

TRADING AWAY OUR ENVIRONMENT

**Global "Harmonization" of Pesticide Laws and other
Environmental Regulations at GATT the General Agreement
on Tariffs and Trade**

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Introduction

Although President Bush has repeatedly declared his strong commitment to protecting the earth's environment, his trade negotiators in Geneva, at the General Agreement on Tariffs and Trade (GATT), are making agricultural proposals that could seriously weaken existing pesticide and environmental protection laws, and which could ultimately erode a wide range of consumer safety legislation in the U.S. and around the world.¹

The U.S. proposal, called the "double zero plan" or "global de-regulation" would change the rules governing agricultural trade. These changes could interfere with GATT member nations' rights to implement national or state legislation, including:

- 1) Farm programs which impact production, consumption, or prices;
- 2) Import controls;
- 3) Export controls on food and potentially other natural resources, even in times of famine or critical shortages;
- 4) Environmental health standards on imported goods if they are more strict than those of the UN agency Codex Alimentarius.

Although each of these elements could have serious potential ecological and human health consequences, this report will focus primarily on the fourth element, often called "harmonization." Congress is prohibited by law from amending the final GATT agreement signed by the President, it can only vote yes or no.² Since the final agreement is likely to contain provisions which will significantly affect the lives and health of the citizens in each and every congressional district, Congress must become informed about exactly how our environment is being traded away at GATT.

¹For a complete review of all ecological concerns related to GATT, see Steven Shrybman "International Trade and the Environment," The Ecologist, Agriculture and Trade Policy, 1990 and Mark Ritchie, Environmental Implications of GATT, Institute for Agriculture and Trade Policy, 1990.

² GATT negotiations are conducted exclusively by the President, under "fast track" authority granted by Congress. Under this process, Congress is prohibited from amending the GATT agreement signed by the President.

Background

Few issues have caused as much conflict in this round of agricultural trade talks as the wide differences between each nation's food safety and their environmental standards.³ Citizens' groups all over the world are demanding ever more strict laws to protect their health and the environment. At the same time chemical companies who make pesticides and veterinary drugs are lobbying for new GATT rules which could both limit the right of nations to set stricter standards and allow federal governments to preempt state pesticide and food safety legislation.

In between these two sharply conflicting interests are governments, some who impose strict health standards to protect their citizens, while others have used food regulations as hidden trade barriers. One objective of the current round of GATT talks is to find an equitable way to resolve these conflicts.

In October of 1989, the Bush administration presented to all GATT member nations the final version of a comprehensive agricultural proposal, which included detailed plans for regulating sanitary and phytosanitary standards.⁴ This comprehensive "harmonization" plan was designed to strictly limit the right of nations to impose environmental and consumer protection regulations on imported foods, by imposing the following procedures:

- 1) The Rome-based agency Codex Alimentarius (CODEX), made up of government officials with the active participation of executives from chemical and food companies, would be the main source of "acceptable" scientific evidence regarding food safety.⁵

³ In GATT, standards concerning human health issues are called sanitary and those dealing with plants or animals are called phytosanitary.

⁴ United States Trade Representatives Office, Submission of the United States on Comprehensive Long-Term Agricultural Reform, October, 1989. (see appendix).

⁵ For instance, at a recent meeting of Codex the U.S. delegation included three corporate executives from swiss-owned Nestle, one each from Coca Cola, Pepsi, Hershey, CPC International, Ralston Purina, Kraft, and representatives from several trade associations including the Grocery Manufacturers of America, Food Marketing Institute, American Frozen Food Institute, Food Processors Association, and the Association of Cereal Chemists. See appendix for full list.

2) "Scientific evidence" would be the only regulation applied to imports. No social, economic, religious, or cultural concerns could be considered, no matter how important to consumers, environmentalists, or farmers.

Take DDT as an example. Today, thanks to congressional action, if a food item shipped to the United States is found to have DDT residues above extremely low "background" levels, it is not allowed into the U.S.. However, since Codex has set Maximum Residue Levels (MRLs) for DDT many times higher than the current U.S. limits, if the U.S. proposal becomes the basis for the new GATT agreement any nation whose products have been denied entry could take this issue to a GATT dispute panel, who would compare U.S. limits to those of Codex. The current U.S. standards could be ruled "illegal", leading to possible trade retaliation.⁶

Potential Impacts of "Harmonization"

Potential impacts of "harmonization" fall into five major areas:

- 1) Threats to Human Health
- 2) Reduction of Congressional Authority
- 3) Pre-emption of State Legislative Authority
- 4) Weakening Other Nation's Environment and Consumer Safety Laws
- 5) Slowing Down the Adoption of the "Fourth Criterion"

Threats to Human Health

Anne Lindsay, Director of Pesticides Registration at the Environmental Protection Agency (EPA), estimates that 16% of the pesticide tolerance standards set by Codex are weaker than current U.S. tolerances.⁷ If "harmonization" is accepted by GATT, those standards set by Congress which are more strict than those of Codex would be difficult to apply to imports. Attempts to enforce stricter domestic standards on imports could result in GATT-sanctioned retaliation in the form of tariffs applied against U.S. exports, or in the demand that the U.S. pay compensation to exporting countries whose products are denied entry on the basis of more strict standards.

⁶ For a comparisons of some U.S. and Codex pesticide residue standards see chart prepared by Greenpeace USA included in appendix.

⁷ Pesticide and Toxic Chemical News, May 9, 1990, page 34.

Under this option other countries could demand "compensation" in return for promising not to export goods to the U.S. with pesticide residues above domestic tolerance levels, a practice referred to by some as "greenmail". Alex Hittle from Friends of the Earth used even stronger language in a May 29, 1990 interview in the Washington Post, arguing that "U.S. consumers and exporters should not be asked to pay ransom to other countries if they wish to set standards higher than the rest of the world." If Codex standards become a "ceiling" on the regulations that can be enforced on imported goods, U.S. farmers will be competing with imported foods produced under much less strict environmental regulations. When this situation threatens the U.S. economy, Congress may feel compelled to lower U.S. standards to create a "more level playing field." In the end, it may result in the lowering of safety standards on both imported and domestically produced foods.

Reduction of Congressional Authority

In a recent interview, Agriculture Secretary Clayton Yeutter expressed his belief that he can eventually use GATT to overturn or weaken the growing number of health and environmental regulations being adopted by Congress.

"If the rest of the world can agree on what the standard ought to be on a given product, maybe the U.S. or EC will have to admit they are wrong when their standards differ."⁸

Since Codex is controlled by Clayton Yeutter's appointee at the U.S. Dept. of Agriculture, Dr. Lester Crawford, public health advocates fear Yeutter will be successful in efforts to weaken safety regulations Congress has refused to repeal.

Under legislation now being considered by Congress, dangerous pesticides banned here in the U.S. could no longer be shipped abroad--where they are often used on foods which are then exported to the United States, a process often called the "circle of poison." Under "harmonization," "circle of poison" legislation would be jeopardized. Since Codex does not ban a number of chemicals prohibited in the U.S., it could be against GATT rules for Congress to prohibit the export of those products, or the re-import of foods with residues of these banned products.

