

1-1-1995

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## Recommended Citation

Justin R. Ward, Symposium, *Environmental Reform Priorities for the World Trading System*, 35 SANTA CLARA L. REV. 1205 (1995).  
Available at: <http://digitalcommons.law.scu.edu/lawreview/vol35/iss4/7>

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# ENVIRONMENTAL REFORM PRIORITIES FOR THE WORLD TRADING SYSTEM\*

## Summary of Remarks by Justin R. Ward\*\*

### I. THE URUGUAY ROUND GATT AGREEMENTS, THE WORLD TRADE ORGANIZATION AND THE COMMITTEE ON TRADE AND ENVIRONMENT

The Uruguay Round agreements, which enter into force this month, establish a new World Trade Organization [hereinafter "WTO"] that will supplant the more informal organizational structure that has existed throughout the GATT's history. As part of the Uruguay Round package, trade ministers from around the world chartered a new WTO Committee on Trade and Environment. This committee began preparatory work during 1994, and will be an important forum for dealing with the environmental issues surrounding the GATT regime.

### II. RECOMMENDATIONS TO THE WTO COMMITTEE ON TRADE AND ENVIRONMENT

The WTO Committee on Trade and Environment will operate with rather open-ended terms of reference covering a wide range of complex issues (see attached Ministerial Decision). To achieve badly-needed environmental reform of GATT and the WTO, the committee should develop recommendations in the following priority areas:

#### A. *Public Participation in the WTO Regime*

The GATT system has operated for decades with very limited opportunities for public participation, and general requirements that meetings and documents be kept secret. The Uruguay Round treaty preserves GATT's insular traditions, with only modest concessions toward greater openness.

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\* Prepared for the California State Bar Environmental Section's Conference on NAFTA and GATT: The Impact of International Treaties on Environmental Law and Practice La Jolla, California January 1995

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The current restrictions on public access and disclosure work against the objectives of liberal trade, environmental protection and good government. Limiting non-governmental involvement impedes the flow of ideas and information needed for sound policy choices, and fuels public distrust of GATT's role in world commerce. The Committee on Trade and Environment should institute, and recommend to the WTO at large, concrete steps to increase public participation in the GATT regime, starting with adoption of a recent U.S. proposal to allow non-governmental observers at committee meetings.

### B. *Environmental Disciplines for GATT Parties*

Current GATT rules impose no environmental protection obligations on participating countries. There is no prohibition against direct or indirect subsidies for natural resource extraction, and no means to redress wide differences in pollution control or conservation standards. The WTO Committee on Trade and Environment should formulate GATT disciplines to make the trading system more consistent with, and supportive of, policies that account for the full costs of environmental impacts.

#### 1. *Production and process methods*

Current GATT rules require that countries apply even-handed treatment to "like products," whether those products are produced domestically or imported. However, some recent GATT dispute panel decisions have concluded that GATT disciplines forbid differentiation of traded goods on the basis of production and process methods (PPMs) that are not reflected in the goods' physical characteristics.

The WTO Committee on Trade and Environment should recommend that GATT rules incorporate common PPM requirements for countries participating in the world trading system. Development of the actual requirements would fall outside the committee's competence, and should therefore be undertaken under the auspices of other international institutions with expertise on environmental protection and sustainable development. Establishment of any common minimum PPM standards must fully protect the rights of individual countries and sub-national governments to adopt

more stringent environmental measures, subject to basic GATT rules barring arbitrary discrimination.

## 2. *Limiting Environmental Damage and Economic Distortions from Natural Resource Subsidies*

Natural resource subsidies (e.g., for timber, energy, water and livestock grazing) often cause both economic inefficiency and environmental damage. Such subsidies run counter to the longstanding GATT objective of removing trade distortions, but are not limited by current GATT disciplines. Moreover, agricultural subsidies in many OECD countries have fostered production systems that exceed environmental limits, distort trade, and cause social and economic dislocation. Notwithstanding some gains, the Uruguay Round falls well short of needed "green" reform of agricultural subsidies.

The WTO Committee on Trade and Environment should recommend a strategy and schedule by which the GATT Parties would phase out trade distorting subsidies for unsustainable natural resource development. The Committee should also recommend additional agricultural subsidy reforms, going beyond the terms of the Uruguay Round, to redirect government intervention to reward farmers for careful land stewardship and pollution prevention, rather than resource-depleting production of surplus commodities.

## 3. *Trade Related Investment Measures*

Implementation of the Uruguay Round will undoubtedly increase levels of international investment. It will be critical to ensure that investment liberalization under GATT does not come at the expense of environmental quality. Thus, the Committee on Trade and Environment should develop an explicit rule to forbid countries from weakening environmental regulations to entice new investment.

