



INSTITUTE
for
AGRICULTURE
and
TRADE POLICY

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Contact:

Kristin Dawkins

Institute for Agriculture and
Trade Policy. (612) 379-5980.

THE MARRAKESH PROPOSALS FOR SUSTAINABLE TRADE

The attached Marrakesh Proposals for Sustainable Trade, signed by more than 80 representatives of non-governmental organizations and individuals from 12 countries of the world suggest language for a sustainable "green" trade agreement.

The signatories agree that the Uruguay Round agreements fail to protect the environment, safety and health and, to the contrary, will jeopardize nations' rights to environmental, safety and health regulations.

With this document, the signatories emphasize that multilateral policy on trade and the environment should be developed within the context of the United Nations institutions.

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As this document will be used in future fora, individuals and representatives of non-governmental organizations are welcome to add their signature by contacting Kristin Dawkins at the Institute for Agriculture and Trade Policy,

MARRAKESH PROPOSALS FOR SUSTAINABLE TRADE - APRIL, 1994

We live in a time of unprecedented ecological crises, and stand on the verge of establishing rules for international trade that will lock in the very patterns of development that are the root cause of the environmental, health and safety, and resource problems we confront. If trade agreements are to foster rather than undermine the goals of sustainable development, they must reflect the priority of protecting the environment, health and safety, and resource conservation objectives. Rather than reflect this imperative, current GATT proposals subordinate environmental, health and safety, and resource objectives to those of de-regulated trade.

Following is a partial proposal for an ecologically viable trade agreement, offered to illustrate how great a gap exists between current trade proposals and those needed to foster sustainable trade. (It does not attempt to address all of the components requisite to either an environmental or a social agreement for sustainable development.)

The format adopts the style of present GATT text and begins with a proposal for an Agreement on Environmental Protection and Sustainable Development (EPSD) that would be an integral element of the final GATT treaty in the same way that other multi-lateral Agreements will be. Following the provisions of the EPSD, are proposals for amending the various Agreements that comprise the draft GATT text.

AGREEMENT ON ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT

1. In pursuit of sustainable development, and in accordance with the development principle and the principle of differentiated obligations, each contracting party has a positive obligation to minimise adverse environmental effects, both within and outside its jurisdiction, that may result from its operations or from its patterns of consumption. To do so, each party shall:
 - i) take such precautionary measures as may be needed to anticipate, prevent or minimize adverse environmental effects, and;
 - ii) avoid the externalization of environmental costs by encouraging pollution prevention initiatives--especially excessive consumption and resource use--and by establishing polluter-pay regimes.
2. This agreement recognizes the right of each nation and of local jurisdictions to take any action which they may deem necessary to protect the environment, and health and safety, including the establishment of import or export restrictions and the use of subsidies to prevent or remedy adverse effects on the environment, health and safety, and/or conserve natural resources. Where an action is taken to protect resources or prevent or remedy adverse environmental effects outside the territory of regulating state, such measure shall not be employed against developing states unless:
 - i) efforts at creating or maintaining an effective and enforceable multilateral agreement to solve the environmental problem have failed, and;
 - ii) financial and/or technological assistance is provided by the regulating state to the target state for purposes of aiding in the conservation of the resource at issue or the prevention or remedy of the adverse environmental effect at issue.
3. For greater certainty, actions "necessary to protect the environment" shall include sub-national, national and international initiatives, including, but not limited to:
 - i) the establishment of regulatory regimes including environmental, health and safety standards, objectives, guidelines and codes of practice;
 - ii) approval processes relating to environmental impact assessment of projects, programs, policies (including trade policies), or processes that may have significant consequences for the environment, health and safety, including the determination of whether such initiatives shall be approved;
 - iii) provision of information on matters relating to the environment, health and safety;
 - iv) provision of financing to support pollution prevention and polluter pays regimes, and;
 - v) measures intended to encourage public participation and standing in the decision-making processes that may affect the environment, health and safety.
4. For the purpose of resolving or adjudicating any dispute that may arise under this agreement with respect to any action taken to protect the environment, health and safety, where the measure applies in the same manner to domestic and foreign producers, the onus shall be upon the complainant to prove that:
 - i) the action or measure was not taken in good faith, and is unreasonable.

INTERNATIONAL ENVIRONMENTAL AGREEMENTS

The use of trade measures to ensure compliance with international environmental agreements established under the auspices of the UN or regional organizations, such as the Montreal Protocol or the Bamako Convention, will often be essential to the effectiveness of such agreements. Therefore GATT must explicitly recognize the legitimacy and priority of trade measures established under international environmental agreements.

