



#202  
**Canadian Environmental Law Association**  
**L'Association canadienne du droit de l'environnement**

517 College Street, Suite 401, Toronto, Ontario M6G 4A2  
Telephone (416) 960-2284  
Fax (416) 960-9392

**ISSUE PAPER:**

**INTERNATIONAL TRADE AND THE ENVIRONMENT**

**Publication #202**

**ISBN# 978-1-77189-528-6**

**Submitted By:**

**Janine Ferretti**  
**Pollution Probe**

**Zen Makuch**  
**Canadian Environmental Law Association**

**Ken Traynor**  
**Common Frontiers**

**October 1991**

VF:  
CANADIAN ENVIRONMENTAL LAW  
ASSOCIATION.  
POLLUTION PROBE.  
CELA BRIEF NO.202; Inte...RN7692



The world's economy and the earth's ecology are inextricably linked. This reality must be reflected in trade policy if the move towards more environmentally sustainable forms of development is to be successful.

The World Commission on Environment and Development in its effort to address the world's development needs within the earth's environmental limits, had as its central recommendation the integration of environmental and economic decision-making:

... It is impossible to separate economic development issues from environment issues; many forms of development erode the environmental resources upon which they must be based, and environmental degradation can undermine economic development. Poverty is a major cause and effect of global environmental problems. It is therefore futile to attempt to deal with environmental problems without a broader perspective that encompasses the factors underlying world poverty and international inequality.

- (World Commission on the Environment and Development Report, Our Common Future, Gro Harlem Brundtland, Chair; Oxford University Press 1987, p. 3)

The Commission's recommendations received widespread support from governments and business. At the July 1989 Economic Summit, the "G-7" government leaders reinforced the need to integrate economic and environmental policy.

Environmental protection is integral to issues such as trade, development, energy, transport, agriculture and economic planning. Therefore, environmental considerations must be taken into account in economic decision making. In fact, good economic policies and good environmental policies are mutually reinforcing.

- (The Paris Economic Summit, Economic Declaration, July 16, 1989, p. 2)

International trade is perhaps the most significant dimension of global economic activity. Trading relationships and trade agreements such as the General Agreement on Tariffs and Trade (GATT) in particular can accelerate environmental degradation and undermine national and international efforts to address ecological problems. For example, the resource based economies of the South incurred \$14 billion each year in pollution costs alone according to 1980 statistics. The situation has grown worse in the past decade. Yet, little has been done to integrate environmental concerns into trade policies. The present round of negotiations to reform GATT, and the negotiation of other recent trade agreements have occurred without serious consideration for the environment.

The emphasis placed in GATT on the deregulation of corporate activity,

the definition of environmental regulation as a non-tariff barrier to trade, limits on the use of export and import controls even for environmental purposes, the push for harmonization of standards, and the secretive, undemocratic nature of the GATT negotiations and dispute settlement mechanism all reflect an approach fundamentally at odds with the aims of UNCED.

Trade and economic policies are being put in place through the Uruguay Round of the GATT and other trade agreements that could fundamentally restrict the ability of the international community to achieve the ambitious and necessary goals set by UNCED.

### Emerging GATT/UNCED Conflicts

Potential conflicts between UNCED and trade agreements such as GATT can already be identified. A number of questions key to addressing and resolving these potential conflicts include those listed below.

1. Will trade deregulation lead to increased energy use and, if so, undermine present and future programs to combat climate change?
2. Will GATT proposals designed to limit the use of subsidies and the use of import and export controls restrict the ability of governments to address crucial domestic problems such as deforestation, desertification and energy security?
3. Will Intellectual Property Rights if codified under the GATT impede the transfer of non-polluting technologies to the South?
4. Will fiscal mechanisms proposed under UNCED that internalize environmental costs have to be GATT compatible and who will decide if they are?
5. Will the GATT definition of subsidies adversely affect the use of international financial instruments to meet environmental and developmental goals such as the fund created by the Montreal Protocol?
6. Will the definition of freshwater as a tradeable "good" promote diversion schemes and undermine protection of water quantity and quality?
7. Are there fundamental conflicts between the functional aims and programs of international agreements on environment and GATT? If so, which will prevail?

