on common policies in agriculture, industry, trade and intellectual property²⁶. For most countries, however, the reforms have been carried out at a very high cost in terms of foregone opportunities such as taxes and duties on the part of the state and loss of jobs, income and welfare on the part of individuals²⁷. Although other researchers feel that Africa's pace of reforms has not been rapid enough to take most countries out of their economic crises, it can be argued that given the available resources African countries have done their best in restructuring their economies²⁸. However, there is more to be done especially in the areas of transport, port facilities, tourism and telecommunications²⁹. Tar-

iffs for water, telephones and electricity are still too high and tend to inflate the cost of production in many African countries.

In spite of all these efforts, Africa's trade opportunities will not only be secured by policy reforms. There's need to increase knowledge about environmental standards and regulations which are proliferating in countries which have formed traditional destinations of Africa's products. These regulations have been intensified during the Uruguay and post-Uruguay negotiations. They are part of the new non-tariff barriers and their threat to Africa's market access should not be under-estimated. They constitute of five major components: sanitary and phytosanitary standards, product and process environmental policies and standards, stimulation policies, eco-labelling regulations and codes of conduct on responsible product management or development. They will be examined in detail below.

2. PRODUCT AND PROCESS ENVIRONMENTAL POLICIES AND REGULATIONS

These are mainly concerned with the regulation of health standards. They cover products that may be considered directly or indirectly responsible for adverse effects, which may occur in the production or consumption chain. In the area of foodstuffs, for example, the FAO has estimated that in the USA alone, about 9000 deaths and between 6.5 and 33 million illness are caused by food borne diseases. It has also estimated that in 1994 alone such illnesses cost the US government between USD 9 and 12 bi³⁰. In the processing of wood products for example, scientists have established that the use of *cadmium* and *pentaclorophenol* chemicals is harmful to humans, other animals and aquatic life in general. As a result their use in the treatment of timber is restricted if timber is intended to be used in the European Union. Similarly the use of *creosote* in treating wood products is restricted to specific levels and wood products treated with *creosote* cannot be used inside buildings or in public places where there is a risk of contact with human skin. It cannot be used for packing food products or for the production of breeding trays³¹.

Product and process policies will pose a very serious obstacle to market access for African products because they tend to be very comprehensive, covering the whole life cycle of a product. Many African producers do not have the necessary skills and instruments to carry out life cycle assessment [LCA]. Life cycle assessment requires advanced skills

for environmental impact assessment [EIA]. It covers four major stages. First the primary or manufacturing stage. Second the consumption or storage stage. Third the transportation including export process and finally the wastage stage.

European companies have taken voluntary measures to enable themselves to comply with process oriented environmental standards. They have adopted three major policies. First they have what are known as 'Environmental Management Systems'. These are quality certification standards under the ISO 9000. Chambers of industry and commerce have popularised these standards. They also encourage companies to record information on their environmental policies, subject themselves to inspection by competent authorities and obtain environmental quality certificates, which they use as instruments for marketing and competition.

In 1995 April, the European Commission established an 'Environmental Management Audit Scheme' [EMAS]. This scheme encourages voluntary environmental management audits. Successful companies are given a special logo that they use for marketing purposes. The third voluntary mechanism applicable in the European Union is the 'Annual Environmental Report' through which companies keep detailed records and give account of their achievements in implementing the international standards for environmental management [ISO 1400]. Such reports are also required under the EMAS. In some countries such as The Netherlands, designated companies are required to present mandatory reports. Such companies if involved in importing products will always want to import from countries applying similar standards. In the absence of a concerted effort to upgrade the technical capabilities of many exporters, African products will increasingly fail to comply with the product and process standards of the European Commission.

Another process policy with a potential to affect African products is the waste management policy. For almost each product there are specific regulations aimed at reducing the environmental problems, which may arise out of disposed products or packaging materials. Many African exporters are still unaware of these regulations. But waste management policies and regulations will affect them, because importers will not accept products, which do not meet the waste disposal or packaging disposal guidelines. The standards set within the EU are very high. In The Netherlands for example, incineration or dumping is already illegal. Therefore products or packaging materials which require incin-

eration cannot find market in The Netherlands.

European Union importers are increasingly going for packaging, which is capable of being recycled. Most of the products from Africa are packaged in wood rather than paper boxes. The new EU packaging regulations require that by July 1st, 2001,³²:

- a. Each manufacturer and importer must be able to recover 50% to 65% of the packaging materials brought into the market. Recovery in this context includes 25 – 45% recycling with a minimum of 15% for each material. It also includes composition and incineration resulting in energy recovery.
- b. The packaging has to be such that the packaging and weight are limited to the minimum for purposes of safety, hygiene, consumer interests and acceptance of the packaged product.
- c. Packaging must be designed, produced and commercialised in such a way as to permit its re-use or recovery including recycling.
- d. Packaging must be manufactured in such a way as to minimise environmental impact in the disposal of packaging waste.
- e. Packaging must be in such a way that it minimises the presence of noxious and other hazardous substances and materials with regard to their presence in emissions, ash or leachate when packaging materials are being disposed of as waste.

Although the directive comes into effect in July 2001, European countries have already passed legislation to implement it. Some of them have introduced more strict standards. In The Netherlands, for example, the importers and manufacturers had to start recovering 65% of the packaging materials brought into the Dutch market by 1st July 1997³³. But even without the force of legislation by 1994, over 47% of all packaging were already being recycled in The Netherlands. Due to a tradition of tripartite consultations in The Netherlands, all interested parties agreed upon each policy package on environmental standards. French waste disposal regulations aim at a higher standard of 75% recovery by the end of 2001. Under French regulations importers and manufacturers are required to take back their packaging waste. They can handle their own waste or use the authorised organisations known as 'Eco-Emballages'. The French standards have serious implications for exporters to the French market. Exporters are also expected to take back their packaging

materials. If they cannot take them back they have to meet the costs of waste disposal. They may authorise the importers to act on their behalf³⁴.