⁸ "Washington" in Farm Journal, May 1989, page 10.

Under "harmonization" the U.S. could be forced to either continue to import products with these dangerous pesticides or face GATT-sanctioned trade retaliation costing consumers millions of dollars. John Wessel, director of the Food and Drug Administration's (FDA) Contaminants Policy Staff, condemned Congressional attempts to pass "circle of poison" legislation arguing the proposed laws would:

"have the potential of bringing international food trade to a halt. If there is a need for providing a level playing field for farmers, then it should be the responsibility of the Codex Committee on Pesticide Residues rather than an individual country."⁹

Pre-Emption Of State Governments' Right to Set Pesticide and Other Environmental Protection Standards

"Harmonization" will restrict the ability of state governments to set environmental and consumer protection standards, and it will be used as an argument for federal preemption over states who attempt to set standards stricter than the federal ones.

First, the proposal calls for Codex preemption of all standards on imported and exported goods. For example, even if California voters or legislators approve strict regulations prohibiting the use of any cancer-causing pesticides on foods grown or sold in the state, under "harmonization" this law could not be enforced on foods imported from overseas without facing possible GATT-sanctioned trade retaliation.

Agriculture Secretary Yeutter has stated publicly that one of his main goals at GATT is to overturn the more strict local and state food safety regulations that have been passed in recent years. He fears that if state governments can implement their own regulations, it could set a precedent for more strict federal legislation. In recent congressional testimony arguing for federal laws to take precedent over state laws, he cited California. The main reason he offered for seeking federal preemption was his belief that actions of some states, like California, threaten his efforts at GATT. In testimony to Congress he asked,

⁹ Food Chemical News, April 2, 1990, page 7-9.

"How can we get international harmonization when we can't get it here at home?"¹⁰

Food Chemical News has noted that even some Democratic members of Congress share Secretary Yeutter's perspective. Quoting Speaker of the House Tom Foley (D-WA), they reported that he is;

"not happy with the trend toward states taking the lead in health, safety, and environment areas, adding that it can have serious consequences for trade and commerce in the U.S. and internationally. Speaking to a Cosmetic, Toiletry, and Fragrance Association breakfast, Foley was reported as saying that California's Proposition 65 is the most blatant example of the trend."¹¹

Weakening Other Nations Environment and Consumer Safety Laws

Since most GATT rules apply to all of the member nations, the "harmonization" process could lead to the lowering of standards in other countries. Food industry officials in the United States have been very active in support of "harmonization" partially because they believe it can be used to lower the standards they must meet when they ship goods to other countries. In addition, they see this as a way to reverse the trend towards ever higher standards in some regions, especially Europe, which they fear could lead to demand for the similar standards in the U.S.

A good example is the proposed EC ban on bovine growth hormone (BGH). In a letter to Europe's Agriculture commissioner, Ray MacSharry, Secretary Yeutter objected to this proposed ban, using GATT as his main argument. Yeutter believes that a moratorium on the use of BGH would both disrupt the GATT talks and might encourage consumer demands for similar regulations on the US sides. He fears that an EC ban on BGH would;

"contravene our mutual objective of achieving international harmonization in this sensitive area of food safety. It would also add fuel to the fires for those who wish to have public

¹⁰ Larry Waterfield, "Yeutter jabs at California during farm bill testimony" in The Packer, February 25, 1990.

¹¹ Food Chemical News, April 30, 1990, page 60.

policy decisions made on the basis of emotion and political pressure."¹²

Yeutter, speaking at a Midwest Governor's Conference in Milwaukee last year, went so far as to call for an international policy on BGH. This did nothing to calm the fears of those who see "harmonization" undercutting local, state, and federal governments. He went on to say;

"Arguments about the synthetic hormone's impact on production also should not be used as a basis for FDA consideration. I don't want to see government agencies decide on the basis of alleged economic grounds what should or should not enter the American market. Let's let the marketplace provide that determination."¹³

Slowing the Adoption of the "Fourth Criterion"

Over the last one hundred years, three criteria for evaluating new chemical additives to food have evolved; safety, quality, and efficacy. A number of consumer and environmental organizations are working to establish social and economic values or need as the "fourth criterion" for evaluating new food chemicals.

Many of the chemical, pharmaceutical, and food companies fear that if the "fourth criterion" becomes generally accepted it would lead to tougher laws and regulations. One example of regulations based on the "fourth criterion" are the recently passed bans on the commercial use of bovine growth hormones (BGH) by a number of states. Although there are health concerns, these laws were passed on the argument that the use of this drug would bankrupt thousands of dairy farmers.

Another example is the beef hormone ban imposed last year in Europe, on the basis of consumer demands, not on "scientific evidence". Under "harmonization" these laws could not be applied to imported goods without running the risk of retaliatory action sanctioned by GATT. If the "harmonization" proposal is accepted, future efforts by consumers and

¹² Clayton Yeutter, U.S. Secretary of Agriculture, Washington DC. Letter to Ray MacSharry, EC Agriculture Commissioner, July 8, 1989.

¹³ Leo Van Beek, "Yeutter Asks for International BGH Policy" in Wisconsin Agri-News, October, 1989.

environmentalists to set regulations based on the "fourth criterion" could be effectively blocked.

The United States representatives at GATT have raised their concerns about the growing support for the fourth criterion, including attacks on EC regulations for biotechnology. In a recent official GATT report, the US representative argued that;

"the basis for for authorizing products should be a thorough scientific appraisal against the three traditional criteria of safety, quality and efficacy. The EC was now considering whether a new biotechnology product known as BST should also be reviewed on the basis of social and economic implications. According to the United States, such a political criterion could set a very dangerous precedent and would be contrary to the standstill commitment."¹⁴

Opposition to Harmonization

Consumers.

Consumer organizations are opposed to "harmonization" fearing it could lead to less safe food, confusion in the marketplace, and new obstacles to consumer protection.

A comparison between current U.S. pesticide residue tolerances and those of Codex shows that if accepted, "harmonization" would mean that U.S. consumers would face a two-tiered system of health protection.¹⁵ Many U.S. standards are much stronger than Codex, including a number of items that are effectively banned in this country because they cause cancer, like DDT. Under "harmonization" these standards could not be applied to imported goods. Since it is often difficult or impossible to tell which items on supermarket shelves are imported and which are domestic, consumers will find cancer-causing items back in the food supply without the kind of labeling or other information necessary to avoid them. This will both cause health problems down the road, but also cause confusion until country of origin labeling can be passed and implemented.

¹⁴ News of the Uruguay Round, GATT Secretariat, Geneva, April 1990.

¹⁵ See comparison chart of Codex and U.S. standards prepared by Greenpeace USA included in appendix.

The overall impact is likely to be a dark cloud hanging over the whole food supply. This lack of confidence in commercial products is likely to end up pushing more consumers to demand strictly organic produce, which is already in short supply. This will most likely lead to higher prices, and therefore further restrictions of these goods to more affluent consumers.

