

**Havana Workshop on Trade and Environment  
31 May-2 June 2000**

**DRAFT WORKSHOP REPORT**

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**Havana Workshop on Trade and Environment**  
**30 May- 2 June 2000**

**I. Agenda**

**Tuesday, 30 May**

Meeting with the Cuban National Committee on Trade and Environment

**Wednesday, 31 May**

**Havana Workshop: “Strengthening Research and Policy Making Capacity on Trade and Environment in Developing Countries”.**

**First Morning Session (9h00-13h00)**

**Opening 9h00-10h00**

Representative from the Cuban Government

Representative from UNDP, Sr. Luis Gómez-Echeverri

Representative from UNCTAD, Sr. Rene Vossenaar

Foundation for International Environmental Law and Development (FIELD),

Srta. Beatrice Chaytor

**Biodiversity –related issues 10h00-13h00**

- Presentation by Mr. Jorge Cabrera Medaglia (Expert on Biodiversity Issues)

1. National experiences for the protection of traditional knowledge and *sui generis* systems

- Brazil
- South Africa
- Costa Rica
- Cuba
- India
- Philippines

Discussion

2. Experiences with benefit-sharing

- South Africa
- Brazil
- Costa Rica
- Philippines
- Tanzania
- India

Discussion

### **First Afternoon Session (14h00-18h00)**

#### **3. Summing up of the discussions on biodiversity Issues 14h00-15h00**

#### **Multilateral Environmental Agreements (MEAs), in particular The Biosafety Protocol 15h00-16h00**

- Presentation of the study prepared by FIELD (Ms. Beatrice Chaytor)
- Presentaion by Ms. Risa Schwartz (WTO)

Discussion

#### **Trading Opportunities for Environmentally Preferable Products (EPPs) for developing countries**

- Presentation on “Organic food products and certification issues” (Ms. Veena Jha)
- Presentation from South Africa

Discussion

**Thursday, 1 June**

### **Second Morning Session (9h00-13h00)**

#### **Market Access**

##### **Agricultural Products**

- India
- Tunisia

Discussion

##### **Fisheries Sector**

- Cuba
- Bangladesh
- Tanzania

Discussion

### **Second Afternoon Session (14h00-18h00)**

#### **Agriculture: Trade Liberalization and the Environment 14h00-16h00**

- Costa Rica
- Tunisia
- Brazil

Discussion

#### **Textiles 16h00-18h00**

- Bangladesh
- India

Discussion

**Friday 2, June**  
**Third Morning Session (9h00-13h00)**

**Issues Related to the Export of Domestically Prohibited Goods (DPGs)**

- Bangladesh
- Philippines
- Costa Rica
- Uganda
- Tanzania
- Tunisia
- Brazil

Discussion

**Technology Issues**

- Philippines
- India
- Costa Rica
- Tunisia

Discussion

**Capacity –Building for Technology Transfer**

- Tanzania
- Bangladesh
- Uganda

Discussion

**Third Afternoon Session (14h00-18h00)**

- Presentation by Ms. Risa Schwartz (WTO) Trade and Environment:  
Post Seattle
- Preparing forthcoming events
- Terms of reference for future studies
- London Meeting/ Publication of Papers
- UNCTAD Expert Meeting on Traditional Knowledge
- Final Workshop in South Africa

## **II. Summary of Substantive Discussions**

**Wednesday 31 May 2000**

The first day was largely dedicated to presentations and debate on biodiversity issues, especially benefit-sharing, the protection of traditional knowledge and the Biosafety Protocol. The main issues from the discussions were as follows:

### *Legal Regimes on Access to Genetic Resources*

Countries which are Party to the Convention on Biological Diversity (CBD) must adopt national legislation to regulate access to their genetic resources in line with Articles 3, 15, 16 and 19 of the CBD. These access frameworks should include the requirement of prior informed consent of both the State and the owners of the genetic resources, as well as the conditions to achieve a fair and equitable sharing of the benefits derived from the use of those genetic resources under mutually agreed terms.