German packaging regulations are also very strict and comprehensive. Under the Packaging Act³⁵, general regulations discourage secondary packaging, encourage multiple use packing, require packaging with material that can be recycled (preferably paper and cardboard) and make packaging with *polyvinylchloride* plastic or CFC foamed parts illegal. The most important regulations for exporters to the German market are the take back regulations. Like in the case of France exporters are required to take back their packaging materials for re-use, re-cycling or disposal. The importers are empowered by German law to enforce the regulations on the exporters. All exporters are required to comply with the take back regulations. In practice, however, the importer or a designated third party can discharge the obligations of the exporters under contract.

What is the significance of product and process regulations for market access to European countries? From the outset it was pointed out that most of these regulations were developed and put into force during the Uruguay Round negotiations. By establishing them at the same time free trade was being strengthened, the European nations were creating new technical barriers that would ensure they retained an upper hand in world trade. Together with this they were already setting the pace and rhythm of environmentalism as a new legitimate mechanism for defining the new rules of trade. The cultural and scientific significance of these regulations is also worth noting. These nations have some of the best and most advanced scientific institutions in the world. They have always provided lead without consulting others and their leadership has always been accepted. They have used environmentalism to develop a new set of scientific and technical standards that will be transferred, copied and applied by all countries that hope to trade with them. This assures them of unquestioned technical leadership in the new trade regime.

Product and process environmental regulations have other more significant power implications. One of these is that they create joint responsibility between importers and exporters because processes in the exporter country have a bearing on the liability of the importers. Due to this joint responsibility some obvious choices emerge. Either the exporters can form joint ventures with importers in order to be able to acquire the necessary technology to comply with the standards or get the necessary legitimacy and acceptance on

the European market. The other alternative is for African countries to invite European companies to invest and operate from Africa because their acceptability on the European markets is almost guaranteed.

In the area of flowers and fish products, it is becoming increasingly clear that fish products entering the EU on European fishing vessels or being exported by European companies are assumed to be European and subjected to minimal scrutiny or controls. The same is happening in the area of flowers and other horticultural products. The more the involvement of European companies the lesser the restrictions.

Joint ventures have always been used to transfer technology and increase foreign investments. But desperate attempts to enforce European standards have a potential to impose cultural and political changes on Africa. In order to comply with strict standards about fish products, aquaculture has to be more and more privatised. In order to control levels of toxicity or pollution, communities may have to be closed out of commercial agriculture, forestry and aquaculture. As is already happening in the case of horticulture, farms have to be fenced and kept out of reach. This calls for further intensification of private property and trespass laws. It calls for a new culture, which involves the exclusion of local communities from all forms of product management or commercial farming. The political implications of this are social exclusion, concentration of land in the hands of a few and garrison economies, fenced and kept out of the reach of the poor. Viewed from this angle the EU environmental regulations may become effective instruments of Westernisation or de-Africanisation of Africa's economy.

The packaging waste retake requirements look simple on their face value. But they carry serious jurisprudential implications. The German law discussed above, for example, gives power to the importer to enforce the retake or recovery regulations. First this gives regulatory powers to the importer over the exporter. The enforcement of regulations is taken from the state of export to the importer companies and this gives direct control to the importer over the exporter. This power can easily be used to influence export prices or to reduce export earnings as importers can always deduct some of the money to recover the packaging materials. This abdication of the law enforcement obligations from the European states to the importers gives control to the latter over exporters and even exporter states. It is also in line with the increasing privatisation of public responsibilities. In addi-

tion to the general product and process regulations, the EU has product specific environmental regulations that will affect market access for African products in the long run. Some of these are examined below.

3. LEGISLATIVE MEASURES TAKEN BY THE EUROPEAN UNION COUNTRIES AFFECTING SELECTED PRODUCTS OF INTEREST TO AFRICA

It must be made clear again that, EU regulations are not binding on non-EU countries. They are meant to regulate environmental standards within the EU. But they also create technical barriers to products from outside the EU. In this section we shall examine standards governing foods, especially fresh fruits and vegetables, wood and fish products. In the case of wood and fish products we shall also examine international codes of conduct initiated by European countries on the responsible management of fisheries and forests. The argument is that the standards set unilaterally are too high and have far-reaching implications for power, production and trade in Africa.

3.1 Fresh Fruits and Vegetables

Africa's potential is beginning to be realised in the area of horticulture. The main destination of Africa's fruits and vegetables is Europe. Benin, Cameroon, Cotê d'Ivoire, Ghana, Guinea, Kenya, Madagascar, Mali, Reunion, South Africa and Zimbabwe are major exporters of passion fruits, pineapples, chillies, avocados, beans and mangoes to the EU³⁶. A few environmental regulations passed by the European Commission will affect the competitiveness and access of African products in this market. First the regulations establish 'maximum residue levels' [MRLS]. These relate to the maximum concentration of pesticides in food products. They are based on what are called by the European countries, 'good agricultural practices' [GAPS]. These GAPS and the MRLS have been set up by European nations taking into consideration their own agricultural systems and climatical regimes. Suppliers or exporters to EU markets have either to apply the same standards in their own countries or give up on trade with Europe.

Until 1995, the implementation of international standards on tolerable levels of pesticides in foodstuffs was voluntary. These standards were set jointly by the FAO,

WHO and Codex Alimentarius Committee. These international bodies had examined up to 275 pesticides. But beginning in 1995, European nations have gone beyond international standards. While re-enforcing the Codex standards, the principle of voluntary enforcement has been set aside. EU Directive EU 76/895 which established the MRLS provides that no European country can simply depart from the Codex standards without very strong reasons. It also provides that exporters who cannot meet the Codex standards can with the help of the importer take legal action to be exempted from such strict standards. The obvious problem is that for the majority of developing countries, it will be very difficult to institute or fund such legal proceedings without wiping out the profits expected from small-scale trade activities.