5. Notwithstanding any other provision of the GATT, nothing in these agreements shall be taken to limit the sovereign authority of governments to implement trade measures in accordance with the provisions of any international environmental agreement established under the auspices of the United Nations or its agencies, or under multi-lateral regional organizations (eg. the OAU).
6. In any trade dispute concerning the implementation of a trade measure taken in accordance with the provisions of an international environmental agreement, the burden of proof shall be upon the complaining party to establish that the measure was implemented without justification and in bad faith.

TRADE IN GOODS (NATURAL RESOURCES AND ENERGY)

Sustainable natural resources management must be an essential priority of international trade policy. To respect this priority, trade agreements must assure the authority of governments to regulate the export of natural resources where necessary to establish and maintain sustainable resource management systems. Governments must also be guaranteed the right to require domestic processing of natural resources before they are exported in order to maximize the value of those resources for the communities most dependent upon them. In this way the economic vulnerability of those communities to commodity price trends will also be reduced.

7. In order to establish sustainable natural resource management regimes, all GATT parties are free to:
 - i) regulate resource exports through quantitative or price controls for the purposes of conservation, or for the purpose of community economic development as part of a domestic program for the sustainable use and management of the natural resource;
 - ii) adopt preferential purchasing policies to favour renewable resources, and;
 - iii) regulate foreign investment in natural resource sectors and industries to impose export performance obligations, technology transfer requirements, domestic content rules and research and development commitments.
8. No party shall adopt escalating tariffs intended to discourage another party from maximizing the value that it derives from its indigenous resources.

AGRICULTURE

The first priority of agricultural trade must be to ensure food security for all peoples. The second must be to put the management of agricultural resources on a sustainable basis. To serve these goals agricultural trade policies must:

- * reduce the energy intensity of agricultural production;
 - * encourage self reliance in agricultural production and food consumption;
 - * promote democratic forms of land ownership;
 - * assure biologically diverse agricultural production; and
 - * secure the health and productivity of agro-ecological systems.
9. To ensure food security and sustainable agriculture, GATT must preserve the right of all nations to:
 - i) establish farm security programs, including supply management systems for agricultural production, import controls and price support programs as long as these do not lead to export dumping;
 - ii) regulate or embargo the export of agricultural commodities in order to ensure food security for their people;
 - iii) control or embargo agricultural imports to their country;
 - iv) prohibit export dumping of agricultural commodities;
 - v) negotiate international commodity agreements, and;
 - vi) adopt such trade and other measures as they may deem necessary to maintain and enhance cultural patrimony and agro-ecological integrity.

INTELLECTUAL PROPERTY

Biodiversity and knowledge relating to its use has traditionally belonged to local communities and thus the appropriation of these resources as private intellectual property should be prohibited.

10. GATT rules concerning intellectual property rights must:
- i) allow nations to adopt such trade and other measures as they may deem necessary in order to ban the patenting of plant and animal varieties, micro-organisms, biological processes, and micro-biological processes for producing plants and animals;
 - ii) require the contracting parties to eliminate existing and future tariff and non-tariff barriers to the transfer of technology in the fields of environmental protection, clean production, biotechnology, and health care, and;
 - iii) guarantee the authority of governments to require compulsory licensing for all patents free from the threat of trade challenge or sanction.

STANDARDS RELATED MEASURES [TECHNICAL BARRIERS TO TRADE]

In no event should the GATT or any GATT related institution assume standard setting responsibility. Environmental and food safety standards must reflect the values and priorities of the people who must live with them. Therefore, trade agreements must not operate to constrain or otherwise limit the ability of governments to develop and implement progressive environmental, health and safety regulation. Furthermore, if environmental, health and safety standards are to reflect community values, a presumption must exist in favor of regulation at the local level (the principle of subsidiarity).

11. The following environmental and food safety regulatory initiatives shall be considered entirely within the sovereign prerogatives of national and sub-national governments and shall not be considered trade distorting or in breach of any GATT obligation:
- i) all environmental and food safety standards established by sub-national and local governments;
 - ii) all national environmental and food safety standards that make no distinction between domestic and foreign producers, and;
 - iii) trade sanctions imposed in accordance with the provisions of an International Environmental Agreement to which that country is a signatory.
12. Only where national environmental or food safety laws impose border measures that are different in character than those applied to domestic producers, may they be challenged under GATT. In this case the complaining party must establish that the measure does not advance a valid environmental interest and was imposed with an intent to discriminate against foreign producers.