One of the most important concerns is whether "harmonization" will be used to undermine our democratic institutions. Lynn Greenwalt, vice-president for international affairs of the National Wildlife Federation, in his statement of support for a congressional resolution opposing "harmonization", summarized this concern as follows;

"We have come together today to note, and perhaps prevent, the passing of an era. An era when local communities had a say in how their natural resources were used. An era when the state and federal governments could take steps to stop the destruction of our environment. These basic rights may be sacrificed by U.S. negotiators in the name of free trade.¹⁶

The professional journal Nutrition Week summarized the scientific community's fears about the same issues this way.

"The U.S. proposal on subordinating health and safety rules to economic goals was developed by Clayton Yeutter, Secretary of Agriculture, when he was President Reagan's trade representative. Rather than use the term subordination, Yeutter described the concept as "harmonization"--i.e. differences in health and safety rules would be harmonized, or resolved, by referring them to a body of scientists. In a discussion recently, the U.S. Trade Representative office described the procedure as 'creating a scientific court'. As conceived by the U.S. trade negotiators, national differences in health and safety rules that impinge on trade would be examined by scientists to distinguish between regulations needed to protect health and safety and those which are not. Only those which the scientific court determines are needed would be permitted to apply to products involved in world trade. Countries that refuse to change rules and regulations to

¹⁶ Lynn Greenwalt, National Wildlife Federation Press Statement, Washington DC, May 24, 1990.

comply with the science court's decisions would be subject, under GATT, to higher tariffs on other products they export. In effect, higher safety and health standards would be penalized.

While the concept sounds reasonable, it is not. Federal regulatory agencies--the Food and Drug Administration (FDA), USDA, and the Environmental Protection Agency (EPA)--are suppose to license, or regulate only on the basis of scientific assessment of health and safety. They do not. The speed at which new chemicals are licensed and the scientific rigor applied in each examination varies depending on the political goals of the President and his Administration. When Administrations change, health and safety goals may also change.

In fact, the role of science in the regulatory process is advisory. Health and safety rules are decided by the elected representatives of the people--i.e. by those who are are accountable to the citizens of the republic. Rules and regulations are developed with the advice of scientists, subject to comment and review by those affected by the proposed rule or regulation and approved by an individual appointed by the President--the chief executive officer. The executive branch is accountable to the Congress, and the actions of the executive are subject to judicial review.

The U.S. trade proposal (harmonization) would change all of that. A scientific court would be accountable only to those individuals or interests that appoint the members of the court. The decisions of the scientific court would not be reviewable. The function of the court, although scientific in appearance, would be framed always in economic goals and objectives. Science would no longer be an advisor, but would determine what is best for the economic future of the people of the world."¹⁷

Consumer organizations have had a number of very bad experiences with faulty or outright dishonest science, ranging from the thalidomide scandal to nuclear power. For most of them, the prospect of seeing our democracy

¹⁷ "New World Trade Rules To Replace Health, Safety Standards In Federal Law", in Nutrition Week, May 3, 1990, page 4.

undermined by a global "science court" has provoked a negative reaction. This concern is reflected in a resolution adopted recently at the National Consumer Assembly of the Consumer Federation of America.

"The Consumer Federation of America (CFA) calls on Congress to reject proposals on international trade negotiations which seek to preempt the right of American people, acting through their elected representatives, to establish policies related to food security and agricultural stability, health and safety standards, environmental protection, and other policies that express their social and cultural values. CFA views with particular concern the proposal advanced by the Bush Administration on agricultural trade in the current negotiations of the Uruguay round of the General Agreement on Tariffs and Trade (GATT), a proposal that does not represent the views of the consumers, farmers, workers and environmentalists in CFA."¹⁸

Another concern often raised by consumer groups is the fear that even if pesticide standards were "harmonized" on a strict basis, the level of enforcement of these standards by different countries is extremely uneven. Many poor countries lack the financial resources to employ the technical capacity to enforce adequate standards. Although some GATT "harmonization" proposals have noted the need for technical assistance to developing nations for implementing this idea, the likelihood of adequate funding being available is negligible. Consumer leader Ralph Nader, at a Washington DC press conference where he and other groups announced their strong opposition to "harmonization", described this effort as an "attempt by the transnational corporations to undermine the power of governments."

Environmentalists

Many environmental and natural resource conservation groups have spoken out against "harmonization", because they see it as a potential threat to the victories they have won over the past decade. Organizations as diverse as the National Toxics Campaign, Sierra Club, Friends of the Earth, Natural Resources Defense Council, National Wildlife Federation, Greenpeace, and Clean Water Action have all spoken out in opposition to "harmonization."

¹⁸ Consumer Federation of America Annual Meeting, March 1990.

For example, a coalition that includes most of the nation's largest environmental organizations, the Ad-Hoc Coalition on Trade and Environmentally Sustainable Development, expressed their opposition. They called on Congress to demand that the Administration withdraw the "harmonization" proposal. In a joint letter to Congress they propose that;

"Congressional approval for legislation implementing this round of GATT negotiations be withheld until certain key environmental objectives are met. The first is that the neglect of ecological issues thus far in the Uruguay round be corrected through an environmental analysis of all the framework agreements currently being negotiated. Secondly, proposals which could adversely effect environmental or health safety standards, or which could effectively undermine the authority of the U.S. Congress to set domestic environmental policy should be amended or withdrawn.

One such case is the U.S. proposal to delegate final authority on health and food safety standards to international bodies such as Codex Alimentarius, thereby undermining the power of state and federal legislators to set minimum pesticide and other chemical residue standards for imported foods."¹⁹

Family Farmers

In addition to strong consumer and environmental opposition, a number of family farm organizations, ranging from the American Agriculture Movement to the Farmers Union Milk Marketing Cooperative have expressed strong concerns about the potential impact of "harmonization."

First, they fear that "harmonization" will force U.S. farmers to compete with imported products grown, processed, and shipped under much less strict environmental and safety regulations. If Alar is banned in the U.S. but apples grown with Alar are allowed in from other countries, this would place U.S. producers at a significant competitive disadvantage. Fresh fruit and vegetable shipments from Mexico and other countries with lower environmental standards would increase dramatically, since

¹⁹ Ad-Hoc Working Group on Trade and Environmentally Sustainable Development, Washington DC. Letter to Congress, May 9 1990.

"harmonization" would make it difficult for the U.S. government to enforce certain import restrictions based on pesticide residues.

Second, many farmers believe that "harmonization" will create a great deal of confusion and doubt in the minds of consumers about the overall safety of the food supply. If this results in reduced consumption of some items, or to the switching to strictly organic produce by some consumers, it will alter the market much faster than most farmers are able to adapt, thereby creating economic hardships and market disruptions.

Third, "harmonization" could potentially drive a wedge between farmers and environmentalists. If "harmonization" causes U.S. farmers to face an unfair competitive situation which threatens their survival, they may feel compelled to lobby Congress or state legislatures to overturn regulations more strict than Codex, creating a serious conflict with consumer and environmental groups. Not only could this be an expensive and time-consuming battle, it may destroy the small, but growing, alliance among farmers, consumers and environmentalists.