Apart from the directive on MRLS, another EU directive³⁷ prescribes maximum levels of food additives and also lists additives that are acceptable within the EU. Most of the accepted are waxes, some chemicals and acids. For example specific maximum quantities of *thiabendazole* are prescribed for bananas, and citrus fruits. The measurements allowed are very elaborate and relate to surface treatment. Exporters have to ascertain that these acceptable levels are not exceeded. The details involved indicate that high technical skills are required for scanning the products. This in turn requires advanced and reliable technologies. In addition these technologies have to be at the same level with those in importing countries.

In some cases the maximum levels are not specified as for example in the case of ascorbic acid, sodium and *calcium acrobate* and in some cases wax treatment. This apparent flexibility based on vague clauses setting the standard as '*quantum satis*' or not more than necessary can be used to impose multiple standards and discriminate against the least favoured exporters. Such clauses encourage discretion, which can be abused or used to impose nuisance non-tariff barriers. A third area regulated by the EU in the area of foods is the presence of heavy metals. Cadmium, lead and mercury are known to be potentially hazardous to human health. Since 1991, Belgium, The Netherlands and Luxembourg have established the so-called Benelux requirements covering tubers, yams, beet root, mushrooms, fruit, vegetables, root vegetables, legumes and fresh vegetables. The German regulations have added to the Benelux list kernels and plant parts and have added thallium to cadmium, lead and mercury. Most of the listed products come from the African region.

Recently African countries have tried to enter the mushrooms market. In all cases, these products especially tubers are grown by small scale farmers whose know – how about metals is limited. It seems as in the other cases, the European regulations will push the continent further into commercial, large-scale, private agriculture.

The control of mouldy foods is another area that will put a strain on Africa's technical and technological resources. Tropical conditions are naturally conducive to the growth of natural toxins. Thus there's an inherent potential for such toxins to affect the environmental quality of tropical foods. Although moulds such as fungus are easily detectable by naked eyes, their toxins are not. Small-scale producers, from whom most of the export foodstuffs are purchased, do not have the necessary technical and technological capabilities to detect and control toxic substances in the foods they produce.

National legislation in Europe has already made it illegal to sell food, which is injurious to health or contaminated. This is the goal of every country. But these regulations are adding pressure on exporters to the European market, to equip themselves with the means to control the quality of food exports. One main mechanism encouraged is the control of humidity levels to control fungal growth.

The EU directive on GAPS requires the use of particular techniques such as use of seedlings that have not been disinfected, crop rotation, use of fungi resistant techniques, use of fungicides and the cleaning of fruits and vegetables with fungicides or hot water after harvest. These GAPS introduce new rigid standards about best practices in farming. They ignore traditional or indigenous systems of fungal control that vary from region to region. They envisage and favour exports from large-scale, modern and perhaps private commercial farmers. In addition, the regulations require drying facilities and climate control to reduce moisture in storage and transport facilities. All these require technologies and techniques, which are recognised and respected in the European countries. Such resources are not available to the poor farmers who form the bulk of suppliers to exporters. It will take time before African commercial actors become competitive on the European markets notwithstanding the substantial reduction in tariffs.

Before winding up on this section it worth commenting on grading of food product standards³⁸. These regulate the assortment, size, uniformity, colour, marking, packaging and presentation. These regulations are not known to many African exporters and reflect

the cultural gaps between two continents. Culturally European consumers accept standardisation and some adhere to these standards very rigidly. European and African perceptions of measures and size are determined by cultural values, geographical and ecological conditions, family size and other factors. They are not uniform and none of the values should be taken to be exclusively rational.

3.2 Regulatory Measures Related to Wood Products

Wood products constitute a significant component of African exports to the EU. Cameroon, Cotê d'Ivoire, Gabon and Nigeria together supply more than 50% of EU timber and wood product imports³⁹. Other countries are also key exporters of timber and some countries depend for more than 20% of their GDP on these products. Four major types of environmental regulations exist in the EU, which have a bearing on wood and wood products. They relate to the use of *cadmium*, wood preservatives, *formaldehyde* and packaging. The EU directive on 'Restriction on the Marketing and Use of Certain Dangerous Substances and Preparation'⁴⁰ sets standards for the maximum levels of cadmium by weight in wood paints. At national level the maximum levels allowed in such paints are even much lower. The 1993 German legislation on 'The Marketing and Use of Dangerous Substances' establishes higher standards than those set by the EU directive. The standards in The Netherlands are even much higher⁴¹.

Wood preservatives aimed at controlling fungi and insects are very necessary in the wood industry in tropical countries. The EU regulations⁴², make the use of *pentachlorophenol*, or PCP salts restricted especially for wood intended for indoor purposes. The Netherlands and Germany have also restricted the use of these preservatives by national legislation. The use of *creosote* oils in treating wood or the sale of *creosote* treated wood with *creosote* levels exceeding certain limits is prohibited if such wood is intended for use public buildings, packaging of products or the production of breeding trays⁴³. A survey of 12 wood exporting companies from Ghana, Nigeria, Cameroon and Tanzania indicates that only 20% of them were aware of the European limitations on preservatives. They were all based in Ghana. But 60% indicated that some preservatives were unavoidable because of the climatic conditions. All of them indicated that even if they were aware of the restrictions, they were unable to actually ascertain the levels because of low skills and lack of technologies.

3.3 Environmental Regulations Relating to Fish Products

Sanitary and phytosanitary standards have constituted some of the biggest non-tariff barriers to market access for developing countries. Fish and fish products have formed a small battle ground on which trade wars between developed and developing countries have been intensifying. Developed countries are still significant exporters of fish. Over 80% of the world fish exports are still from developed countries. Japan alone accounts for over 30% of the world total fish exports and the US is the second biggest importer while it occupies the third position as the world's biggest exporter⁴⁴. In order to protect their own interest and to regulate health standards, developed countries are introducing various quality control measures, which will affect developing countries.

