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DEMOCRATIZING THE TRADE POLICY-
MAKING PROCESS: THE LESSONS OF
NAFTA AND THEIR IMPLICATIONS
FOR THE GATT

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1994 CORNELL INTERNATIONAL LAW JOURNAL SYMPOSIUM Greening the GATT: Setting the Agenda

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I. Lessons from the NAFTA Debate

There are two major lessons concerning democratizing that can be learned from the NAFTA¹ debate. First, the lack of democratic participation in the drafting of the agreement led to major problems. Second, the intense public debate that ensued after the conclusion of the original agreement brought out a wide range of new and important issues and concerns, ultimately making the agreement more environmentally sound and politically acceptable.

The lack of democratic participation in the drafting of the NAFTA led to two significant problems. First, the public lacked an in-depth understanding of the key issues and effective solutions. The Clinton Administration "shut out" individuals and groups, including some of the most knowledgeable and thoughtful, who criticized the direction of the NAFTA negotiations.² Major problems in several areas of the agreement, including environmental,³ food safety,⁴ and agricultural⁵ issues, could have been avoided if the process had been more open to participation.

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1. North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 296 and 32 I.L.M. 605 [hereinafter NAFTA].

2. See Letter from Citizens Trade Campaign to Ambassador Michael Kantor (Sept. 12, 1993) (on file with Citizens Trade Campaign and author).

3. Eric Christensen & Rodney E. Leonard, Community Nutrition Inst., Brief of Community Nutrition Institute Concerning Negotiation of a North American Free Trade Agreement (Aug. 12, 1991).

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The second major problem created by shutting out the public was the resulting lack of public support. The huge political battle over the NAFTA in Congress, which cost taxpayers billions of dollars in "sweeteners"⁶ and created huge political splits in the environmental community,⁷ could have been avoided if there was a serious attempt to include public participation. Similarly, there was little public input into the proposed treaty on biodiversity that came out of the Rio Summit.⁸ Because there was little public participation in the negotiation process, there was little public support for this important treaty, which made it very difficult to build political momentum necessary for congressional ratification. Citizens must feel like they are a part of the negotiating process if they are ever going to make the kinds of lifestyle and workplace changes needed to implement this and other treaties. Unless citizens feel like they are a part of the process, they are unlikely to ever agree to drive their cars less or to be more energy conscious in their daily lives.

Largely because of the strong organizing done by groups who both opposed and supported the final text of the NAFTA, the democratic process was very lively and active once the agreement was completed. The lessons learned as a result of this intense debate can be grouped into two main categories: scientific and political.

Scientific Lessons:

- a) Environmental concerns related to trade (imports and exports)
- b) Environmental concerns related to trade agreements and negotiations and their relations to international environmental agreements

Political Lessons:

- a) Political dynamics of trade (imports and exports)
- b) Political dynamics of trade agreements and their relations to other international agreements
- c) Political dynamics of trade negotiations
- d) Coalition building/conflict creation within environmental, animal welfare and consumer community (conscious and inadvertent)
- e) Coalition building/conflict creation beyond the environmental community
- f) Coalition building/conflict creation across borders

4. PUBLIC CITIZEN, *THE NORTH AMERICAN FREE TRADE AGREEMENT: A DETAILED ANALYSIS OF SANITARY AND PHYTOSANITARY STANDARDS* (1992) (adaption for Pesticide Action Network October 1992 meeting).

5. Mark Ritchie, *Free Trade Versus Sustainable Agriculture: The Implications of NAFTA*, 22 *ECOLOGIST* 221 (1992).

6. Mark Dowie, *The Selling (Out) of the Greens*, 258 *NATION* 514 (1994).

7. *NAFTA: Family Fued [sic] Splinters Greens*, Greenwire, American Political Network Inc., Sept. 16, 1993, available in LEXIS, News Library, Currws File; Keith Schneider, *Environment Groups Are Split on Support for Free Trade Pact*, *N.Y. TIMES*, Sept. 16, 1993, at A1.

8. Rio Declaration on Environment and Development, June 14, 1992, Principle 15, U.N. Doc. A/CONF. 151/5/Rev.1 (1992), 31 *I.L.M.* 876 (1992).

II. Applying These Lessons to the GATT Debate

Given that the GATT negotiations ended, it is too late to try to change the negotiation procedure to include more public participation. Unfortunately, the process was even more closed than that of the NAFTA, resulting in a final GATT text⁹ with numerous serious environmental and political problems.

