

A STANDING CONFERENCE ON TRADE AND ENVIRONMENT

A Proposal by the
International Institute for Sustainable Development (IISD)
and IUCN - The World Conservation Union

IISD and IUCN propose the convening of a Standing Conference on Trade and Environment (SCTE). The Conference would be a forum for achieving coherence in environmental policy as it relates to trade. It would gather the key environmental actors with an interest in trade policy, review policy objectives and proposals, and seek to formulate practical recommendations, which could be introduced to the WTO and other policy forums. SCTE is would be a light structure, not a new organisation. Uniquely, it would gather intergovernmental organizations, secretariats, and key elements of civil society.

Background

Trade liberalization can contribute to sustainable development, provided trade and environment policies are harmonized and mutually supportive. At the global level, trade policy is relatively coherent. WTO administers some 24 multilateral trade agreements within a common framework of rules and disciplines. In comparison, environmental policy lacks coherence. Responsibility for environmental management in respect of trade is dispersed, depends on relatively weak and underresourced departments of government, and is served at the multilateral level by a large number of organisations. The creation of a World Environment Organization to mirror WTO is currently unrealistic because of the nature of environmental challenges. At the same time, there must be an attempt to build harmony and coherence in environmental policy as it relates to trade.

Why environment cannot be ignored

The WTO has made little progress towards the goal articulated in its Preamble - to ensure that trade liberalization is supportive of sustainable development. Debates in the WTO Committee on Trade and Environment have bogged down, and there is no coherent approach to the environment across the different organs of WTO. To make matters worse, the WTO Dispute Settlement mechanism has demonstrated serious disdain towards environmental arguments. As a result, there is now a very real risk of the environmental community turning against the WTO, and seeking to undermine it.

If this is to be averted, significant movement is required on at least two fronts. The WTO must open itself and its operations to a far wider range of opinion and ideas, and it must show increased sensitivity to broadly-supported social and environmental objectives.

And the environmental community must build coherence in their proposals and introduce politically and operationally realistic proposals into the trade debate.

SCTE aims to provide a forum to address the latter concern.

Who would participate?

SCTE would be an open forum, though a balance would have to be found between participation and efficiency. In addition to governments, the key participants would be international organizations with environmental responsibilities and an interest in trade. These would include the Secretariats of Multilateral Environmental Agreements at the global and regional level. Key international NGOs and professional associations would also be invited.

How would it be organized?

The idea of SCTE is to provide a forum for achieving policy coherence without establishing a heavy new institutional structure. A Bureau could be formed which included the government hosting the SCTE session, the host of the previous session and that of the forthcoming session. An established organization, such as the ICTSD, could provide Secretariat services. Each session of the SCTE would determine the topics for the next session. The existence of SCTE would depend on its interest to the participants and the usefulness of its products. There would be no presumption of permanence; instead, each session would determine if and when a further session would be held.

Is SCTE a threat to WTO?

On the contrary. WTO has argued that its mandate is to consider the trade effects of environmental policy and regulation, and not to rule on environmental issues per se, or even on the environmental impacts of trade policy. At present, there is no single environmental counterpart to WTO in this respect. As a result, there is no clear and effective channel for introducing widely-agreed environmental policy proposals into the WTO system. SCTE could make the work of WTO more effective and coherent, provide it with a sound environmental counterpart, and help it achieve its preambular goal of supporting sustainable development.

Where should the SCTE proposal be considered?

IISD and IUCN propose that the establishment of the SCTE be one of the key outcomes of the proposed High-Level Meeting on Trade and Environment planned for early 1999.

ANNEX

Arguments in Favor of a Standing Conference on Trade and Environment

The Singapore Ministerial Conference of the World Trade Organization (WTO) documented the limitations of the WTO process on trade and environment. This has been confirmed by the subsequent work in the Committee on Trade and Environment and by the second WTO Ministerial in Geneva.

It is now evident that an organization responsible for trade cannot address the linkages between international trade and environmental policy on its own. At the same time, there is ample evidence that the environmental interests with respect to trade policy have not been articulated effectively by the available international environmental forums.