The most effective set of standards has been introduced through the Hazard Analysis Critical Control Point [HACCP] principle launched on the 18 December 1997. All fish intended to be sold to markets applying the principle must come from plants with an HACCP plan. This principle which has a globalisation mission for standards in the fish industry, has even been termed by the FAO as the most effective mechanism for tariff escalation or 'a *de facto* non-tariff measure against value added products originating from developing countries'⁴⁵. The arguments for the introduction and circularisation of the HACCP which is based on mandatory and uniform procedures for developing, catching, processing, storing and transporting fish and fish products, apply only to national production and imports. They apply in all OECD countries and other countries dependent on fish exports have adopted the principles and standards. Among these are Australia, Brazil, Canada, Morocco, New Zealand and Thailand that adopted the HACCP principles in order to retain a share in fish trade markets.

The HACCP regulations have a deeper impact than is readily admitted. Although meant for domestic production, they cover imports too. The US regulation on HACCP provides that,

'If assurances do not exist that the imported fish or fishery product has been processed under conditions that are equivalent to those required of domestic processes under this part, the product will appear adulterated and will be denied entry'⁴⁵.

In order to comply with the HACCP principles an exporter has to acquire new plant and new technologies and has to start completely new production processes. The resources required for the installation of new equipment are enormous and cannot be afforded by

small producers. The HACCP standards require heavy capital investments and resources inaccessible by the poor.

The EU countries have adopted the HACCP principles. In addition they have their own sanitary guidelines, which are very comprehensive and relate to:

- a. Means relating to production i.e. physical installation, construction and equipment water quality, disposal of refuse etc.
- b. Public health requirements such as hygiene during processing, staff hygiene, maintenance, cleaning and dis-infection in connection with fishing boats, landing sites, processing plants etc.
- c. Product standards relating to freshness, cleanliness, maximum level of microbial contaminants, chemicals, toxic substances, parasites etc.
- d. Monitoring standards relating to self-monitoring, official monitoring by national agencies and EU monitoring and inspection⁴⁶.

In order to be given a phytosanitary certificate by the European Commission's Animal and Plant and Health Inspection and Control Office, the following are inspected and reported upon:

- a. National legislation especially that relating to the legal powers given to the competent authorities.
- b. The competent authority's organisational structure, its inspection department, available staff and materials.
- c. A field review of health inspection's conditions on a number of sites and facilities.
- d. An assessment of guarantees by the competent authority in connection with quality and public health standards as laid down by the European Commission⁴⁷.

Fish and fish products have been a very difficult area in the trade relations between the EU and Africa. A case in question is the east African countries. In March 1998 an outbreak of cholera in Mozambique led the EU to slam a ban on fish from all the east African countries. Three months later, the ban was lifted after the WHO expressed an opinion the disease causing bacteria cannot be transmitted through hygienically prepared fish or fish products. In March 1999 the EU imposed a new ban of fish from Lake Victoria after it was alleged that some fisher people were using pesticides to increase their catches.

In trying to comply with the new ban the three east African countries invited EU experts to visit the fishing sites. Several visits were made and a selective lifting of the ban followed. Tanzania and Uganda were exempted after some time while Kenya continued to be covered by the ban. Many fishing companies moved from Kenya to Uganda and Tanzania. Kenya was forced to reduce its fishing operations to 20%. The ban was lifted in November 2000 by which time Kenya was losing earnings worth US\$ 50 mil. per annum. The problem for Kenya is that it could not understand why the ban was lifted for Tanzania in January 2000 and for Uganda in August while the three countries shared the same lake environment.

Many African countries are trying to introduce quality control measures but very few will manage to satisfy the very high standards laid down by the EU. One easy option for them to comply is to go into joint ventures with European fishing companies. This may be actually the expected result because as the FAO has noted, 'HACCP can create benefits not only in causing safer seafood to enter the market place but as a business management tool and in creating benefits.'⁴⁸ Some of these benefits could be in the form of joint ventures with OECD countries as dominant partners.

The second option is for African countries through regional economic communities forming quality control, information and standards units, which can offer support to fish and fish products exporters. The Eastern European countries have formed a seventeen member country network known as 'Fish Marketing Information Service for Eastern European Countries' [EASTFISH]. The network, with the help of the FAO offers technical assistance and training on aquaculture production, fish processing, quality control and quality assurance. It also promotes exports and joint ventures.

In May 1999 the FAO gave the East African Co-operation [EAC] about US\$2.5 mil. to help the East African countries to improve quality standards of their fish for export to the European market. During the same period another US\$2.5 mil. was donated by the EU to COMESA (Common Market for Eastern and Southern Africa) to support the Standards Quality Metrology Project that is aimed at improving the quality of fish exports⁴⁹. It is worth noting, however, that the support extended to African regional economic communities is not as massive and as well organised as that extended to Asian or East European countries. The major difference is that while in Eastern Europe and in Asia commercial

aquaculture is gaining root with room for direct foreign investments and joint ventures, in Africa large scale commercial aquaculture is still very limited. The industry is dominated by small-scale fishing companies and a large number of small fisher folk. Such conditions do not make the fishing industry in Africa noticeable enough to attract any heavy investments.

4. CONSUMER AND MARKET ORIENTED ENVIRONMENTAL STANDARDS

In this section we will examine two types of regulatory mechanisms that EU have developed in order to strengthen their producers by stimulating a culture of environmental consciousness. After this we will take a brief look at the international codes of conduct development under the stewardship of EU and other OECD countries which lay the basic best practices in environmental resource development and management. These two sets of environmental regulations have enabled the importers and producers in developed countries to dictate the pace, rhythm and conduct of international trade in key areas globally.