The experience of countries that have developed this legislation, such as Costa Rica, shows that there are some key issues that must be taken into account when developing legislation on access: the scope of the access system, who will give consent to access, benefit sharing arrangements and types of benefits, sanctions and penalties, monitoring, consideration of ex situ materials, etc.

Access procedures should cover material transfer agreements, contracts, access to agricultural resources, academic and scientific research, etc.

Some of the difficulties identified by national experiences are the uncertainty associated with bioprospecting, ownership of the resources, the high transaction costs that derive from complex regulations, the value of genetic resources, the changing role of biotechnology and the possible impact of access regulations on national research.

Some factors identified as contributing to an effective access regime are: the existence of a defined institutional policy that provides legal certainty, flexibility, involvement of different stakeholders in the planning process and national capacity on institutional, legal and scientific issues.

Brazil has been working on an access regime since 1995 and there is a draft Bill in Congress on genetic resources and traditional knowledge. Costa Rica adopted its Biodiversity Law in 1994, which established a National Committee for Biodiversity Management (Conagebio). The Biodiversity Law has been challenged in the Constitutional Court and this is delaying its implementation.

### *Intellectual property rights (IPRs) and biodiversity*

IPRs on biodiversity have an impact on technology transfer and cause genetic erosion in the countries of origin of the biological resources. There was agreement that a way of ensuring that the genetic resources used in the development of a new product have been

acquired in accordance with the CBD would be to require a certificate of origin of the resources prior to granting the patent.

*Sui generis* or specialised systems are allowed under Art.27(3)(b) of the TRIPS Agreement for the protection of plant varieties as an alternative to patents. Each country must consider what system is most appropriate to their circumstances, either the UPOV Convention or a *sui generis* system. The links between biodiversity and the TRIPS Agreement are being considered by the CTE and the TRIPS Council in the context of the review of Article 27(3)(b) of TRIPS.

As regards traditional knowledge, IPR systems do not offer adequate protection for the knowledge, innovations and practices of indigenous and local communities. This traditional knowledge has a collective nature and has been developed and transmitted over generations. There is a need to explore alternatives to IPRs, including *sui generis* systems. Countries like India and Vietnam have established registers of traditional knowledge related to biodiversity. These registers provide a way of recording information that can be used in opposing patent applications that include elements of traditional knowledge as new inventions.

In the case of India, a *sui generis* regime is currently being discussed in Parliament. The objective is to promote the sustainable use of biodiversity and protect not only plant breeders but also farmers and indigenous peoples.

#### *Prior Informed Consent (PIC)*

PIC is a requirement of the CBD for access to genetic resources, subject to national legislation. Colombia, with the support of other countries, proposed to both the WTO and WIPO the inclusion of information on the country of origin of the resources in patent applications, in the framework of the negotiations of the Patent Treaty. If the country of origin is known it would be easier to prove whether PIC was lawfully granted for accessing the genetic resources. However, Canada and the US opposed the Colombian proposal.

#### *Benefit-sharing*

The sharing of both monetary (fees, royalties, etc.) and non-monetary benefits (technology transfer, training, joint research, etc.) need to be considered when discussing the terms of access. This may vary in case of commercial or research agreements. Developing countries need to develop adequate legislation to provide incentives for the sustainable use of their biological resources.

In this respect, it is crucial to develop capacity so that developing countries can negotiate mutually agreed terms of access with user countries. This capacity will also be very important in achieving a fair and equitable sharing of benefits.

## **Multilateral Environmental Agreements (MEAs), in particular the Biosafety Protocol**

Discussions on this topic centered around presentations made by FIELD and the WTO on the the Biosafety Protocol and its relation to multilateral trade agreements, particularly the Agreements on Sanitary and Phyto-sanitary Measures (SPS) and on Technical Barriers to Trade (TBT).

