



Contributing to a better policy making regarding economic incentive measures for the conservation and sustainable use of biodiversity and their relationship with international legal obligations under WTO rules

PROJECT BRIEF

1. Background

It is widely recognized that the production of value-added goods and services derived from biodiversity, both for domestic and for international markets (“Biotrade”) may generate incentives for the conservation and sustainable use of biodiversity. The Biotrade Initiative of the United Nations Conference on Trade and Development (UNCTAD) has been actively engaged in promoting the trade and investment of biological resources in line with the objectives of the CBD and its programmes of work. In this regard, the UNCTAD Biotrade Initiative and the CBD have been cooperating closely under several areas including business sector engagement and incentive measures.

Since its inception in 1996, biotrade has become an important instrument not only for the conservation and sustainable use of biodiversity, but also for broader sustainable development strategies. It has also provided a platform where governments, business and civil society can engage effectively in cooperation.

Being at the interface between the international trade regime and sustainable development, UNCTAD has a direct contribution to make on the trade, biodiversity and development agenda.

With a history of cooperation with MEAs and other international fora such as the WTO, the IUCN, and other UN programmes and specialised agencies, among others, the UNCTAD BioTrade Initiative is in a privileged position to contribute to the different agendas of these fora by providing practical tools and methodologies that contribute significantly to using trade as an incentive for the sustainable use and conservation of biodiversity and the involvement of private sector to encourage the sustainable management of biological resources.

UNCTAD will contribute its knowledge and its tools and methodologies that have been developed by an important number of stakeholders to ongoing discussions at the international level where this knowledge can offer a concrete expression of how the concept of sustainable development is put into practice.

2. Justification

Article 11 of the Convention on Biological Diversity (CBD) states that “each Contracting Party shall, as far as possible and as appropriate, adopt economically

and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity." By this, the international community acknowledged the importance of incentive measures in achieving the conservation and sustainable use of biological diversity.

Furthermore, in its Decision VI/15 Annex I, the sixth Conference of the Parties (COP6) underlined that positive incentives can influence decision-making by recognizing and rewarding activities that are carried out for the conservation and sustainable use of biodiversity. However, it was noted that these measures should be consistent with Parties' national policies and legislations as well as with their international obligations.

With the introduction of measures that correct incentives of individuals, governments and companies towards more effective conservation, sustainable use and commercialization of biodiversity, existing or future positive incentive measures related to BioTrade could be regarded as trade measures and, as such, would be covered by the rules under the World Trade Organization agreements. In this regard, the consistency of specific incentive measures that could have direct impact on international trade would depend on the design of each specific measure.

Recently, during the ninth Conference of the Parties (COP9) to the CBD which took place in Bonn, Germany in May of this year, Parties invited the UNCTAD Biotrade Initiative "to continue its work on trade promotion for biodiversity-based products which are produced in a sustainable manner and compatible with the three objectives of the CBD, through capacity-building, enhancing market access, promoting enabling environments and engaging relevant public and private actors" (Decision IX/6, paragraph 13).

Furthermore, Parties invited "the Food and Agriculture Organization of the United Nations, the United Nations Conference on Trade and Development, the United Nations Environment Programme, the Organisation for Economic Co-operation and Development, and other national, regional, and international organizations and initiatives to undertake, and *requests* the Executive Secretary to encourage, further studies on payments for ecosystem services and other positive incentive measures at local, national, regional and international levels, their advantages as well as their potential limitations and risks, their cost-effectiveness, potential implications for biodiversity and indigenous and local communities, and their consistency with other international obligations" (Decision IX/6, paragraph 15).

The COP9 emphasized that these measures should, among other things, contribute to the conservation of biological diversity and the sustainable use of its components, and be consistent and in harmony with the Convention and other relevant international obligations.

The design and implementation details of trade-related incentive measures are key in determining whether it is WTO consistent. The measures would have to comply with non-discrimination clauses related to domestic vs. foreign producers of like product (national treatment), as well as between like products originating in different countries (most favored nation).

Some schemes are likely face difficulties with these disciplines of non-discrimination so they would then have to rely on GATT's General Exceptions under Article XX which cover, among other, measures to safeguard the health of humans and to protect the environment.

3. Objectives

The objective of the work under this project would be to contribute to the work programme underlined within the CBD COP9 Decision IX/6 on incentive measures specifically in regards to ensuring the mutual supportiveness of international trade rules and the objectives of the CBD.

More specifically the project aims at a better understanding of the elements that should be taken into consideration in the design and implementation of these measures to ensure coherence between trade, environmental and development policies.

Thereby, it seeks:

- to promote a better understanding of the technical trade issues for policy makers in the environmental arena, and
- to build capacity of trade negotiators to better understand the potential implications of trade regulations on domestic policy making in the area of biodiversity conservation and sustainable use.

4. Activities

The specific activities to meet the general objective include:

- 1) Commission a case study identifying four concrete cases in which countries have designed and implemented economic incentive measures to promote the trade of biodiversity related products and services in line with the objectives of the CBD and analyzing the formulation process in regards to ensuring policy consistency in areas such as environment, development and trade.
- 2) Carrying out a legal analysis of the incentive measures identified under point 1 in relation to the relevant WTO agreements which could include the GATT, the Agreement on Subsidies and Countervailing Measures, the Agreement on Agriculture, the SPS Agreement, the TBT Agreement and the Plurilateral Agreement on Government Procurement.
- 3) Organize two round table meetings with trade negotiators in Geneva and a selected group of National Focal Points to the CBD to discuss the initial results of the studies and allow for exchange of views among the different communities.
- 4) Share the results of the studies and the discussions of the first roundtable Geneva meeting at the CBD International Workshop on incentive measures, which will tentatively take place in 2009.

5. Timetable

Case study and printing	Second quarter of 2009
Legal analysis	Second quarter of 2009
Roundtable meetings in Geneva	Second and third quarter of 2009
CBD International Workshop	Fourth quarter of 2009