WASTE AND DOMESTICALLY RESTRICTED GOODS

Trade agreements must foster policies of waste avoidance and prohibit waste dumping. The most powerful impetus to achieve these goals is to require the internalization of waste management costs. Waste export externalizes these costs. In accordance with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and the Bamako Convention on the Ban of the Import Into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa:

13. No challenge or complaint under GATT shall be made to trade measures intended to:
- i) ban the export of domestically prohibited or unregistered goods;
 - ii) ban the import of toxic materials, and;
 - iii) ban or restrict international waste trade.

PROCUREMENT

Government purchasing can provide a powerful market incentive for technological innovation in the areas of resource use efficiencies and pollution abatement and control.

14. No challenge or complaint under GATT shall be made to procurement or purchasing practices that are designed to favour clean technology or reduced consumption of resources, notwithstanding disproportionate benefits to domestic producers.

INVESTMENT MEASURES

15. Nothing in GATT shall be taken to constrain the ability of any government to regulate or otherwise control foreign investment, and to determine the requirements for such investment, including:
 - i) the right to establish export performance obligations;
 - ii) the right to apply technology transfer requirements;
 - iii) the right to require research and development commitments, and;
 - iv) the right to establish domestic content rules.

DISPUTE RESOLUTION

The rules of international trade dispute resolution must reflect the norms of judicial fairness that have been the hallmarks of democratic societies for well over a century. In other words dispute resolution under GATT must be transparent and accountable. Furthermore, domestic trade law should provide all with the ability to petition for international trade dispute resolution.

16. Trade dispute resolution under GATT must guarantee:
 - i) that trade dispute panels be unbiased and competent to address environmental, health and safety, or resource issues when they arise in the course of dispute resolution;
 - ii) that a public record be kept of all documentation, evidence and proceedings that arise in consequence of trade disputes, and;
 - iii) sufficient and public notice of all pending trade disputes and an opportunity for the effective participation of all affected interests and parties.

WORLD TRADE ORGANIZATION

If the rules for international trade are to be respected by all nations, they must be as amenable to enforcement by less developed nations as they have traditionally been at the instance of developed nations. Moreover the process for creating and amending those rules must provide a much more effective role for less influential or developed nations. Providing for the more effective enforcement of rules of trade that are fundamentally unsustainable or unjust will simply perpetuate patterns of trade and development that underlie the ecological crises that loom before us.

For the reasons expressed above, the present proposal for the WTO must be rejected.

17. Therefore, the GATT Ministerial Conference shall establish a Committee on the Environment and Trade which shall advise on trade and environment matters subject to the following:
 - i) Membership on the Committee shall include official representation from the United Nations Commission on Sustainable Development, the United Nations Environment Programme, the United Nations Conference on Trade and Development, and the United Nations Development Programme;
 - ii) the deliberations and activities of the Committee shall encourage the broadest range of participation by nations, sub-national governments, and NGOs, and;
 - iii) the authority of the Committee shall be limited to assessing the impact of international trade and trade rules on initiatives to foster sustainable patterns of development, publication of these assessments, ensuring cooperation among the participating agencies, and ensuring integration of their respective workplans.

THE MARRAKESH PROPOSALS FOR SUSTAINABLE TRADE

SIGNATORIES - 29 August 1994

Action for Solidarity, Equality, Environment and Development (A SEED) Danny Kennedy	AUSTRALIA
Aotearoa New Zealand Environment Trust	NEW ZEALAND
Canadian Environmental Law Association (CELA) Steven Shrybman	CANADA
Centro De Estudios Ambientales (CEDEA) María Onestini	ARGENTINA
Christchurch UNCED Agenda 21 Committee	NEW ZEALAND
Citizens Alliance for Saving the Atmosphere and Earth	JAPAN
Collectif Stratégies Alimentaires	BELGIUM
Commonweal Sharyle Patton	USA
Consumers Union of Japan	JAPAN
Council for International Development	NEW ZEALAND
C.S. Fund Marty Teitel	USA
Falls Brook Centre	CANADA
Friends of the Earth	NEW ZEALAND
Friends of the Earth Andrea Durbin	USA
GATT Watchdog	NEW ZEALAND
Group for Self-Supply and Hand-Made	JAPAN
Healthy Community Village	JAPAN
Information Center for Public Citizens	JAPAN
Informed Citizens Acting To Respect The Environment (I CARE) Steven Moore	CANADA
Institute for African Alternatives Ben Turok	SOUTH AFRICA
Institute for Agriculture and Trade Policy (IATP) Mark Ritchie	USA
Institute for Policy Studies John Cavanagh	USA
Instituto Brasileiro de Analises Sociais y Economicos (IBASE) Candido Gryzbowski	BRAZIL
Japan Offspring Fund (JOF)	JAPAN