### Developing the Solution

Trade agreements must incorporate environmentally sustainable development as a fundamental goal. They also must explicitly recognize the legitimacy of environmental protection measures taken by nations. These principles should be written into the purpose

statement of the agreement itself with language which calls for the promotion of such environmental policy goals as conservation of exhaustible resources and environmentally sustainable development.

Among the steps that must be taken are those outlined below. They can serve as a useful checklist of existing and future trade agreements as well as the proposals presently before the GATT negotiators.

#### 1. Environmental Assessment of Trade Deals

An environmental assessment of a trade agreement would help identify potential adverse environmental impacts of trade and the alternatives which would avoid those impacts. The implementation of a comprehensive environmental impact assessment and the consideration of and action on the results is a true test of any nation's commitment to integrating environmental concerns into economic policy.

While there are several important steps in a successful assessment of trade agreements there are two elements which are critical to making the process credible. They include the following:

(a) Timing The timetable of the Environmental Impact Assessment (EIA) process should be related directly to the negotiating and decision-making schedule to ensure that the environmental impacts of the agreement are known and addressed during the negotiations. The EIA should be completed well before the negotiations are concluded to allow government agencies and the public adequate time to review the study and address changes they feel are necessary before the negotiations are completed.

(b) Public Review There must be meaningful and timely public participation in the scoping, evaluation and review of the environmental impact assessment. The public must be able to fully comment on the study and on the options and alternatives identified in the study. The comments and views of the public must be seriously considered. Reasons should be given when proposals made by the public are rejected.

#### 2. The Inclusion of Environmental Protection and Resource Conservation Measures in Trade Agreements

International trade in resource based commodities can be seen as one of the causes of environmental degradation such as deforestation and desertification. In order to reverse the tendency of trade agreements to facilitate unrestrained resource and other environmental exploitation, the agreements themselves must codify environmental protection and resource conservation as legitimate goals. Agreements must not fetter the ability of nations to act decisively in the interest of the environment both nationally and internationally.

A number of measures which any trade agreement should facilitate include the following:

(a) National control over resource exports.

- The control of export flows where a valid conservation purpose can be demonstrated or where basic domestic needs (i.e. food security) are not being met.

(b) National control over import flows.

- The employment of import controls to maintain and promote effective environmental protection legislation such as legislation regulating the movement of hazardous waste.
- The utilization of import tariffs or subsidies of equal value to counteract "environmental subsidies", i.e. those products produced in countries with lax environmental regulations.
- The use of import bans on environmentally harmful products and those resulting from polluting processing or production methods.
- The use of import bans to enforce international environmental agreements.

(c) The internalization of resource depletion and the environmental costs of commercial activities. Specifically an agreement would:

- Include measures to require that an externalized environmental or resource cost be treated as an unacceptable subsidy (e.g. amend Article VI of the GATT).
- Allow mechanisms to be put in place that enshrine the principle that polluters must pay for any environmental harm resulting from their commercial activities. In this sense the "polluter pays principle" would constitute a true cost internalization mechanism.

(d) Create a Trade and Environment Institution

- An institutional capacity such as an International Trade and Environment Panel must be granted the jurisdiction pursuant to any trade agreement to identify, monitor and resolve environment and trade issues as they pertain to the agreement itself. Direction to national governments would be given to initiate domestic or co-ordinated international action to promote environmentally sound practices and to call for amendments to the trade agreement where necessary in order to accomplish this goal. Representation for non-governmental organizations on this committee would be required.