Press and Media

Although GATT has not been a very visible topic in the mainstream press, there are signs that the specialized press, including the farm press, are beginning to give it serious coverage. In a few instances, major farm journals or their editors have spoken out about their concerns about the entire GATT process, including "harmonization."

For example, the nation's largest circulation farm magazine, Successful Farming, featured a tough editorial written as a letter to Agriculture Secretary Clayton Yeutter.

"Dear Clayton Yeutter:

Congratulations on your new job as Secretary of Agriculture! Everybody knows you turned down a half-million-dollar-a-year job at ConAgra to take this one, and that speaks of your commitment to America's farmers. That makes me feel good about you. And I have a feeling that you'll get together with ConAgra in three or four years, anyway. (By the way, is that job still open?)

Say, I know you didn't ask for my advice, but then, few of us out here on the prairie asked you to be Secretary of Agriculture, either. So, here's my nickel's worth."

Remember who you represent. It's farmers, not consumers. Not big business nor agribusiness."²⁰

The editorial moves through domestic farm issues and then turns to GATT.

"I remind you of this because I think you 'blew it' at the GATT meetings (in Montreal), and we've let you off the hook for that a little too easy. Your stubbornness got us no agreement on any farm trade issues, we offended our best friends in Europe. Now they won't buy our beef, and we're on the verge of a trade war. All because you refused to even consider a compromise."²¹

On June 5, 1990, the national newspaper of the fruit and vegetable industry, The Packer, devoted an entire editorial to the threat to the Uruguay Round posed by the "harmonization" proposal. They closed with this concern.

"Those who understand the GATT goals and support them need to speak up or risk seeing the GATT talks collapse on subsidy and harmonization issues."

In addition to farm press coverage, there have been a few editorials in the major daily newspapers. The St. Paul Pioneer Press, in a syndicated editorial by David Morris titled "Free-trade Purism Imperils Meaningful Democracy," had this to say about "harmonization."

"Under the banner of 'free-trade' planetary corporations are waging an unprecedented assault on democracy and sovereignty. They, and their allies in national governments are demanding laissez faire on a worldwide scale. They would declare commerce in all its forms off-limits to citizen action.

Free-traders prefer no regulations, but for the sake of appearance they reluctantly embrace minimum, uniform global

²⁰ Gene Johnston, in Successful Farming, April 1989, page 5.

²¹ *Ibid*, page 5.

standards. Harmonization is the new buzzword. Everyone's rules must be the same. Thus ex-trade negotiator and current Secretary of Agriculture Clayton Yeutter angrily lashes out at California's upcoming pesticide initiative. 'how can we get international harmonization when we cannot get it here at home.'

In Yeutter's brave new world, the new rules will come, not from the ground up, but from the top down. Not through initiative or referendum, or by elected officials at the local, state, or even national level, but by unelected negotiators in private sessions in far-off places like Geneva and Uruguay."

"Democracy is sweeping the planet. But democracy without authority is process without substance. Free trade is a worthy 19th century doctrine that, at the twilight of the 20th century, has become a threat to democracies both old and new."²²

Perhaps the most important press coverage thus far has been in the Washington Post, where business section editor Hobart Rowan covered the controversy in a column on May 29, 1990. His editorial ends with a strong message to Congress.

"This is an issue that needs a full airing. At a minimum, the coalition's demands for public debate and media attention are justified."

Congress

The congressional approval of the U.S.-Canadian Trade Agreement demonstrated that current "fast track procedures" for approving trade treaties makes it nearly impossible for Congress to vote down any final agreement. As a result, members of Congress concerned with GATT are working to make a positive impact on the final text of the agreement, before the President signs the treaty. They are especially concerned that nothing in the final agreement is objectionable to any major constituents groups back home, like environmentalists, farmers, or consumers.

²² David Morris, "Free-trade Purism imperils meaningful democracy" editorial in St.Paul Pioneer Press, May 7, 1990.

Already key representatives and senators have begun to speak out in opposition to a number of environmental issues relating to GATT, especially on "harmonization." There are already two resolutions addressing these issues.

Representative Al Swift (D-WA) introduced a resolution "relating to unfair practices in international trade resulting from differing national environmental policies, standards, and controls." His resolution was specifically aimed at protecting U.S. producers, both farm and non-farm, from the practice of "ecological dumping", the shipping of goods into the U.S. which are produced under lower environmental standards which give these imported goods a price advantage.²³

Representative James Scheuer (D-NY) has introduced a resolution specifically addressing harmonization" which states;

"It is the sense of Congress that legislation to implement the agreement reached during the Uruguay Round will not be enacted--

- 1) Until an analysis of the environmental impact of the agreement is made;
- 2) If there are agreement provisions (such as the harmonization proposal of the United States Trade Representative which would weaken federal and state pesticide regulation in the United States) that would undermine environmental or health and safety standards in any of the nations that are contracting parties to the GATT or reduces the authority of national regulators to set more stringent domestic environmental policy;
- 3) Unless the contracting parties agree to an amendment to the GATT that specifies that nothing in the Agreement may be construed to prevent the adoption or enforcement by any contracting party of measures necessary to protect the environment ;
- 4) If implementation of any of the agreement provisions would prohibit the Congress from enacting higher environmental and health standards in the United

²³ House Resolution 371, March 29, 1990.

States, or in any way prohibit the United States Government from concluding international agreements and treaties that call for more stringent global environmental standards."²⁴

A number of Senators are taking action on this issue, including Senator Al Gore (D-TN) who raised GATT and environmental issues at the recent International Conference on Global Environment held in Washington.

Alongside of this growing concern by farmers, consumers, and environmentalists there is strong opposition to GATT from several industries, including textiles and maritime, as well as from most trade unions. The AFL-CIO has stated that;

"Congress should rescind the special, fast-track procedure for consideration of the negotiated issues and substitute for them a procedure that provides Congress the appropriate opportunities for discussion and debate."²⁵

The combined power of these diverse constituencies could add up to enough votes to either directly defeat or to sustain a filibuster against the final package presented by the President next year.²⁶

Government Agencies

It should be noted, however, that not all federal agencies share the same ideological commitment to "harmonization" and preemption as the USDA.

For example, at a recent forum held organized by Public Voice for Food and Health Policy, Health and Human Service Secretary Louis Sullivan encouraged states to come out with their own laws in the area of food labeling, in direct contradiction to the efforts being made by the USTR staff

²⁴ House Resolution 336, May 24, 1990.

²⁵ Statement by the AFL-CIO Executive Council on The Uruguay Round of Trade Negotiations, Bal Harbor, Florida, February 19, 1990.

²⁶ For more information on the concerns of the textile industry contact the Fiber, Fabric and Apparel Coalition on Trade, Dan Frierson, Chairman, c/o Dixie Yarns, Box 751, Chattanooga, TN 37401.

at GATT.²⁷ At the same time, there have been numerous reports of opposition from a number of key staff at EPA.