Three main points emerged:

- 1) The preamble of the Biosafety Protocol emphasizes the mutual supportiveness of the agreements.
- 2) The precautionary principle was incorporated and operationalized in the Biosafety Protocol.
- 3) The most recent MEAs include language which tries to avoid obvious conflict with WTO rules by inserting clauses about discriminatory measures; the potential for conflict therefore arises in the manner in which parties implement the MEAs.

The background to the issue is a long-standing discussion on the compatibility of MEAs and multilateral trade agreements. Recently, the relationship between the Convention on Biological Diversity (CBD) and TRIPS has been the subject of much attention.

## **Trading Opportunities for Environmentally Preferable Products (EPPs) for Developing Countries**

This item was introduced with a presentation by UNCTAD on the production and trade in organic agricultural products, with special attention to the findings of an UNCTAD project on organic tea in India.

Recent analysis indicates that niche markets for organic products continue to hold promise for developing country producers, with market growth of 25-30% in many countries. However, price premiums have been on the decline. It is important for developing country producers to work cooperatively with others to get a large enough supply, and not to neglect the domestic market.

Challenges facing developing country suppliers include:

- the high costs of certification,
- the range of different certification standards,
- decreased productivity, particularly in the beginning of the conversion to organic methods,
- the relatively long conversion period, and
- possible conflicts with food security goals.

There followed a presentation on EPPs in South Africa, looking at both agricultural and industrial EPPs. An example of the later was a wind-up radio requiring neither batteries nor electricity. It was pointed out in the discussions, that defining EPPs becomes trickier in the case of industrial EPPs.

There was a call by Cuba for all participants to prepare papers on national experiences in the export of EPPs for the next workshop.

**Thursday, 1 June 2000-06-01**

## **Market Access: Agricultural and Fisheries Products**

Discussions on market access commenced with a presentation by UNCTAD on the SPS Agreement, with special attention given to the cases of India and Vietnam. In all three cases which had been brought to the Panel (EC measures against hormone beef, Japan's import ban on fruit from the United States, and Australia's ban on uncooked Salmon imports from Canada), despite a favorable ruling, the countries had not implemented the ruling to date.

Several cases where developed country regulations seemed to be discriminatory were described. For example, EC regulation on marine products goes beyond hazard requirements, including, for example, that the box should not be dented and ceilings in the processing plant must be washed with potable water daily. Sometimes regulations are based on little scientific evidence.

Testing procedures could also be discriminatory. The possibility of developing international codes is a matter worth exploring.

India and Cuba shared national experiences. The former spoke of environmental and non-environmental requirements that impact India's exports, particularly PPMs. A representative of the Cuban Ministry of Fisheries described vigorous efforts and considerable investments it had made in its fisheries industries in order to comply with new EC regulations, and continue to export lobsters. Another Cuban government representative spoke of the difficulties the country had faced with standards on honey and coffee. With coffee, the EU proposed guidelines call for limits on ocratoxin which are too small to be detected by most laboratories in the world, thus creating a monopoly for the testing procedure.

The situation in Vietnam and India was similar: often limits are set arbitrarily and detection facilities don't exist. The representative of Brazil wondered if coffee-exporting countries should organize to work towards more reasonable limits. Otherwise, she worried that Africa's coffee exports to the European Union would be cut off completely.

The Brazilians also spoke of the detrimental effects of the EU ban on phthalates in plastics, pointing out that just one kind of phthalates is toxic, although all were banned, and that after 20 years of using PVCs, there was not a single case of human health damage documented.

There was widespread agreement that, where SPS measures seem to be discriminatory, it is important to document the cases and raise it in the WTO. The representative of the WTO secretariat said that the best time to discuss is right after a country notifies the TBT or SPS of a new standard. It's best and less expensive to discuss in the committees and bilaterally before heading for dispute settlement.

Participants are encouraged to do quantitative studies in their countries on this subject. This information could be presented at the London workshop in September, where an EU audience could listen to concerns expressed.

## **Trade Liberalisation and the Environment**

This topic focused on country experiences in agriculture and textiles.