Maple Key Paul Psutka	CANADA
Miyagi Prefecture Liaison Office for Food and Agriculture Concerns	JAPAN
Netherlands Committee for The World Conservation Union (IUCN) Sander van Bennekom, Vouter Veening	THE NETHERLANDS
Network for Safe and Secure Food and Environment	JAPAN
Niagara Citizens for Modern Waste Management	CANADA
No to Harmonization Action Committee	JAPAN
Oakville Pesticide Action Group Susan Moore	CANADA
Organization for Civic Science Research	JAPAN
Pacific-Asia Resource Center Inove Reiko	JAPAN
Pacific Institute of Resource Management	NEW ZEALAND
People-Centered Development Forum	USA
People's Action Network to Monitor Japanese TNCs	JAPAN
Pesticide Action Group of Canada	CANADA
Pesticide Action Network, North America Regional Center Monica Moore	USA
Policy Research for Development Alternative (UBINIG) Farida Akater	BANGLADESH
PP21-Rural Urban Alternative (RUA)	JAPAN
Pu Hao Rangi Trust	NEW ZEALAND
Rural Development Education of the Evangelical Church in Germany Rudolf Buntzel	GERMANY
Sanntama Association for School Lunch Program Concerns	JAPAN
Seikatsu Club Consumers Cooperative Union (SCCCU)	JAPAN
Seikatsu Club Consumers Co-op, Hokkaido	JAPAN
Tamaki Makau Rau Auckland UNCED Earth Summit Committee	NEW ZEALAND
Te Whanau O Rongomai Wahine Trust	NEW ZEALAND
Tone-mumata Waste Society	JAPAN
Turtle Island Earth Stewards Tyhson Banighen	CANADA
United Methodist Board of Church and Society Jaydee R. Hanson	USA
United Nations Association of New Zealand/ Te Ropu Whakakotahi Whenua o Aotearoa	NEW ZEALAND

Water for Survival	NEW ZEALAND
Women's International League for Peace and Freedom (Aotearoa)	NEW ZEALAND
World Development Movement Harriet Lamb	UNITED KINGDOM
World Economy, Ecology & Development Association Barbara Unmuessig	GERMANY

Individuals	Organization	Country
Junko Arimura	Director, Seikatsu Club Consumers Co-op, Kawasaki City	JAPAN
Shigenobu Kobayashi	Advisor, Seikatsu Club Consumers Co-op, Hokkaido	
Katsuko Nomura	Representative, Information Center for Public Citizens	
Nobuhiko Orito	Chairperson, SCCCUC	
Sumiko Yokoyama	Representative, Global Citizens Fund "Earth Tree"	
Yoshiko Sakamoto	Director, The Osaka Liaison Committee/Consumers' Organizations	
Kazuko Ishikawa	Organizer, Kangawawa Prefecture Network Movement	
Yoshie Mashimo	Numata City Council Member	
Sadashige Tamura	Farmer	
Atty. Michiko Kamiyana	Head Advisor, JOF	
Atty. Kimio Kajiyama	Tokyo Bar Association	
Atty. Koichi Kozen	Tokyo Bar Association	
Shigeo Oshima	Chief Researcher, Consumers Cooperative Institute	
Prof. Koyu Furusawa	Mejiro Gakuen Women's College	
Ass. Prof. Takaaki Koganezawa	Miyagi Education College	
Dr. Koa Tasaka	Assistant Dean, International Christian University	
Prof. Dr. Susumu Yamaji	Tokai University	
Ass. Prof. Mamamitsu Yasaka	Tokyo University	
Yusaku Hino	President, GAIA	
Ryoko Shimizu	Writer, Social Movement Research Center	
Kanechiyo Narumi	Director, San-Tech Institute	
Shunsuke Funase	Researcher on Consumer and Environmental Issues	
Yoko Kitazawa	Journalist, International Affairs	
Kazuoki Ohno	Agricultural Journalist	
Leanne Grossman	ISAR	USA
Richard B. Norgaard	Professor, Energy & Resources Program, University of California at Berkeley	