In both the December 27, 1989 and May 9, 1990 editions of Food Chemical News this split within the Administration was discussed. A remarkably frank review of the technical and scientific problems associated with "harmonization" was made in a recent speech by EPA Pesticide Registration Division Director Anne Lindsay.

"To achieve harmonization more than numerical agreement will be required. Although there are many similarities between the US tolerance process and the Codex MRL process, there can also be a number of differences in the process which have led to divergent residue limits:

- Differences in GAP or perceptions that certain residue data do not represent a nationally approved use,
- Differences in expression of residue and in the use of the indicator compound approach,
- Use of an arithmetic rather than a geometric approach in rounding up,
- Differences in considering high residue values,
- Differences in commodity definitions,
- Differences in interpretation of toxicology data,
- Differences in data files available to EPA and to JMPR,
- Differences in the application of dietary exposure and risk calculation methods.

Because these differences are based primarily on scientific considerations and have implications for food safety and public health, it is difficult to simply change US tolerances to match Codex MRLs without reevaluation of the relevant toxicology and residue data which underlie existing tolerances.

Thus, the accelerated reevaluation of pesticides mandated by our new law also gives us an opportunity to pursue harmonization with Codex MRLs as part of our tolerance reassessment activities. To help in this effort we are also considering asking pesticide producers to develop a technical argument for or against harmonization with Codex MRLs as

²⁷ Food Chemical News, April 16, 1990, page 45.

part of either tolerance reassessment or of tolerance establishment.

Although harmonization is our goal, we also anticipate that in some cases harmonization will not be possible. There may be a divergence of scientific judgement in the interpretation of data; in other cases, additional data may be available to the US EPA which have not been made available to the JMPR."²⁸

Ms. Lindsay goes on to describe EPA plans for allowing other countries to gain access to their decision-making process.

"Tolerance revisions and revocations would have a considerable impact on trade and the possibilities for harmonization--there may no longer be an acceptable residue level established in the US for a particular chemical on a commodity, but that chemical may still be used in other countries. To mitigate these consequences to the extent possible, we will accomplish tolerance revisions in a two-step process;

The changes and the reasons for them will first be proposed in a public document; we typically send these proposals to all Codex member countries. A comment period will follow, in which any interested party may submit data or other information that may modify the original proposal. All comments are analyzed and a final decision is then published. The extent to which final decisions are different than the proposals will depend to a large extent on the quality and kind of data submitted in the comment process. If sufficient data are not available, tolerance will not be maintained."²⁹

Creating Support for Harmonization

Anticipating a very tough fight against "harmonization", Administration officials are working hard to reverse the mounting opposition among farmers, environmentalists, and consumers.

²⁸ Anne Lindsay, "Pesticide Registration in the United States", presentation made on April 25, 1990, page 4.

²⁹ Ibid, page 5.

To farm groups, they make two points. First, they argue that if the U.S. can control the process for setting pesticide standards through Codex, they can use GATT dispute panels to open foreign markets. Second, they promise that GATT is the best way to get around Congress to overturn domestic pesticide and food safety laws. The report from a recent conference of the California World Trade Commission on "International Standards and Agricultural Trade." summarizes the arguments for using GATT to open foreign markets.

"As food safety and environmental protection capture the attention of nations around the world, California farm leaders recognize a growing need to reform both government and industry response to health-related trade problems."

"Participants agreed that uniform national standards are essential to successful negotiations and implementation of current GATT talks to harmonize health and safety rules."
"Participants expressed concern that California, in its zeal to lead the world in regulating chemical use, may become so out of step with the competition that it will put its \$17 billion agriculture industry out of our business."

"The Uruguay Round talks on harmonizing plant and animal health restrictions are becoming increasingly important to California as food safety and environmental concerns grow. The group gave general support to "harmonization", with two exceptions;

- 1) No special and differential treatment should be granted to developing nations on health-related trade rules. Allowing for exemptions based on economic development would indicate that sanitary and phytosanitary restrictions are based on geopolitical considerations, whereas they should be based strictly on science.
- 2) No exemptions to health-related rules should be granted for dietary and climatic conditions."³⁰

³⁰ "International Standards and Agricultural Trade: A California Perspective"
California State World Trade Commission, Sacramento CA, April 3, 1990.

Some Administration officials also argue that "harmonization" could force Europe to drop their ban on hormone-fed beef³¹, and that it would lead to lower internal U.S. standards, especially in regards to overturning more strict state-level regulations. On a highly controversial issue, the recent ban of Alar, the promise of a way around U.S. law is openly discussed. In a recent edition of a Farm Bureau newspaper they outlined this scenario;

"The CODEX group, including representatives from the United States, is to decide whether to support acceptable daily intake recommendations (Alar) from the World Health Organization/Food and Agricultural Organization joint meeting on pesticide residues last September. Toxicologists at the meeting--including EPA scientists serving independently--suggested acceptable daily intake levels for daminozide (Alar) should be 0-5 parts per million."

"The CODEX is a political body with all the trappings of a regulatory agency but without the authority. That authority could come, however, if governments agree to defer to the group's scientific authority." ³²

Another example is USDA's recommendations to Congress, contained in a report submitted under provisions of the 1988 Trade Act, calling for the adoption of Codex standards as the U.S. standards for imported meat, poultry and dairy products. This recommendation, designed to undercut consumer efforts to ban bovine growth hormone (BGH), was similar to an attempt by the BGH industry group, the Animal Health Institute, to get Codex standards adopted for imports of unapproved animal drugs in 1988.³³

A former member of Yeutter's GATT team in Geneva, C. Ford Runge, who now works for the Cargill Grain corporation-funded Center for International Food and Agricultural Policy, devotes much of his time to convincing farm groups that GATT can be used to;

³¹ For example, see "Washington" in Farm Journal, May 1989, page 10.

³² Tom Karst, "Stumping for acceptance Alar finds foreign favor" in California Farm Bureau's AgAlert, April 1990.

³³ Food Chemical News, January 16, 1989.

"Keep stricter environmental standards from adversely affecting their cost of production."

According to Runge,

"Farmers will have to turn to international organizations, to help them confront the issues of environmental standards."³⁴

In addition to attempting to win the support of farm groups, Administration officials have met with representatives of several environmental and consumer organizations, arguing that "free trade" as an ideological position should have the support of consumer groups.

Although a few environmental organizations, like Resources for the Future, have been convinced to support the U.S GATT proposal³⁵ most efforts by the Administration to build support for lowering health and safety standards have not been effective.

Efforts by Corporations

Clearly the main impetus and support for "harmonization" has come from the chemical, pharmaceutical, and food manufacturing firms which see the growing strength of environmental and consumer organizations as a direct threat to their goal of a non-regulated global economy.