A Standing Conference on Trade and Environment (SCTE) can provide a solution to these dilemmas. The SCTE will include key environmental actors with an interest in trade policy, including representatives from governments, appropriate international organizations, global and regional environmental regimes, and from international civil society. The SCTE will be a light structure, not a new organization. Its purpose is to review policy objectives and proposals, and to seek to formulate practical recommendations, which can be introduced to the WTO and other appropriate policy forums. It will articulate the environmental interest in trade policy in such a manner that further steps can be taken through a process that is acceptable to all concerned.

The Context

A number of recent developments in trade regimes have provided impetus to the trade and environment debate and have created the impression that effective environmental management and trade are incompatible. That seems short-sighted.

As environmental policy confronts the need to identify measures to achieve sustainable development, a condition of long-term success in attaining essential environmental goals, it has become necessary to incorporate the realities of international economic policy and its implications for development into the patterns of environmental management. In this regard, environmental policy is intimately linked to developments in international

economic policy. Indeed, every major trend in economic and development theory and practice has tended to engender a corresponding response seeking to address the environmental risks associated with each of these economic trends.

International economic policy at the end of the twentieth century is characterized by the emergence of trade and international private investment as central factors. With the maturing of international financial markets and the elimination of the systemic conflict between market-based and centrally planned economies, trade and investment must be seen as essential tools in the effort to secure sustainable development.

Trade can foster economic growth, which is essential to achieving sustainability. Growth, however, does not provide automatic environmental benefits. These will only be realized if policies are in place to ensure that environmental criteria are respected. As markets become more international, the corresponding environmental disciplines must also become more internationally defined. The trade and environment agenda concerns the identification of essential market disciplines to ensure that development is sustainable and their implementation in a manner that is compatible with trade liberalization.

In addition to promoting economic growth, trade and investment contribute to innovation, economic restructuring and greater efficiency which can help address environmental concerns, particularly in manufacturing. Certainly industries with high levels of innovation and investment have greater opportunities to address environmental concerns than entrenched, inefficient industries with little scope for investment.

At the same time, expanding trade creates numerous new problems that environmental policy makers must confront. Expanding economic activities without due regard for environmental imperatives leads to environmental damage and creates a growing burden of environmental debts for future generations. Countries which pioneered pollution even as they developed their industries, including the United Kingdom, Germany and the United States on the one hand and Russia and the countries of Central and Eastern Europe on the other, demonstrate that the repair of past environmental damage is a crushing burden for some industries and for many communities.

Manufacturers confronted with environmental requirements fear that their competitors may benefit from less stringent measures. There is scant evidence that stringent environmental measures adversely impact the competitiveness of manufacturers of

specialty products and goods that benefit from brand name or intellectual property rights protection. In the production of primary commodities, however, and in the production of commodity manufactures, the situation is much more complex. Even modest additional costs often cannot be recaptured on highly competitive unsegmented international markets. Moreover it is difficult to separate actions that realize competitive advantage rooted in differing natural endowments from actions that degrade the environment in an unacceptable manner. Trade liberalization creates conditions where competitive disadvantage in commodity markets can translate directly into deteriorating market position. This creates fierce pressures to avoid or delay needed environmental measures.

In many instances even the perception of competitive disadvantage can create pressures to downgrade environmental measures. And less successful managers the world over have found that blaming environmental measures for their difficulties is one of the easiest ways to escape responsibility, never mind that this further contributes to the perception that environmental controls are onerous.

The need for trade policy to openly confront the environmental dimensions of international trade are no less real. At a political level, trade policy depends on a tenuous consensus that the undeniable pain for some individuals, corporations and communities inflicted by trade-induced economic restructuring is more than justified by the benefits for other individuals, corporations and communities and for the economic system as a whole. Those adversely affected by trade-related restructuring will tend to be more vocal than those who benefit—a phenomenon well known to environmental policy makers. It cannot be a matter of indifference to trade policy if those for whom environmental integrity represents an overriding priority—whether individuals, enterprises or policy makers—view trade liberalization as a threat to their ability to achieve this priority.