4.1 Stimulation Policies Aimed at Creating Environmental Competitiveness and Trade Monopoly

The EU is leading on importer incentives aimed at stimulating competitiveness and institutionalising environmental values and standards at global level. The three major instruments in this area are financial incentives, eco-information systems and eco-labelling procedures and standards. Financial incentives include eco-taxes and the new Green General System of Preferences [the GGSPS]. Eco-taxes operate by sanctions and penalties. They make environmentally unsound products and production processes attract higher taxes. A fuel tax or pay as you pollute charges have been on the table of the EU for almost half a decade now and due to resistance from some European countries no general policy has emerged. But lead treated fuel attracts higher prices in some European countries due to the tax component. Low energy products attract low tax rates. In the area of waste and package waste disposal higher tax rates for high energy consuming products operate as non-tariff barriers for products from developing countries with higher fuel and energy costs.

Since 1998 the EU introduced the concept of an 'encouragement regime' based on a 20 to 30% additional import tariff preferences for ecologically friendly and humanly sound products. The human aspect relates to child labour, social protection and trade union rights. Human rights generally have crept into the EU trade regulations in spite of the fact that the social clause is still being resisted by developing countries as part and parcel of the world trade standards. By introducing an encouragement policy of this type, the EU has introduced new trade conditionality in the world trade regime. Much as human rights have to be finally accepted as part of the *corpus juris* of the WTO standards, a unilateral encouragement policy is calculated to pre-empt discussion on the social clause in the forthcoming millennium round of negotiations.

Eco-information systems are another set of instruments developed by the EU to enhance competitiveness among European companies on the EU market. European companies are encouraged to keep detailed information on product components, environmental characteristics, consumer preferences and their eco-label records. It is a comprehensive product cycle information system, which is supposed to make the market more accountable to consumers. But the aim is to show consumers the environmental effects of the processes used in the development of particular products. The effect is, however, to preserve the superiority of European products and to compel exporters to the EU markets to comply with EU standards. Because the data sheets are used to obtain eco-labels as certificates of excellence, they are, in fact, used both as marketing techniques and as non-tariff barriers to products from outside the EU. Suppliers of raw materials have no choice but to bear in mind the requirements and expectations of European consumers. For African exporters many limitations abound. First, they have not been involved even at the level of the Lome IV framework, to contribute to the development of these standards. Second, they are faced with environmental standards, which ignore their structural capacity for compliance.

The third mechanism is the eco-labelling system. The European Union has facilitated the development of eco-labelling as a marketing and business tool. Manufacturers and traders, who have used eco-information systems as a marketing tool, have been allowed to develop their own private eco-labels. These private eco-labels are given to or allowed to be used by companies with a strong track record on environmental standards. Private companies have been quick to establish themselves as leaders on environmental

quality. Some of these include garments manufactures and wholesalers such as Espirit and Steilman⁵⁰. In addition to private eco-labels there are a number of national eco-label systems. Nowhere are eco-labels more effective as tools of monopoly and exclusion as in the area of textiles.

In spite of the new agreement on textiles, eco-labelling seems to present a strong barrage of non-tariff barriers that will keep textiles from developing countries out of the European markets. By 1996 Germany, The Netherlands and Sweden had passed stringent regulations limiting the use of *azo* dyes, *pentachlorophenol*, flame retardants, *polychlorinated biphenyles* (PCB), and *terphenyles* (PCT), cadmium, asbestos, formaldehyde and nickel in the manufacture of garments⁵¹. When introduced in Germany and The Netherlands in 1996, they immediately affected the import of garments from developing countries. Most of these countries have no indigenous systems of production. They have been depending on purchased technologies and systems from European and American companies. The new technological revolution that has swept the textile industry in developed countries came as a surprise to developing countries. The same developed nations that have transferred environmentally unsound technologies to the South have introduced new regulations banning products produced through processes now considered harmful to health.

The new eco-labelling legislation has been popularised through an aggressive environmental consciousness campaign. In addition a string of environmental quality control institutions of a public and private nature have mushroomed covering even the most minute details in the manufacture of textiles. The EU eco-labels for baby and adult garments for example, are concerned with the use of dyes, pesticides and pigments. There are about six EU ecolabels. But Germany alone has more than 25 eco-labels systems, The Netherlands about eight, the Scandinavian countries together eight and in addition Sweden has about 8 systems⁵². In addition to general product and process labels, organic labels are emerging both as a marketing tool and as instruments of screening imports and where they do not meet European standards excluding them from the market or taxing them highly thereby making them more expensive.

The eco-labelling system has been more intensified in the area of textiles. After the dismantling of the Multifibre Agreement with its quota-based system, advanced nations are

trying increase their dominance by selling textiles to developing countries while barring the latter from doing the same in their own markets. During the era of comparative advantage, they transferred static textile technologies to developing countries, lent money to these countries to purchase and set up the textile factories that use the same dyes and pigments, which are now being outlawed. African countries, whose textile industries have been exporting Europe, will find these regulations difficult to comply with because they imply establishment of new plants, shift in technologies and development of eco-scanning systems. With the debt burden and the pressure from developed countries to privatise public textile industries, such massive investments cannot be undertaken in the short run.

4.2 Codes of Conduct on Responsible Management of Environmental Resources

Most of the regulations discussed in section 3 are legislative and administrative. They can be enforced through non-market mechanisms such as customs inspection and procedures. But market mechanisms are not enforced through administrative procedures. The market enforces them. The market in terms of choice however, has not generated some of these. They have been administratively engineered, they are voluntary but they have been circularised and made part of consumer culture. A very outstanding example is the FAO Code of Conduct Responsible Fisheries, the CCRF. Another one is the International Tropical Timber Organisation (ITTO) policy on sustainable forest management. The EU has become a front runner on the enforcement of these two policies and their implications for exporters from developing countries have been ignored.