The success of the Nestle Boycott in forcing the World Health Organization to issue a Code of Conduct to govern the activities of infant formula corporations is just one example of the impact of organized citizen's efforts in the international arena.³⁶

The corporations most concerned with this issue have begun to reach out to other sectors of the business community, using the entire discussion as a way to gain support for the overturning of both state and federal

³⁴ Ryan Taylor, "Relationship between environment, trade policy important to region's future," in Minnesota Wheat, January, 1990.

³⁵ For example, see Agriculture in the Uruguay Round of the GATT, Resources for the Future, Washington DC., August 1988.

³⁶ For a closer look at the impact of this consumer campaign, see Douglas Johnson, "Strategies and Phases of the Nestle Boycott" in Research in Corporate Social Performance and Policy, Vol. 8, 1986, page 323-343.

legislation. They are using the rationale that "uniform" internal U.S. laws on food safety and "harmonize" laws on a global scale are necessities for U.S. companies competing in international markets.

The specter of disrupted international trade is being used by the corporation as a way to argue against the right of states to set their own standards. "Uniformity" is the word used to describe the "harmonization" process with the U.S. borders. States could set their own standards for within their borders, but they could not impose these standards on items "imported" from other states.

For example, "uniformity" is being promoted to various food manufacturers as a necessary tool to promote U.S. food exports. A recent study, prepared for the Grocery Manufacturers of America by Dr. Paul Stern, former head of the International Trade Commission, effectively made these arguments;

"The question of uniformity has been discussed as if it were entirely a domestic matter. What is often ignored is that this question of uniformity presents a fundamental issue for U.S. trade policy. Failure to see its trade implications threatens a significant portion of over \$46 billion of U.S. farm and forestry exports. There is a real danger the U.S. efforts to get more harmony in international standards could be seriously undermined by increasing disharmony between various state and U.S. federal standards."³⁷

At a recent forum on the US-Canada Free Trade Agreement, Deputy under-secretary of the U.S. Department of Agriculture, Ann Veneman, complained;

"How can we encourage or even join in the international harmonization project if we cannot agree on common domestic standards? There is little doubt that fragmentation, if carried too far, could jeopardize U.S. participation in a more open world trading system. We cannot be part of any agreement unless we can commit as a country."

"We need as much uniformity as we can get. We're absolutely going to impede interstate as well as international commerce if we go in the direction of having separate sets of regulations for

³⁷ Food Chemical News, April 30, 1990, page 60.

50 states. I think there is a growing recognition with in the Administration of the importance of uniform federal standards in the area of food."³⁸

Agriculture Secretary Clayton Yeutter has expressed the same view;

"Harmonization many never happen unless the country is ready to accept federal standards."³⁹

Efforts by GATT and Codex Staffs

Although it is expected that the staffs of these various international agencies should remain strictly neutral in these negotiations, in reality they play a powerful role in determining the direction of the discussions. In this regard, both Codex and GATT staff have expressed support for "harmonization" on a number of occasions.

A recent meeting of senior GATT staff with a delegation of consumer, environmental, church, farm, and trade union representatives from the US, Europe and Japan was summarized by Nutrition Week in this way.

"New terms being hammered out here (Geneva) to guide world trade during the period of explosive social and political change in the 1990's will eliminate or weaken health and safety rules and regulations for food, drugs, and the environment in nearly every country that imports and exports products. The immediate target is the Delaney clause of the Food, Drug and Cosmetic Act that prohibits in the U.S. the use of food additives that cause cancer in humans or test animals. The Delaney clause is the only food safety law that sets a zero tolerance for chemicals and other substances used as food additives.

'World trade cannot survive with a zero tolerance', said Jean Marc Luc, Director of the Agricultural Division of the GATT. Luc will draft the final proposal in the current negotiations--called

³⁸ Food Chemical News, April 16, 1990, page 45-46.

³⁹ Henry Schacht, "Key to GATT Accord is Agriculture, Yeutter Contends" in San Francisco Chronicle, April 21, 1990.

the Uruguay Round--to set new rules for trade in agricultural products under GATT."⁴⁰

In his opening speech to the July 1989 session of Codex, the chairman was quite explicit about his excitement over GATT's "international harmonization project."

"The current developments underway within the Uruguay Round of Multilateral Trade Negotiations offer the exciting prospect of the Codex standards being used as the basis for the harmonization of national regulations as a long-term objective under GATT."⁴¹

Towards a Positive Solution

The problem of distinguishing between legitimate consumer and environmental protection measures and hidden trade barriers has become increasingly more difficult. As more long-term effects of various drugs and chemicals are discovered, there will be intense public pressure to tightly control what foreign substances are allowed into the food supply.

The development of more clear and operationally effective rules for resolving trade conflicts over these matters is crucial to all citizens, in the United States and around the world. The fight between the Administration and Europe over the beef hormone ban is a good example of how trade wars can harm producers and consumers on both sides. This hormone fight is only one example of why specific and clear rules are needed. Thus far, however, there has been little progress in finding acceptable alternatives.

A number of GATT member nations have endorsed various elements of the "harmonization" proposal, but with widely varying interpretations of various elements. For example the European GATT proposal states;

"countries which have achieved a high health status will find it difficult to systematically relinquish their national standards in favor of lower, albeit "international" standards. It will,

⁴⁰ Rod Leonard, "New World Trade Rules to Replace Health, Safety Standards in Federal Law," in Nutrition Week, March 1, 1990, page 1.

⁴¹ Report on the 18th Session of Codex Alimentarius Commission, July 1989.

therefore, be necessary to provide for countries to continue to apply more stringent standards, where appropriate. ⁴²

However, it is clear that "harmonization" and a wide range of other environmental issues are only in their first stage of consideration by GATT and that much more will be needed in the future. With this in mind, the resolutions being considered by Congress address the need for a special process within the GATT to begin incorporate these concerns. The resolution by Congressman James Scheuer calls on Congress to reject the final GATT agreement if it does not adequately address environmental protection. Included in his resolution is the threat that the agreement reached in the Uruguay Round will not be enacted unless there is;

"agreement among contracting parties to initiate special consultations (which shall include nongovernmental organizations and parliamentarians from member countries as full participants) to discuss environmental issues by April 1, 1991, which consultations must address, among other relevant issues--

a) the steps that can be taken to ensure that the implementation of the GATT does not undermine national environmental protection measures and health and safety standards, and the promotion of sustainable development,

b) means by which the GATT can be used to enhance environmental protection and the promotion of sustainable development, and

c) mechanisms by which public access to information regarding, and public participation in, the GATT process can be encouraged.⁴³

⁴² Submission of the European Communities on Sanitary and Phytosanitary Regulations and Measures, December 1989, page 2.

⁴³ House Resolution 336, May 24, 1990.

Rod Leonard, director of the Community Nutrition Institute, sees the evolution of a positive solution in the growing consensus on the "fourth criterion."

"Safety is not enough. Society must be convinced that a demonstrable need also can be shown. Rather than diminish the role of science, the fourth criterion will give new dimension to the place of science and the scientist in public policy and in solving the economic and social problems that will be confronted in the 21st century.