Negotiators ignored the repeated calls by environmental groups for some elementary changes. For example, in a December 1, 1993 letter to the U.S. Trade Representative, several major Washington, D.C.-based environmental organizations made a number of technical suggestions for changes in the text and called for "measures to ensure greater public participation and transparency in the GATT dispute settlement procedures."¹⁰ The requested changes were ignored.

Even some staff from the U.S. Environmental Protection Agency and other departments expressed their disappointment about how little got "fixed" in the final deal.¹¹ For example, the final language does not incorporate even the relatively weak language used in the NAFTA on a key issue such as burden of proof in environmental disputes.¹² The final Uruguay Round language requires only that the Member against whom the complaint has been brought rebut the charge.¹³ Even the six Washington, D.C.-based conservation groups who backed the NAFTA publicly attacked the final GATT deal.¹⁴

Instead of allowing more openness and democratic procedures, the Uruguay Round moved in the opposite direction, creating a new World Trade Organization (WTO)¹⁵ with greatly expanded powers but no discernible expansion in mechanisms for public participation.

9. *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* [hereinafter *Uruguay Round*], GATT Doc. MTN/FA (Dec. 15, 1993), 33 I.L.M. 9 (1994), reprinted in OFFICE OF THE U.S. TRADE REPRESENTATIVE, FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (VERSION OF 15 DECEMBER 1993) (1993).

10. Letter from Community Nutrition Institute to U.S. Trade Representative (Dec. 1, 1993) (signed by several environmental organizations).

11. Private discussion with Environmental Protection Agency Staff (Dec. 1993).

12. See, e.g., *GATT Dispute Settlement, NAFTA*, supra note 1, art. 2005.

13. *Understanding on Rules and Procedures Governing the Settlement of Disputes*, GATT Doc. MTN/FA II-A2, § 3.8 (Dec. 15, 1993), in *Uruguay Round*, supra note 9. See generally Naomi Roht-Arriaza, *Dispute Settlement*, GATT Facts (Inst. for Agric. & Trade Pol'y, Minneapolis, Minn. [undated]).

14. The National Audubon Society, the National Wildlife Federation, the Natural Resources Defense Council, the Environmental Defense Fund, the World Wildlife Fund, and Conservation International were the only major environmental groups to support NAFTA. See Schneider, supra note 7. However, most of these same groups recently voiced their objections to the GATT. See GATT: Coalition of Environmental Groups Announces Opposition to Implementing Bill, BNA Nat'l Env't Daily, Sept. 30, 1994, available in LEXIS, News Library, Curnws File; *Environmental Groups Unite Against Trade Bill Before Congress*, U.S. Newswire, Sept. 29, 1994, available in LEXIS, News Library, Curnws File.

15. *Agreement Establishing the Multilateral [World] Trade Organization (WTO)*, GATT Doc. MTN/FA II (Dec. 15, 1993), in *Uruguay Round*, supra note 9.

III. Next Steps

Given the lack of any democratic participation in the negotiation process, the final result is both seriously flawed and lacks public political support. While it may be possible to pass this agreement through Congress using the "fast track" procedures,¹⁶ the agreement is a long way from being environmentally acceptable. Therefore it invites disregard and disrespect whether or not it becomes U.S. law. In order to correct the environmental problems and to build public support, there must be a major public debate, like the debate that surrounded the NAFTA. Based on what was learned from the NAFTA, the following steps would be necessary in any "Greening of the GATT" campaign.

1. There must be careful and thorough analysis of the potential impacts of this GATT text on every conceivable environmental topic. The list of topics developed by the Clinton Administration for immediate attention is a good starting place: Agriculture, Services, Environmental Technologies and Services, Transportation, Energy, Advanced Materials and Non-Renewable Resources, Wildlife and Fisheries, and Forest Resources.

2. There must be drafting of specific language changes for the GATT text. This process must include thorough and careful consultation with the broad, international coalition of concerned groups that has been constructed as part of the overall trade debate over the past few years.

3. Once the deal is signed, there must be a second round of analysis, with an eye towards drafting specific legal language for the enabling legislation that could mitigate the worst elements. These ideas would then be backed by a grassroots campaign targeting Congress.

4. There must be a use of the GATT working group on trade and environment to develop and promote a series of positive and new ideas for a proactive response (instead of just reactions against the current bad agreement).