The FAO Code of Conduct for Responsible Fisheries was drafted at the request of UNCED member countries⁵³. It was adopted in 1995 and is mainly devoted to the environmental, social and economic impact of shrimp culture. Problems addressed by the code include the siting of ponds in mangrove areas on the one and the issue of benefits accruing to local communities arising from the siting of ponds in mangrove areas on the other. Others include the need to ensure shrimp culture does not exhaust the capacity of creeks, the need to preserve lagoons and near coastal waters, the nutritional and socio-economic and cultural impacts of conversion from agriculture to aquaculture and related issues⁵⁴.

The code outlines in detail the basic standards of practice and behaviour for responsible fishing beyond shrimp culture. The standards cover fisheries management, fishing,

operations, aquaculture development, and integration of fisheries into coastal area management, post harvest practices and trade and fisheries research⁵⁵.

Some of the problems of the code are inherent in the process through which it was developed. For a UNCED project, one would expect that the process would have involved thorough survey of practices and limitations abundant in the FAO member countries. This does not seem to have been done. Berg and others⁵⁶ have noted other problems. They have pointed out the lack of institutional and legal support and capacity to carry out the obligations prescribed by the code⁵⁷. Lack of adequate information by FAO member countries on the code has also been pointed out⁵⁸. The FAO has also pointed out that the so-called 'good practices' are those recognised by the consumers and retailers⁵⁹. The code is not oblivious of these limitations. Article 4 calls for co-operation between member states and governmental and non-governmental bodies within these states to ensure the successful implementation of the code. The code envisages the introduction of a voluntary scheme to accept and implement its provisions.

The basic limitation of Article 4 lies in its generalisation of the interests and objectives of the main stakeholders. NGOs will necessarily be interested in conservation. Governments will have an interest in regulated utilisation and the private sector may be interested in conservation, but it has little interest in regulation and is more interested in exploitation for gain. While Articles 6.13 and 6.16 call for participatory frameworks in the planning and utilisation of fishery resources involving industry, fish workers and environmental organisations in fisheries management, the divergence of interests between all actors including lending agencies is not given any serious consideration.

Article 5 seeks to address the technical and technological limitations of developing countries by calling for measures and efforts to redress the deficits of developing countries in the areas of financial and technical assistance, technology transfer, training and scientific co-operation and human resources development. But as in all cases of special and differential treatment (SDT), the code falls short of establishing financial and institutional mechanisms for redressing these deficits or deficiencies in the short and long run⁶⁰. In addition the convention prescribes obligations which developing countries especially the least developed will be unable to implement. These include the obligations to train and promote awareness on responsible fisheries⁶¹. Some of the standards expected are beyond

the reach of small economies. An example is ‘responsible development and management’ under Articles 9.1.2 and 9.1.5 which also refer to advanced evaluation of environmental effects [EIPA] and regular monitoring. These require advanced scientific infrastructure and information. Some least developed countries cannot mobilise the necessary resources to meet such requirements.

Other obligations relate to responsible selection and use of appropriate feeds, feed additives and fertilisers or manure⁶². Responsible harvesting refers to harvesting methods that retain quality and safety and preserve the environment. Article 11 refers to responsible utilisation, which has to take into account the consumers’ right to safe, wholesome and unadulterated fish and fishery products. The Code also links up with the existing FAO/WHO Codex Alimentarius Commission’s standards. But if the aim is to protect health and reduce fish borne diseases, the code will only be enforced by countries with the necessary means to put into place the infrastructure required for these excellent standards. African countries generally, do not have such capacity. If the aim is globalisation of standards in fish products the code will operate as an instrument of exclusion.

The last set of consumer oriented international codes is the Code on Sustainable Forest Management. The EU has taken lead in developing a policy that allows only the sale and distribution of wood products made out of sustainably managed forests. For a long time it has operated a system of voluntary certification. Taking cue from the EU, the International Tropical Timber Organisation [ITTO] has laid down criteria for determining the standards for sustainably managed forests. Two systems for international certification of sustainably managed forest systems have been established. One of these is based on ISO 1400⁶³. The Forest Stewardship Council, in existence since 1991 has also established its own standards for eco-certification. At the frontline of these developments are Austria, The Netherlands and Denmark. They have together succeeded to push for a Multilateral Framework Agreement on Tropical Timber, which was signed in 1996 and came into operation on the 1st January 2000.

Bilateral agreements have followed from the framework for example between The Netherlands and Cameroon and Gabon. These agreements have been used to entrench the standards laid down by advanced countries. They require among other things, information to be recorded and kept, on the felling of trees in forests in which social and ecological as-

pects are important. They call for action to ensure sufficient growth of trees and they allow timber from natural or primary forests if assurance is given that the quality of forests and the eco-systems are not damaged. Such criteria is skill and information intensive, requires good information storage systems, institutional mechanisms for enforcing standards and all these require substantial resources.

5. KEY POLICY ISSUES AND CONCLUSIONS

It may be wrongly implied from this article, that the author is opposed to environmental regulations. Environmental standards are necessary for the preservation of health and the quality of life. But they need to be developed jointly by the international community, take into consideration variations in economic, social, cultural and environmental systems. Developing them without consulting and involving millions of people across the globe whose livelihoods they will permanently affect, violates the same values of participation, consultation and democracy which advanced countries use to distinguish themselves from other nations.

Unilateral action becomes suspicious when environmental regulations are taken seriously only in the areas of trade but completely ignored when it comes to issues of climate change. The recent failure of the UN Conference on Climate Change in The Hague has undermined the credibility of the majority of the developed countries as regards the importance they attach to environmental issues. The first issue is therefore that of coherence. Developed nations need to be coherent in their major policies if they want to enjoy legitimacy as leaders and role models in global policy.