Economics thus far has limited the function of science to creating wealth and justifying the use of harmful substances. The promise of free trade was that more people would enjoy a better life and that economic growth would raise incomes

That promise, compromised by contaminated water, polluted air, and undisclosed health risks, has not been fulfilled, either in the United States or in Europe. The task for economics in the 21st century is to fashion a more creative role for science in helping people achieve a more satisfactory lifestyle. Harmonization, a process to continually lower standards of health and safety, is not part of that future.⁴⁴

⁴⁴ Rod Leonard, "Science, Economics Role to be Re-defined in the 1990s," in Nutrition Week, May 3, 1990, page 6.

APPENDIXES

SUBMISSION OF THE UNITED STATES
ON COMPREHENSIVE LONG-TERM AGRICULTURAL REFORM

(Final U.S. Proposal--October 1989)

The Mid-Term Agreement for agriculture approved by the Trade Negotiations Committee on April 7, 1989 (MTN.TNC/11), states that:

- o not later than the end of 1990, participants will agree on a long-term agricultural reform program and the period of time for implementation;
- o the long-term objective is to provide for substantial progressive reductions in agricultural support and protection, sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets;
- o the strengthened and more operationally effective GATT rules and disciplines, which would be equally applicable to all Contracting Parties, and the commitments to be negotiated, should encompass all measures affecting directly or indirectly import access and export competition;
- o proposals to achieve these objectives are to be submitted by December 1989.

In accordance with these guidelines, the United States hereby submits to the Contracting Parties a comprehensive proposal for agricultural reform. The comprehensive nature of this proposal recognizes the wide variety of internal and border measures employed across countries and commodities, and the complex interaction among these policies. The broad array of policy instruments is categorized into four subsets: import access, export competition, internal support and sanitary and phytosanitary measures. The United States proposal calls for reform in all four areas, and these reforms should be viewed as integral parts of a comprehensive package and not as four separate proposals. Our comprehensive proposal is designed to guide agricultural production and trade toward a market oriented system governed by strengthened and more operationally effective GATT rules and disciplines and to integrate agriculture fully into the GATT.

The United States proposal is designed to correct and prevent the many problems and distortions of current agricultural policies. These include costs to consumers and taxpayers that exceed \$275 billion annually; incentives for overproduction; subsidized disposal of surpluses; internal support systems that distort trade and inhibit market development; and import barriers that misallocate resources, reduce the level of food purchases, and limit consumer choice.

- o direct income payments to producers that are not tied to current production, prices, the cost of production or marketings of agricultural commodities;
- o programs for the development and implementation of bona fide conservation and environment protection plans and practices;
- o disaster assistance keyed to bona fide production losses;
- o bona fide domestic food aid;
- o marketing programs that do not confer an economic benefit --in the form of price discounts, cash or in-kind payments, etc.--on the purchaser at any level of the marketing chain;
- o general services that do not provide direct price or income support or subsidized inputs to producers, processors or consumers;
- o programs to remove land or other production factors from agriculture or to facilitate the transition process; and
- o programs for stockpiling food reserves that do not provide direct price or income support or subsidized inputs to producers, processors or consumers.

These policies would not be subject to the commitment to reduce support and protection agreed to at the Mid-Term Review. As with the list of policies to be phased-out, explicit criteria identifying permitted policies should be carefully defined in an interpretive note.

C. Policies to be disciplined

All policies that do not meet the criteria for permitted policies nor fit within the criteria for policies to be phased-out would be subject to specific GATT disciplines designed to prevent their use in ways that would nullify or impair concessions or cause serious prejudice or material injury to a Contracting Party.

In addition, Contracting Parties would negotiate reductions in support granted through this category of policies. Commitments in this regard would be expressed in terms of an agreed upon aggregate measure of support (AMS). These reduction commitments, together with the new GATT disciplines, should further reduce trade distortions and ensure that Contracting Parties do not simply transfer resources from one distorting policy to another as the former are phased out.

IMPLEMENTATION

Commitments on internal support would be implemented over a ten year period.

A. Policies to be phased out

Contracting Parties would be free to choose the transition mechanism best suited to their particular policies. For example, Contracting Parties using administered price policies could progressively reduce either administered prices, or the amount of production eligible for price supports, or both. However, each Contracting Party will be required to choose a mechanism that will lead to reductions in equal annual steps over the transition period and culminate in the elimination of the policy in question. Commitments should be made by policy and, in most cases, by commodity as well.

B. Policies to be disciplined

An AMS approach would provide a convenient method of reducing support from these policies. The Producer Subsidy Equivalent developed by the OECD provides one such approach; others could be developed. The AMS level would be bound at progressively reduced rates over the transition period. The AMS calculation would include all types of government support that are not explicitly prohibited or permitted under new GATT rules. Since border measures would not be included, many of the methodological problems presently associated with AMS calculations could be avoided. Commitments would be implemented through a negotiated level of linear cuts in the AMS over the transition period.

SANITARY AND PHYTOSANITARY MEASURES

OBJECTIVE

To provide a mechanism for notification, consultation and dispute settlement which would ensure that measures taken to protect animal, plant and human health are based on sound scientific evidence and recognize the principle of equivalency.

GATT RULES AND DISCIPLINES

The United States proposes that Article XX(b) be amended to provide that:

nothing in the agreement shall be construed to prevent the adoption or enforcement by any Contracting Party of measures necessary to protect human, animal or plant life or health, provided that these measures are consistent with sound scientific evidence and recognize the principle of equivalency.

To elaborate on the above amendment, GATT instruments should be drafted to provide that:

The appropriate standards or guidelines of the Codex Alimentarius Commission, the International Office of Epizootics, the International Plant Protection Convention or, as appropriate, other scientific organizations, open to full participation by all Contracting Parties e.g. the World Health Organization for situations involving hazards to human health and the environment, shall be considered by a panel in determining whether a measure designed to provide an acceptable level of protection is consistent with sound scientific evidence.

A measure shall be deemed to be based on sound scientific evidence if the measure is equivalent to the appropriate standard established by an organization included above or if the measure was developed using information and analysis comparable to that used by such organization. However, if there is not an international standard or guideline, or if a Party maintains a measure which is not equivalent to or has not been developed using information comparable to that used in an international standard or guideline, then Parties may still avail themselves of the dispute settlement procedures under the agreement.

Measures which are not identical but which have the same effect in ensuring an acceptable level of protection shall be deemed to be equivalent.

In addition, GATT instruments should be drafted to provide that a notification, consultation and dispute settlement system having the following elements is available:

Notification

Each Contracting Party shall notify the GATT Secretariat of any proposed sanitary and phytosanitary regulation involving processes and production methods, product specifications and inspection and certification systems, as well as concluded bilateral agreements, which could have a significant effect on the trade of other Contracting Parties, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with, or their relevance to, rights and obligations under the General Agreement.

Notifications shall cover any technical regulations, standards bilateral agreements or certification systems which have been adopted or proposed by central government bodies, by non-governmental bodies which have legal power to enforce a technical

regulation, or by regional standardizing bodies in which relevant bodies within parties' territories are members or participants.