(e) Establish an Environmental Fund and Other Incentives

- Create a financial mechanism such as an Environmental Fund. Moneys received from any levy placed on imports bearing environmental costs from developing countries would be transferred back to those countries for the purpose of improving their environmental programs and regulatory enforcement.
- Grant tariff protection and other assistance to promote the establishment of industries whose policies ensure environmental protection and exclude development policies harmful to the environment. This would permit developing countries to utilize otherwise outlawed approaches to assist industries in becoming environmentally sound.

3. The Enhancement of Environmental Standards

The potential exists for the "harmonization " of environmental standards within the context of trade agreements to weaken environmental standards to the lowest level among nations.

To prevent the weakening of environmental standards, trade agreements must observe the following environmental protection measures:

- Uniform minimum standards must not interfere with the regulatory power of any level of government within a given nation to apply higher domestic environmental protection and national resource conservation standards.
- The negotiation of any harmonization measures must be undertaken by democratically accountable political institutions and shall take place in an open transparent forum which offers full opportunities for public participation.
- Developing countries must be offered further technical and financial assistance so that they may improve and enforce their environmental and health and safety standards.

4. Enforcements Mechanisms

A formal commitment of environmental and resource conservation measures by contracting parties is only valuable if the agreement has effective implementation and enforcement measures. The yardsticks of implementation and enforcement are the means by which the effectiveness of trade agreements in dealing with environmental concerns can be measured.

Retaliatory trade sanctions and mechanisms are an effective means of enforcing environmental regulation. Other measures which will play an integral role in implementing environmental protection and resource

conservation initiatives under trade agreements are the following:

- The implementation of domestic legislation which requires domestically owned businesses operating abroad to use domestic environmental and workplace compliance certificates in instances where applicable foreign standards are less strict;
- The guaranteed right of all nations to use subsidies and other public programs to promote environmental protection and resource conservation objectives;
- The professional environmental expertise of trade dispute resolution bodies and the institutional ability to address environmental concerns in a transparent process that guarantees full public participation;
- The placement of the onus to prove trade distorting impact and intent upon those who challenge any environmental regulation as being a non-tariff trade barrier; and
- The application of internationally co-ordinated or unilateral countervailing measures to remedy the resistance of one country to environmental protection or resource conservation efforts, e.g. the failure of any country to meet environmental protection requirements could be challenged as an unfair subsidy allowing countervailing actions. This mechanism should only be effected when all others have failed.
- In case of conflict between international environmental agreements and trade agreements, the former shall prevail over the latter.

## 5. Public Participation

Public participation in the trade negotiation and implementation process is crucial to ensure that the environmental dimensions and potential environmental impacts of the proposed trade agreement are adequately identified and addressed. The public in most cases would involve affected local communities and/or NGOs representing the public's interest.

There are four key elements of meaningful public participation.

### (a) Access to the Negotiating Process

The public should have access to the negotiating process through meaningful consultation mechanisms. These mechanisms could include significant NGO representation on trade advisory committees and environmental working groups, regular updates from and dialogue with negotiators, and opportunities to make



representations to the various working groups within the negotiation process. In order for the public to be able to provide meaningful input, it must have access to relevant information. It should at least be given the same level of access that is made available to the business community.

(b) Participation in Trade Related Institutions

Agencies or institutions that nonjudicial in nature created by a trade agreement should include NGO representation. One such agency would promote dispute settlement mechanisms, which foster consultation and conciliation prior to any formal hearing process.

(c) Participation in Trade-Dispute Resolution Process

The public should have standing before the trade dispute resolution agency, including any appeal process, in order to ensure that the agency fully considers the environmental aspects of a trade dispute.

(d) Financial Support

Representatives of the public must be given adequate financial support to allow them to participate in the EIA process, in advisory activities and in the dispute resolution process.

Conclusion

Trade agreements must contribute to economic activity that is environmentally sound and improves the quality of life of the citizens of the contacting parties.

Environmental concerns must be integrated into the development of trade policies to ensure that trade agreements promote environmentally sound development in the North and South, not create or exacerbate environmental problems.