Together with the issue of coherence, there is need for the EU countries to decide whether and how they would like to help developing countries to institute changes in their systems of production. The question is whether they would like to help their trade partners to change their systems in a systematic and phased manner or in the same radical and potentially disruptive way in which most structural adjustment programmes were introduced. This is because of the most of the trade related changes have more far reaching effects than can be seen from the surface. Some of these effects are discussed below.

For example, in order to meet the standards established unilaterally by the advanced countries, systematic and comprehensive environmental management systems will have to be developed. Laws will be required and changes in policy will have to be made.

Such policies and laws may entail promoting large-scale commercial agriculture, aquaculture and civiculture. These policy shifts have serious implications for small communities, indigenous people and small producers. They have serious implications for communal versus individual ownership. Control systems will have to be instituted whose impact may include restriction of movement through forests and waters, enclosures of farming areas, introduction and enforcement of draconian trespass laws and restriction of small producers from eking a living out of their natural habitats. Such policies carry potential for cultural disruption and even social and political disorder. Many African countries are already caught up in environmental and resource conflicts and wars⁶⁴. Very few can afford the cost of such reforms that may intensify resource conflicts.

More challenging and problematic is the issue of enforcement of standards. In many developed countries enforcement of environmental regulations and standards has not been very easy although climate conditions have been supportive. Montague⁶⁵ has shown that after a quarter of a century of environmental regulation health standards have been deteriorating in nine industrialised nations. These are nations with the best scientific infrastructure and expertise, high levels of literacy and reasonable systems of sanitation and waste disposal. Many countries in Africa don't have such endowments and suffer from hazard-prone climate. Environmental interactions are more complex in Africa than in Europe. Farmers differ from country to country and region to region. Characteristics, beliefs and practices of small fisher people, small traders and other groups of producers are highly differentiated. Patterns of livelihood have an effect upon and are affected by the available natural resources. Enforcing uniform systems of land use and water use management and standard environmental policies without resorting to repression and authoritarianism will be difficult. Yet the latter options constitute a prescription for community-state conflicts and violate human rights and democratic governance, values the international community has vowed to preserve.

It is worth noting that African countries are not opposed to the improvement of the quality of life through appropriate health and sanitary standards. On its own initiative the Organisation of African unity has passed the 'Bamako Convention On the Ban of the Import Into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa' in 1991. The Convention established a comprehensive re-

gional mechanism for the implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. It also incorporates the spirit and provisions of Article 39 of the Lome IV Convention (Article 39) on the international movement of hazardous wastes and radioactive wastes. Individual governments such as those of Namibia and South Africa have passed local regulations and policies for the implementation of the Bamako Convention. This implies that they are ready and willing to comply with international conventions and regulations. But they need to be supported technically and in a phased manner to create the necessary conditions for such compliance.

The new environmental regulations add to an already long list, new substances that need testing for toxic levels. The EU directive on compounds that can be used for colouring paper, for example, has six lists of compounds covering about 146 substances restricted in the colouring of paper and another about 153 for the treatment of writing materials⁶⁶. Although for legislators their work is done as soon as they pass the legislation, for the scientific community the addition of new items to the list is an enlargement of a nightmare. According to Montague⁶⁷, the US National Toxicology Programme has only capacity to study a maximum of twenty-five chemicals per year and even in the area of pesticides, it has not managed to cover more than 50% of those in use. If that is true, what capacity do developing countries in general and African countries in particular, have which can enable them to ensure exports comply with the European standards or to challenge the decisions of European governments in case their products are arbitrarily barred from entry or quarantined?

The answer is obvious. Such regulations can only perform three major functions. One, they can become instruments of integration which can be either voluntary or by necessity. Voluntary integration can occur if other countries have enough will and resources to adopt the standards and adopt their products and processes of production to them. This option is closed to African countries. Integration by necessity will occur when African countries will invite European companies to work with them or to operate from their territories in order for their products to be accepted on the OECD markets. This may be the hidden agenda of the EU and indeed all developed countries within the WTO framework.

The second possible function that the regulations can have is the leeway function.

Regulations will be used more as a sword than as a shield. They will remain in place without being strictly enforced but will be enforced either for tariff escalation where imports indicate value added by processing or for retaliation against refusal of permission to European companies to invest or repatriate their profits. They may also be selectively used to force countries into broader free trade arrangements. Hence they can be used to reward co-operating nations or to punish slow, uncooperative or hostile trade partners.

The best role they can perform is the socialisation function. The regulations can be used to raise global environmental awareness, conscientise developing countries to the necessity of upgrading their systems and offer financial and technical support to popularise them and train for environmental and technology scanning and forecasting. If adequate resources and time for transition were set aside for a gradual process, these regulations would go a long way to promote competitive co-operation and co-operative competition in world trade.