### **1. Agriculture**

The role of the WTO and other international organizations in promoting co-operation and co-ordination among countries on the benefits of eliminating trade distortions and restrictions in the agriculture sector is recognized in chapter 14 of Agenda 21. The WTO Secretariat (WT/CTE/W/67) has documented that although trade restrictions and distortions may impose burdens on society as a whole, they are particularly difficult to remove due to resistance from domestic coalitions and special interest groups. Institutional reform, permitting trade policy to be viewed in an economy-wide perspective along with the net benefits to society at large – including environmental benefits – would facilitate the task of removing trade restrictions and distortions.

In Brazil, trade liberalization has been an important tool in the promotion of sustainable agricultural production. New production methods take into account agronomic, social, economic and ecological aspects. Private producers are increasingly the main investors in research and development in the agricultural sector. Production of soya, corn, millet and sorghum has shifted to conservation tillage or non-tillage systems. Several environmental and economic benefits have flowed from this new system, including reduction of use of herbicide and conservation of biodiversity, and increased production yields.

The concept of multi-functionality in the agriculture sector has been raised in the WTO in the context of addressing its environmental aspects. Many developing countries are concerned that the concept may be used to justify the maintenance or increase of subsidies in the agriculture sector.

There was agreement that developing countries should try to seize the initiative on the concept of multi-functionality and ensure that it communicates the precise meaning, which has relevance for their concerns in the trade and environment context, for instance, by using terms such as “sustainable agriculture and rural development” (SARD) which has been identified by the FAO. Developing countries should ensure that the debate includes analysis of both developmental and environmental concerns and needs.

### **2. Textiles**

(trade liberalization and market access issues)

In Bangladesh there has been a rapid growth in the garment industry, particularly for ready-made clothing. From 4 firms in 1976, the industry has expanded to 2313 firms in 1997. The industry is concentrated in the capital city of Dhaka, and surrounding suburbs. This has created extra burdens on basic municipal services such as electricity, roads, water, drainage, waste management, etc. Housing for garment workers, usually migrants from rural areas, poses a serious problem.

A huge amount of waste is generated by the industry, including pieces of left over clothes, plastic materials; the problem is compounded by inadequate or improper disposal. Gradually the situation has improved with recycling of these materials for use in the production of toys, cushions, mattresses, etc. nevertheless the garment industry is not considered a major cause of environmental concern, although the link with the burgeoning textile industry may pose some individual environmental problems. This is however being addressed through establishment of environmental waste management systems.

In Tunisia, due to the trade agreement with the EU, many firms are responding to both product requirements and voluntary eco-labelling programmes in the textile sector in order to maintain market access. Firms have had to phase out use of pesticides in the cultivation of cotton, toxic substances in the production of polyester and hazardous substances in final stages of production. Many have complied with ISO 14,000 environmental management systems. One local firm has invested in the development of its own eco-label.

In India, the banning of azo dyes by Germany has affected many small and medium sized firms in the textile industry. Firms only had a year to stop using azo dyes or face the embargo. Once Indian firms had adapted to the changes, Germany then proceeded to ban all derivatives of azo dyes, justifying its decision on the precautionary principle. Indian firms have also been adversely affected by the inflammability criteria used by the US on garments exports.

### **Capacity Building for Technology Transfer**

Tanzania highlighted aspects from the paper presented at the first regional workshop.

- Cleaner production systems have been established as part of compliance measures with the Montreal protocol and the phase out of ozone depleting substances.
- Both individual and institutional capacity building is essential for the attraction of technology transfer and using the technology once it is obtained.
- Since the paper was presented, Tanzania has established a Cleaner Development mechanism for the strengthening of capacity on technology transfer.