The GATT Secretariat will, when it receives a sanitary or phytosanitary notification, circulate copies to all Contracting Parties and all interested international standardizing and certification bodies and draw the attention of developing country Contracting Parties to any notification relating to products of particular interest to them.

The normal time limit for comments on notifications shall be sixty days. Contracting Parties shall discuss comments upon request and take these comments and the results of these discussions into account.

Each Contracting Party shall ensure that an inquiry point exists through which sanitary and phytosanitary notifications can be forwarded to the GATT Secretariat, copies of all final regulations can be obtained, and all relevant inquiries can be directed.

Informal Consultations

Contracting Parties shall respond to requests for consultations promptly and attempt to conclude consultations expeditiously with a view to reaching a mutually satisfactory conclusion.

If a dispute is not resolved by consultations, the Contracting Parties involved in a dispute may request an appropriate body or individual to use their good offices with a view to the settlement of the outstanding differences between the Parties. The Contracting Parties are particularly encouraged to use the good offices of the international scientific organizations established to address sanitary and phytosanitary measures, i.e., the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention.

Dispute Settlement

Provisions regarding dispute settlement should be considered in consultation with the Negotiating Group on Dispute Settlement.

Existing National Approval Process

Some Contracting Parties maintain a domestic regime which generally requires the certification or approval of a broad class of products (e.g., pharmaceuticals or pesticides) which may affect human, animal or plant life or health prior to the use or sale for use of those products within its territory. Before any other Contracting Party may initiate dispute settlement proceedings under this instrument, it shall have attempted to obtain certification or approval of the product in question in

accordance with the rules of that regime, provided that the regime is intended to address a class of products which includes the product in question, that the regime uses reasonable and scientifically-based procedures and evidentiary standards to evaluate such products and that the regime's treatment of foreign products is no less favorable than that accorded to like products of national origin.

Relationship to International Standards and Organizations

The Codex Alimentarius Commission, the International Office of Epizootics, the International Plant Protection Convention, or other appropriate international scientific organizations shall be asked to provide a list of individuals with technical expertise in various areas. Regarding the consistency of a measure with sound scientific evidence, dispute settlement panels shall give primary consideration to the technical judgment of a technical advisory group composed of individuals selected from the appropriate list, its composition subject to the consent of the interested Contracting Parties.

In food safety, the following standards of the Codex Alimentarius and the associated scientific information and analysis shall be deemed to be based on sound scientific evidence: acceptable levels for food additives, maximum residue limits for veterinary drugs, allowable levels of environmental contaminants, maximum residue limits for pesticides, methods of analysis and sampling, and codes and guidelines of hygienic practice.

In the area of animal health, the risk assessment guidelines developed under the auspices of the International Office of Epizootics for the use of the parties shall be deemed to be based on sound scientific evidence.

In the area of plant health, the risk assessment guidelines developed under the auspices of the International Plant Protection Convention for the use of the parties shall be deemed to be based on sound scientific evidence.

For matters not covered by the aforementioned standards or guidelines on food safety, animal health and plant health, the appropriate standards or guidelines of other scientific organizations open to full participation by all Contracting Parties shall be deemed to be based on sound scientific evidence.

If there is not an appropriate international standard or guideline, or if a Contracting Party maintains a measure which is not equivalent to or has not been developed using information and analysis comparable to that used in an international standard or guideline, then a Contracting Party shall have the option of using other experts, evidence, organizations, or other relevant

sources of scientific information to show that its measures are consistent with sound scientific evidence.

National Treatment

The products of the territory of any Contracting Party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect to all sanitary or phytosanitary laws, regulations, requirements, measures or approvals for use.

IMPLEMENTATION

Conforming amendments to the GATT instruments should be fully in effect in 1991.

TECHNICAL ASSISTANCE

The strengthening of the GATT approach to sanitary and phytosanitary measures may pose particular difficulties for developing countries. The Contracting Parties should evaluate the probable effects on developing countries of the enhanced GATT sanitary and phytosanitary procedures. If warranted by the results of this evaluation, the appropriate international organizations, for example the U.N. Food and Agriculture Organization, might be contacted for technical assistance. The assistance provided might focus on strengthening the regulatory mechanisms of developing countries, particularly with regard to food safety and plant health, and could also facilitate the establishment of inquiry points where needed.

SPECIAL AND DISTINCTIVE TREATMENT FOR DEVELOPING COUNTRIES

Meaningful agricultural trade reform requires the active participation of all Contracting Parties. The new GATT rules and disciplines proposed for import access, export competition, internal support and sanitary and phytosanitary measures should be applicable to all Contracting Parties.

Developing countries with relatively advanced economies and/or well-developed agricultural sectors would be expected to comply fully with the implementation mechanisms identified in other sections of this paper. However, the United States understands the distinctive needs of less developed countries, particularly with respect to infrastructure, and the difficulties some may have in implementing the transition schedules proposed for internal support and import access. In order to determine such needs, criteria related to the level of agricultural and overall development would need to be taken into account. The degree to which any developing country departs from the implementation schedules outlined in other parts of this paper should be

shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importation or exportation of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including

those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;*
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products; and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

Article XXI

Security Exceptions

Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

APPENDIX C

Some examples of Codex pesticide residue levels on foods which are higher than US Environmental Protection Agency tolerances.

<u>Crop</u>	<u>Pesticide</u>	<u>Increase</u>
Carrots	Benomyl	25X
Apples	Permethrin	40X
Broccoli	Permethrin	2X
Strawberries	Lindane	3X
Potatoes	Diazanone	5X
Bananas	Aldicarb	1.6X
Bananas	Diazinon	2.5X

Some examples of Codex pesticide residue levels on foods which are higher than Food and Drug Administration action thresholds.

<u>Crop</u>	<u>Pesticide</u>	<u>Increase</u>
Broccoli	Heptachlor	5X
Broccoli	DDT	33X
Broccoli	Aldrin	3.3X
Carrots	Heptachlor	20X
Carrots	DDT	10X
Grapes	DDT	20X
Lettuce	Heptachlor	5X
Lettuce	DDT	33X
Lettuce	Aldrin	3.3X
Potatoes	Heptachlor	5X
Potatoes	DDT	10X
Milk	Endrin	3X
Apples	DDT	10X
Apples	Aldrin	1.7X
Bananas	DDT	50X
Bananas	Aldrin	2.5X
Peaches	DDT	50X
Peaches	Aldrin	2.5X
Pineapple	DDT	33X
Pineapple	Aldrin	1.7X
Strawberries	DDT	20X

FDA Action Thresholds from Federal Register, Vol. 55, #74, Tues., April 17, 1990. FDA docket #89D-0368, "Action Levels for Residues of Certain Pesticides in Foods".

EPA Tolerances from Code of Federal Regulations, Vol. 40, Parts 150-189, July 1, 1988.

Codex information from, "Guide to Codex Maximum Limits for Pesticide Residues, Part 2", Doc. # CAC/PR2, 1989. Issued April 8, 1989 by the Netherlands.

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