## 4. *Environmental Taxes and Border Adjustments*

Fees and taxes represent very promising instruments for addressing environmental problems surrounding municipal solid waste, highway congestion, greenhouse gas emissions and other issues. It is critical that any recommendations the trade and environment committee may render on this issue

fully support domestic and international efforts to internalize environmental costs.

The Committee's work should reinforce that GATT rules do not conflict with facially neutral taxes imposed on products in support of environmental or conservation objectives (e.g., the recent panel finding that the U.S. "gas guzzler" tax on fuel-inefficient cars is consistent with GATT's national treatment requirements). Equally important will be to ensure that GATT fully permits legitimate border adjustment fees to compensate for energy or pollution taxes imposed on domestic industries.

### C. *Removal of Potential GATT Conflicts with International Environmental Agreements*

A number of international environmental agreements, notably the Montreal Protocol, Basel Convention and CITES, employ trade restrictions to enforce compliance. Trade measures within these agreements raise the prospect of inconsistency with GATT rules, notably the "Article XI" prohibition on restrictions on international trade.

The WTO Committee on Trade and Environment should recommend provisions to remove the prospect of successful GATT challenges to international environmental agreements. The exceptions should be broadly drawn so as not to exclude any existing IEAs or to prejudice establishment of legitimate trade measures in future environmental conventions.

### D. *Trade Rules on Intellectual Property*

The Uruguay Round package contains an unprecedented new Agreement on Trade-Related Aspects of Intellectual Property Rights [hereinafter the "TRIPS" agreement]. The Committee on Trade and Environment should conduct analysis and formulate recommendations on how the new intellectual property rules might be harnessed to encourage beneficial technological innovations for pollution prevention or natural resource conservation. In addition, the Committee on Trade and Environment should present recommendations to ensure that implementation of the TRIPS agreement does not harm the interests of indigenous people with longstanding knowledge of biodiversity resources tapped for commercial purposes.

E. *Funding for Environmental Programs and Sustainable Development*

The WTO Committee on Trade and Environment should formulate concrete recommendations to direct new revenues associated with expanded trade to environmental protection and sustainable development. For example, substantial funds could be obtained through a small fee on cross-border trade and dedicated to improvements in environmental infrastructure and enforcement capacity. One priority will be to provide funding for sustainable agriculture, rural development and food security assistance in certain developing countries that may face higher food costs under the Uruguay Round agriculture reforms.

F. *Trade Liberalization and Transportation Services*

Trade liberalization of transportation services has potential to exacerbate environmental impacts including increased noise, congestion, air pollution, and diminished green space. The Committee on Trade and Environment should conduct analysis and develop recommendations to broaden relevant exceptions under the GATT services agreement to cover the full range of measures countries may take to alleviate transportation impacts on the environment.

G. *Product Standards Issues*

In its chapters governing "sanitary and phytosanitary" measures [hereinafter "S&P"] and "technical barriers to trade" [hereinafter "TBT"], the Uruguay Round agreement promotes international equivalence of product standards as a means of reducing non-tariff trade barriers. Portions of the agreement could provide a basis for successful challenge to certain U.S. health and environmental standards; for example, the new TBT text would require generally that technical standards constitute the "least trade restrictive" ways of achieving legitimate purposes such as resource conservation or environmental protection. This controversial language gives unprecedented discretion to GATT panels in making judgments on facially neutral regulations, and is considerably less deferential than comparable TBT provisions in the North American Free Trade Agreement.

As implementation of the Uruguay Round moves forward, the GATT Parties must ensure that the S&P and TBT agreements do not infringe the rights of individual Parties and their sub-national governments to set and maintain health and environmental standards more stringent than international norms. The WTO Committee on Trade and Environment should revisit provisions such as the "least trade restrictive" measures test in the TBT chapter, to ensure that GATT implementation does not lead to attenuation of environmental regulations. The Committee should also seek to ensure that GATT rules do not impede innovations in eco-labeling.

### III. INSTITUTIONAL MECHANISMS TO COMPLEMENT THE WORK OF THE WTO COMMITTEE ON TRADE AND ENVIRONMENT

The WTO Committee on Trade and Environment is not equipped to handle the complete array of issues surrounding trade and the environment. Thus, additional institutional frameworks will be needed to complement the committee's work. Various experts have recommended establishment of a new international organization that would provide the same kind of multilateral coordination and guidance on environmental matters that the GATT has provided on trade.

In the near term, at least three strategies are needed to assure that sufficient environmental and sustainable development expertise is brought to bear on the work of the WTO Committee on Trade and Environment. These include: (1) close coordination between the Committee and other international organizations (e.g., OECD, UNEP) engaged in trade and environment activities; (2) establishment of an Inter-governmental Panel on Trade and Environment, modeled along lines similar to the Inter-governmental Panel on Climate Change, to provide the factual and analytic foundation for reforms linking trade, environmental protection and sustainable development; and (3) an expanded role on trade and environment for the United Nations Commission on Sustainable Development.