It is moreover increasingly clear that certain basic environmental requirements are essential disciplines for any market economy, not really different from the need for enforceable contracts, good measure, stable currencies and the protection of intellectual property rights. These environmental imperatives must be respected in international markets. The determination of these essential environmental disciplines, their implementation and the appropriate measures to enforce them are central to the nexus between trade and environmental policy which represents a critical dimension of sustainable development.

Trade and environmental policy are both international in character. Trade policy is by definition an international activity and few areas of environmental management remain that do not have significant international dimensions, even when they may not be global in character. Consequently the process of identifying essential environmental market disciplines and enforcing them is an inescapably international activity. International institutions capable of accomplishing this task have yet to emerge. However, both international environmental policy and trade policy have been areas of rapid and dramatic institutional innovation. It should consequently not be beyond our ingenuity to develop appropriate responses when they are needed.

By now it is clear that neither trade organizations alone—whether WTO, NAFTA, Mercosur or UNCTAD—nor environmental organizations alone can address the trade and environment agenda. Yet no process is emerging that will be trusted by the key actors and consequently holds the promise of developing constructive solutions. The proposal for a Standing Conference on Trade and Environment represents a process that can promote such an outcome.

Prior Efforts on Trade and Environment

The environmental interest in trade policy has not been articulated in a coherent manner by the many organizations that participate in the formulation of policies for environmental management and sustainable development at the global level. This includes UNEP, UNCTAD, UNDP, FAO, UNESCO and the secretariats of global environmental agreements (commonly referred to as “multilateral environmental agreements” (MEAs), a term that actually encompasses all environmental agreements with more than two parties, close to two hundred in number). It also includes national governments, which have demonstrated a lack of political will on these issues.

In the initial stages of the trade and environment process, a number of urgent decisions provided focus to the debate: the negotiations surrounding NAFTA, conclusion of the Uruguay Round, and a number of salient disputes in the GATT/WTO, from tuna/dolphin to reformulated gasoline, to shrimp/turtle. These multiple events served to highlight the importance of addressing trade/environment linkages, both to promote better environmental management and to avoid polarizing conflicts that could threaten the public consensus which underpins the process of trade liberalization. They also outlined

some elements important to long term resolution of the issues without, however, providing conclusive answers. At the same time, they led to the current impasse and forced the debate into a direction that may ultimately prove to have been counterproductive from the perspective of finding long term solutions.

More recently, focus has been much more difficult to achieve. The most important effort, involving a large commitment of human and financial resources, has been the work in the CTE. The meetings of Joint Experts on Trade and Environment of the OECD worked independently to define the issues, seeking to exercise the traditional link of influence and leverage between OECD and GATT/WTO. UNCTAD, UNEP, CSD, FAO, UNDP and the World Bank have all taken an active interest in the issue. None of these efforts have led to a clear and operational approach to resolving the outstanding questions. Several of them have suffered from insufficient transparency. A number of key actors, notably global and regional environmental regimes and representatives of international civil society have been inadequately represented or not at all.

Three years of work in the Committee on Trade and Environment (CTE) of the WTO have produced no tangible results. With an agenda that is too narrow, too technical and nevertheless too unfocused, the CTE has in effect been given an impossible task.

The difficulties encountered by the CTE have been aggravated by the complexities of establishing the WTO as a new organization derived from the GATT and by the difficulties inherent in implementing the results of the Uruguay Round. But the problems run deeper and appropriate responses acceptable to all concerned are not in sight, despite several years of effort, dating back at least to 1990. This perpetuates a feeling of frustration as the organizations responsible for trade find themselves questioned by environmental interests but nobody seems able to isolate the central environmental concerns and cast them in an operational mode.

In the debate about trade and environment, the development agenda, which intersects significantly with the trade/environment debate, is in constant danger of being left out, causing understandable apprehension on the part of developing countries. The major issues confronting the WTO at this stage have arisen primarily from the implementation of the environmental agenda of developed countries. Nevertheless it is vital to ensure that solutions take into account the high priority that developing countries must give to economic growth with a view to providing for the basic needs of their citizens. In other

words, there is a need to address the linkages between trade and sustainable development and not only those between trade and the environment.