IV. Beyond the GATT: Building upon the International Network

While the GATT is the next item on the Clinton Administration's trade agenda, it is only one in a series of planned steps. President Clinton has already sent his trade negotiators to Chile, Central America, and other countries in Latin America to prepare the way to extend the NAFTA to the rest of the Western Hemisphere.¹⁷ These new agreements could possibly be the testing grounds and pilot projects for serious attempts to democratize the negotiating process.

Efforts must be made inside all involved countries to change the negotiating process. Without agreement from all governments involved, it will be difficult to get the United States to be more forthcoming. There are many areas where the expertise of non-governmental and citizen-orga-

16. Trade Act of 1974, 19 U.S.C. §§ 2101-2495, 2191 (1988 & Supp. V 1993).

17. Peter Behr, *White House Floats Trade Talks Plan: U.S. Wants Chile, Others Under NAFTA*, WASH. POST, June 17, 1994, at F1; Leon Hadar, *A Case of "Trade Exhaustion" in Washington*, BUS. TIMES, July 14, 1994, at 13.

nizations could make a significant positive contribution to the negotiating process: sustainable agriculture, energy, compensatory financing mechanisms, packaging, labeling and waste, technology transfer, intellectual property rights, sustainable forestry, biotechnology and biodiversity, and global governance and policy-making.

V. Democratizing the Globalization Process

Beyond the narrowly defined trade agenda (the GATT, the NAFTA, etc.) there is a much broader agenda, one that goes beyond free trade, which is called globalization. There are a number of elements to this agenda, including the push to extend the NAFTA to all of Latin America and plans for integrating with Asia through the APEC (Asia-Pacific Economic Cooperation). All of these elements must be carefully constructed in order to include substantive procedures for democratic participation. Key issues to which citizens' groups could contribute include: sorting out the sometimes conflicting aspects of free trade, jobs and the environment, developing a positive agenda aimed at the development of sustainable trade policies, articulating alternative approaches to the global decision-making processes, being proactive and building bottom-up economic initiatives, assembling the broad political coalitions needed to adopt and implement global policies, and organizing basic education and outreach to the media.

VI. Beyond Trade: The Need for a Sustainable Livelihoods Initiative

Beyond the narrow confines of trade policy debates lies fertile ground for expanding public participation in economic policy. A good example is the question of jobs and sustainable employment. Both the NAFTA and the GATT debates have hinged largely on two issues—jobs and the environment. The Administration has argued that the best way to address environmental concerns and unemployment is free trade.¹⁸ Although many people do not agree with this perspective, simply arguing against it does not, on its own, protect the environment or create jobs. With or without the GATT there is an existing crisis in the U.S. and other economies.

Constructing a bottom-up debate on a national sustainable livelihoods initiative would shift the debate away from simple positions on a single GATT issue to a debate about what is the best possible way to foster policies that will create economically and ecologically sound employment and self-employment opportunities. For example, there are many ideas for employment and self-employment creation in the area of energy conservation, including insulation, energy conserving remodeling, weatherization, alternative fuels production, etc.¹⁹ There are also many efforts to reconsider lifestyle choices which affect this entire process.

18. Joe Lyford, Jr., *Trade Über Alles: The Propaganda and Politics of NAFTA and GATT*, PROPAGANDA REV., No. 11, 1994, at 22.

19. See DAVID MORRIS, INST. FOR LOCAL SELF-RELIANCE, ETHANOL: BRINGING ENVIRONMENTAL AND ECONOMIC BENEFITS TO MINNESOTA (1993); DAVID MORRIS & IRSHAD

We need to bundle together all of the exciting ideas that people have about how to foster environmentally sustainable employment and self-employment and take these to the policy-makers in Congress, in state legislatures, and in local governments. State-wide or city-wide conferences sponsored by local environmental groups are an excellent way to gather ideas and to get other groups committed to this part of a campaign. We could hold a national conference to gather the findings of the local and state meetings and to assemble a package to be pushed at the national level through grassroots organizing.

If the democratic process can be expanded beyond merely reacting to the proposals of governments to the actual construction of positive new ideas and solutions, then we can sustain the interest and concern of citizens long enough to really engage them in a newly opened GATT process. It would be a disaster to open up the GATT and then have few, or no, people willing, able, and competent to engage in the debate. This kind of positive approach can create the basis for the participation of real citizen diplomats in this important economic arena.

AHMED, INST. FOR LOCAL SELF-RELIANCE, RURAL DEVELOPMENT, BIOREFINERIES AND THE CARBOHYDRATE ECONOMY (1993).