**Friday, 2 June 2000**

### **Technology Transfer**

References were made to the technology transfer discussions in the Philippines where discussions had mostly focused on TRIPs and technology transfer, as well as the relationship between the structure of markets and technology transfer. For example, in the Philippines it had been emphasized that not only TRIPs, but also several other agreements in the WTO had binding commitments on technology transfer and it was a moot point whether these obligations had been honoured. It was additionally argued that

trade liberalization created a bias in favour of trade in goods rather than trade in technologies. Further, mergers and acquisitions had concentrated ownership of technologies into even fewer hands, thus making it difficult to disseminate them particularly to developing countries.

The debate in Cuba had evolved from these positions, as there was a greater emphasis on exchange of national experiences with respect to technology management and technology development, rather than technology transfer. It was mentioned that several of the participating countries were spending a high proportion of their GDP on research and development, but were yet unable to move from the stage of R&D to commercialisation of technologies. It is at this stage that serious capacity building efforts were required. Successful cases of technology development were also cited, such as the Merck-Imbio case of Costa Rica. In this case, bio-prospecting rights were made conditional to access to bio-technologies. Thus the role of the private sector in the development of technologies was considered to be very important, even though conditions for access may not always be favourable for developing countries. It was again emphasized that national governments sign MEAs, whereas technology for meeting objectives of MEAs rests with the private sector. Thus governments should be able to exercise some influence on the private sector to transfer such technologies.

Even in cases where technologies were available, managing environmentally sound technologies was deemed difficult. The case of CETP's (Common effluent treatment plants) in India was cited where only a quarter of the CETP's installed over a year ago are still functioning. These problems were compounded in the case of small and medium enterprises that were handicapped in several ways because of lack of technology management, adaptation and development.

The role of appropriate financial infrastructure to promote technology management and development was also discussed at length. The importance of domestic policy in the form of fiscal incentives such as tax breaks and higher depreciation allowance on environmentally sound technologies, assistance with the formulation of appropriate projects to access GEF and other funds, R&D collaboration between State sponsored research institutes and the private sector, as well as multilateral assistance through UNIDO and other such agencies in the area of clean technologies was discussed. The need for forging a methodological link between Financial and technology transfer agreements within the GEF and other multilateral fora was also emphasized.

On future work the following were emphasized:

- 1) Develop a database on finance and clean technology transfer through bilateral and multilateral agencies.
- 2) Intensify national capacity building in developing projects on clean technology transfer that can be funded by international organizations.
- 3) Design mechanisms for the better management and development of clean technologies.
- 4) Provide domestic incentives such as tax breaks or accelerated depreciation for cleaner technologies.
- 5) Special mechanisms for SMEs on technology transfer.

## **Domestically prohibited goods (DPGs)**

Discussions on DPGs indicated that trade in DPGs continued unabated often in the absence of complete information on the part of importing developing countries. However, concern was also expressed by the more advanced developing countries that valuable secondary resource materials such as used metals may be excluded from imports as they would be treated as DPGs. It was also discussed that while chemicals such as DDT were DPGs in developed countries, developing countries may often need to use such materials because of the threat of malaria. Thus the need to ban the import of DPGs has to be balanced in several cases with health, economic or other domestic concerns. It was also felt that in the CTE more progress and discussion was needed on this issue.

While trade in DPGs continues at the global level their adverse health and environmental effects are experienced to a different degree and a different level by developing countries. Those that are technically less advanced experience it more acutely than those which have the wherewithal to regulate such trade. While existing MEAs cover several DPGs, they do not cover consumer products. Moreover, in most developing countries domestic and institutional structures may be inadequate to address the problems arising out of trade in DPGs.

On future work the following were emphasized:

- 1) Development of domestic legislative frameworks to deal with this problem.
- 2) Export notification of DPGs under the WTO should be revived.
- 3) Information sharing mechanisms on DPGs between developed and developing countries.
- 4) South-south information sharing.
- 5) Inclusion of consumer products in the WTO notification on DPGs.

## List of project focal points, as of June 2000

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## List of Cuban participants

In addition to Raúl Garrido, Belsis Llorente y Natacha Gumá, the following Cuban officials participated in the workshop:

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