ENDNOTES

- ¹ See Meine P. van Dijk et al 1994, *Privatisation Experiences in African and Asian Countries*, SWISWO, Amsterdam, Chapter 4 pp. 55-69
- ² See for example to the FAO Code of Conduct for Responsible Fisheries, <http://fa.org/fi/faocoms/shrimp/hondura.asp>; the FAO Code on Integrated Coastal Areas Management, 1998, and the 1996 ITTO Multilateral Framework Agreement on Tropical Timber which establishes standards for sustainable forests management.
- ³ Example is the 1968 European Agreement on the Restriction of the Use of Certain Detergents in Washing and Cleaning Products.
- ⁴ Those, which were passed before the Maastricht Treaty, tend to be non-mandatory. But after the treaty most of them are mandatory.
- ⁵ An example of non-mandatory environmental instruments are the "OECD Principles Concerning Trans-frontier Pollution", Paris 14th November 1974 and "The OECD Recommendations on National Acceptance of Data in the Assessment of Chemicals and Good Laboratory Practices" of 1981 as amended in 1989.
- ⁶ Problems of inter-ministerial co-ordination are aggravated by the rigid budgetary allocation and accountability structures not conducive to inter-ministerial co-operation. Lack of reliable information systems further complicates co-ordination efforts.
- ⁷ In 1996, the UNDP launched a US\$ 10 million project to support African negotiators. It teamed up with the OAU, UNCTAD, and regional economic communities to prepare negotiators for Seattle.
- ⁸ In "Canada and the Future of the World Trade Organisation: Advancing a Millennium Agenda in Public Interest", Review, 1996: 231:5, the Canadian Parliamentary Committee on Foreign Affairs and International Trade, called up on developed countries to ensure the new trade negotiations result into a world trade system that includes developing countries to ensure equity, stable world trade and sustainable development.
- ⁹ In 1996, Mr Jan Pronk, then Minister for Development Co-operation called upon developed countries to take the interests of Africa into account in all WTO activities. See CBI, *News Bulletin*, Vol. 249, Nov. 1996:5.
- ¹⁰ Njikeu, D., 1998, "Pre and Post Uruguay Round African Market Access Conditions. (Executive Summary)" African Economic Research Consortium, Nairobi.
- ¹¹ Blackhurst, R. and W. Lyakurwa, L. 1996, "Markets and Market Access for African Exports: Past, Present and Future Directions", African Economic Research Consortium, Nairobi, p4.

12. Ibid.
13. Njinkeu, D., op.cit. p 2
14. On the commodity prices and their impact on Africa's economic crisis, see Brown, M.B. and P. Tiffen 1992, *Short-Changed, Africa in the World Trade*, London, Pluto Press.
15. Mwega, F. and Muga, K.L., 1998, "Africa and the World Trade System: The Case Study of Kenya", African Economic Research Consortium, Nairobi, p 1.
16. Njinkeu, D. and A. Monkam, 1998, "Africa and the World Trade System: The Case of Cameroon," African Economic Research Consortium, Nairobi, p. 9 and see also. Oussu, D. A. and K. Diomande, 1998, "Africa and the World Trade System: The Case of Cote d' Ivore", African Economic Research Consortium, Nairobi, p. 4.
17. According to Njikeu, D. 1998, op. cit in the EU, USA and Japan reductions of tariffs on textiles and clothing were a mere average of 0.85%.
18. Njinkeu, D. and Monkam, A. 1998, op. Cit. P. 38.
19. Mwega and Muga, op cit. Pp33-36 on Kenya, Hartzenberg T., and R. Cassim, 1998, "South Africa in the World Trading System", African Economic Research Consortium, Nairobi, p.3. The general impact on Africa's manufacturing prospects is examined by Colin McCarthy, 1998, "Opportunities and Challenges Facing Africa in the Development of Key Export Sectors Under the WTO Agreements – A Focus on Mining, Manufacturing And Services", African Economic Research Consortium, Nairobi.
20. An IDRC study has shown how the advanced countries have been using quotas and domestic pricing to suppress market access for sugar from small island countries. Ref. International Development Research Centre 1992, *Our Common Bowl, Global Food Interdependence*, IDRC, Ottawa, pp.16.
21. Ibid. pp16-17.
22. Brown and Tiffen, op cit.
23. Collier, P. and J.W. Gunning, L., 1998, "Policy Commitment Arrangements for Africa: Implications for Aid, Trade and Investment Flows", Centre for the Study of African Economies, University of Oxford and Free University, Amsterdam (mimeo). See also Jebuni, C.D., and S.M. Wangwe, "Development Policy Options for Africa in the Context of the New World Trade Organisation (WTO) Agreements" African Economic Research Consortium, Nairobi.
24. Oduro, A.D. and K. Yahya, 1998, "The Uruguay Round and Ghana" African Economic Research Consortium, Nairobi. See also Lynne, B. 1991, *Ghana: The Political Economy of Recovery*, Boulder, Colorado
25. Clapp, J. 1996, *Adjustment and Agriculture in Africa: Farmers, the State and the World Bank*, St Martin's Press. See also Hadjimichael, M., 1996. "Adjustment for Growth: the African Experience", IMF, Washington DC.
26. The Southern Africa Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) are aiming at a zero tariff regime by the year 2002. SADC has already developed several protocols on common standards.
27. See Simon, D., 1994, *Structurally Adjusted Africa: Poverty, Debt and Basic Needs*, London, Pluto Press.
28. Mary Shirley, 1999 in 'Bureaucrats in Business: The Role of Privatisation versus Corporatization in State – Owned Enterprise Reforms', in *World Development* 27, pp115-136, does not consider African countries as serious reformers. She thinks the reforms have been slow and have not gone deep enough. But R. Ramamurti in 'Why Haven't Developing Countries Privatised Deeper and Faster?' in *World Development* 27, pp.137-1555, shows that some countries of Africa have done their best as regards reforms but are confronted by many constraints.
29. Tanzania and Cameroon have very good port facilities that have not been put to optimum use and need immediate rehabilitation. Cameroon uses the port of Cotonou in Benin because its biggest port of Yaounde cannot berth big vessels. To dredge it, the country needs not less than US \$ 2 billion. Soon the cost will be too high to even contemplate any rehabilitation.
30. FAO, Committee on Fisheries, Sub-Committee on Fish Trade, 'Report on Important Events Concerning Trade in Fisheries Products' 3- 6 June 1998. FAO, Rome, p.6.
31. European Commission, EC Directive 94/60/EG, in *Official Journal of the European Communities*, No.L.361/1 of 31/12/1994.
32. European Commission, EC Directive 94/62/EG, in *Official Journal of the European communities*, No. L 365 of 20/12/1994.
33. The Packaging Act of the Netherlands, 22/12/1995 that came into operation in January 1996.
34. French Decree, 'Decret No. 92 – 377', otherwise known as the 'La Londe Decree'
35. The German 'Verpackungsverordnung' of 21st June 1991 as amended in 1996.

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