

**A REPORT FROM WTO NGO SYMPOSIUM ON
“STRENGTHENING COMPLEMENTARITIES:
TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT”
GENEVA, SWITZERLAND
MARCH 17-18, 1998**

At the fourth NGO Symposium on Trade and Environment sponsored by the WTO, March 17-18, numerous views were presented – ranging from proposed legal solutions to render the text of the Uruguay Round compatible with that of existing Multilateral Trade Agreements (MEAs) to a critique of the “Invisible Committee” process by which plans for the Second Ministerial are being made.

At the opening session on “Progress and Partnerships,” representatives of UNEP, UNCTAD, and UNDP joined WTO Director-General Renato Ruggiero in greeting the participants and highlighting considerations of their own bailiwick. Mr. Ruggiero mentioned one goal of the upcoming negotiations would be to ensure greater market access for the Least Developed Countries through a zero tariffs policy, noting the LDCs presently handle just 0.4% of all global exports.

Klaus Topfer, Executive Director of UNEP reminded participants that the terms of trade for commodity inputs are very weak, and asked “what is the impact of globalization on consumption patterns?” He suggested regional identity may be an important counterpart to globalization -- not only at an “emotional” level, he said, but as an indicator of sustainability.

Rubens Ricupero, Secretary-General of UNCTAD, pointed at tariff peaks as key to negotiating a positive agenda for LDCs, and reported that UNCTAD has convened an experts group to create a methodology for assessing the impact of the Uruguay Round by countries, regions, and sectors. UNCTAD is also publishing monographs on different countries’ national situations as project manager for Trade and Environment.

Eimi Watanabe, Assistant Administrator and Director for Bureau of Development Policy at UNDP, emphasized that the linkages between trade, sustainable development and poverty eradication are not automatically positive. She reflected upon observations that there has been “little progress” towards reducing agriculture subsidies since the Uruguay Round, and that Producer Subsidies still amount to some \$182 billion or 40% of output. As a result, she said, prices for imported foods are high, exacerbating foreign exchange and debt problems, distorted and unstable commodity prices, uneven income distribution, food insecurity and environmental degradation.

In subsequent sessions, various non-governmental experts discussed key elements of the trade-and-environment debate, including the potential for “win-win” solutions, pricing reform, and issues of legal compatibility.

Mr. Thomas Cottier, a professor of law and Director of the Institut für Europa und Wirtschaftsvölkerrecht at the University of Bern (and former negotiator for Switzerland for the Uruguay Round), proposed several new concepts for consideration: tariff-rate quotas for the environment – that is, varying tariffs on products according to their environmental impacts; an ecological system of preferences; and "traditional resource rights" as a form of intellectual property protection for local communities and the dispersion of environmentally-friendly technology. Mr. Cottier stated his belief that the present Article XX(g) -- providing for exceptions to GATT rules for purposes of conserving exhaustible natural resources – can be interpreted to leave room for environmental considerations including process-and-production methods (PPMs). He also stated his belief that TRIPS Article 27 does not provide sufficient intellectual property protection and that TRIPS should be upgraded to at least the new European standard as a result of the upcoming TRIPS review.

Dr. Vandana Shiva of the Research Foundation for Science, Technology and Natural Resources Policy (India) responded that the TRIPS review must result in language recognizing those rights already recognized by many WTO Members in their capacity as Parties to the Convention on Biological Diversity (CBD), and in particular those rights stipulated in Article 8(j) of that Convention, if the two international agreements are to be seen as compatible; and that the Buenos Aires mandate for Agricultural Biodiversity, deriving from the 3rd Conference of the Parties to the CBD, should become the basis for the revision of the WTO Agriculture Agreement.

Dr. Robert Repetto of the US-based World Resources Institute argued that environmental regulations have an insignificant effect on competitiveness, to which David Schorr of World Wide Fund International (USA) responded: but what if resource policies are also counted... and what if sufficient environmental policies were actually in effect... would the pricing and competitiveness effects still be insignificant? Mr. Schorr went on to suggest an examination of fishing subsidies might yield "win-win" results, given that the world's fisheries are severely depleted and major intervention is needed to restore the potential for any nation to fish in international waters. A representative of Alcan Aluminum (Canada) later noted that environmental protection represents 25% of the costs incurred in his industry.

Dr. Konrad von Moltke, a visiting professor of the Institute for Environmental Studies of Vrije Universiteit (Netherlands), pointed out that a bushel of corn costs at least a bushel of lost topsoil, in addition to the usual input costs and other environmental impacts. He challenged participants to identify policy measures that would allocate environmental "rents" at the point of the damage, what he called a "chain of production analysis." In the case of cotton production, for example, even if Northern consumers of cotton products are willing to pay more for sustainably-produced clothing, there is no mechanism to ensure the premium would ever reach cotton producers. To drive the point home, Dr. von Moltke mentioned that the Zambian government presently derives no revenue whatsoever from copper production.

Dr. James Cameron of FIELD, the Foundation for International Environmental Law and Development (UK), suggested Article 31 of the Vienna Convention on the Law of Treaties, the "General Rule of Interpretation," should be read with the Multilateral Environmental Agreements (MEAs) in mind. Article 31.3 (c) of this Convention states: "There shall be taken into account, together with the context: (c) any relevant rules of international law applicable in the relations between the parties." Many MEAs, he argued, do not stipulate rules for trade, in which case WTO panels should defer to national regulations. On the other hand, the new Kyoto Protocol to the Framework Convention on Climate Change fits the trade regime, encouraging North to South flows of investment for the purchase of environmentally friendly technologies. This trend toward public international law is encouraging, he said.

Steve Charnowitz, director of the Global Environment and Trade Study housed at Yale University (USA), said that the right to trade freely is a fundamental human right, and the WTO builds upon the Universal Declaration of Human Rights which recognizes the rights of producers. He noted that the emerging appellate decisions of the WTO are tightening the basis by which environmental regulations are being evaluated; the hurdle for legitimate environmental regulation is higher now than in 1995.

Kristin Dawkins of the Institute for Agriculture and Trade Policy (USA) observed that the issues of compatibility between MEAs and trade rules are not merely legal, but political. The Uruguay Round itself was not concluded until the US and EU reached bilateral agreement on agriculture policies which actually increased allowable levels of export subsidies, despite environmental impacts; likewise, she said, the US is using its domestic Section 301 laws, contrary to the Dispute Settlement Understanding, to force countries to meet TRIPS obligations ahead of schedule and before the 1999 review of Article 27.3(b), the sui generis clause she described as essential for enabling legal consistency between TRIPS and the Convention on Biological Diversity.

Roberto Bission of the Instituto del Tercer Mundo (Uruguay) pointed out that many of the speakers at the Symposium had called for greater transparency with regard to non-governmental organizations and WTO processes, but there is as yet insufficient transparency even amongst governments, he said. For example, the so-called "Invisible Committee" is taking responsibility for planning for the Second Ministerial Meeting to take place in May, which by its very name demonstrates the degree of exclusion practiced at the WTO.

-- Report submitted by Kristin Dawkins, Institute for Agriculture and Trade Policy, March 26, 1998