Not only the WTO has floundered on these issues. None of the organizations with an interest in environmental issues—by now virtually all the organs of the United Nations system as well as a plethora of secretariats and smaller organizations—has been able to articulate the key issues linking trade and sustainable development in an effective manner. This lack of a clear set of priorities on the environmental side of the debate has rendered the task of trade institutions almost impossible. Without well articulated priorities from an environmental perspective, trade institutions will almost inevitably continue to cast the agenda in trade policy terms.

A number of approaches have been outlined to address the need to articulate the interest of environment and sustainable development in the trade agenda in an operational manner. None of these approaches appears likely to produce satisfactory results within the foreseeable future.

Agenda 21 included a Chapter on trade. The agreed text was overshadowed by anxiety concerning conclusion of the Uruguay Round, which was hanging in the balance at the time of the United Nations Conference on Environment and Development (UNCED). The Commission on Sustainable Development (CSD) was given the task of monitoring implementation of Agenda 21, including the Chapter on trade. It has not been a source of action-oriented proposals and while the CTE has monitored discussions in the CSD, there is no indication that these will lead to results that can be integrated into the trade regime.

The General Assembly of the United Nations held a Special Session (UNGASS) in June 1997 to review progress under Agenda 21. It documented the impasse on implementing the “Rio bargain,” that is the linked agenda of strengthening global environmental regimes while supporting development efforts in Southern countries, within the UN system. It also underlined the virtual impossibility of affecting the trade agenda through the institutions of the United Nations. It must be said that the WTO is maintaining some distance from the General Assembly, preferring to associate more directly with the Bretton Woods institutions. For this reason alone, UNGASS could hardly have been expected to break the continuing logjam in the trade and environment debate.

Several UN organizations have manifested their interest in the environment and trade agenda, most notably the United Nations Environment Programme (UNEP) and the United Nations Conference on Trade and Development (UNCTAD), leading to a jointly organized ministerial meeting that is widely considered to have been a failure. In fact, UNEP's position within the UN system, never very strong, is additionally burdened by the continuing debate about the consequences to be drawn from UNCED and the ensuing process based on Agenda 21. UNCTAD is in a period of transition, induced by diminished interest in its traditional concerns for commodity trade and developing countries and the emergence of the WTO as a fully-fledged organization capable of laying claim to the entire trade agenda at the global level. Other UN organizations such as the Food and Agriculture Organization (FAO) or the International Tropical Timber Organization (ITTO) have an organizational interest in trade and environment issues because of their concern for environmentally sensitive, widely traded commodities from agriculture and forestry.

The creation of a Global Environment Organization (GEO) has been suggested as a response to the need for more determined environmental action at the global level, in particular in relation to trade policy. The creation of a new organization is unlikely to change the dynamic that has led to deadlock on trade and environment, particularly in light of the existence of numerous global organizations that already have legitimate claims to be part of the trade and environment debate. More fundamentally, environmental management is not hierarchical in nature; it depends on the ability of organizations at all levels to work smoothly together. The creation of a large global organization is unlikely to contribute to this goal. In fact, small or large, a new global environmental organization could hardly escape the difficulties that have plagued UNEP, lack of political support, lack of resources, resistance from existing organizations, and an overwhelming agenda.

A number of initiatives have been launched by nongovernmental organizations.

In 1992, the International Institute for Sustainable Development (IISD), convened a working group of nine members with backgrounds in trade, environment and development. This group elaborated the Winnipeg Principles on trade and sustainable development. The Winnipeg Principles still provide a cogent framework for addressing the trade and sustainable development linkages. They have, however, not been operationalized as yet.

The World Wide Fund for Nature (WWF) has sponsored an Expert Panel on Trade and Sustainable Development, which has met several times thus far. The Panel, with a membership from government, environmental organizations and independent experts, all serving in their personal and professional capacities, has further developed the trade and environment agenda, focusing on trade in a number of key commodities, and prepared the way for a more formalized approach to the issues. At the same time, the Panel may provide a means to further develop some of the issues that have received insufficient attention to date.

In 1996, several nongovernmental organizations from developed and developing countries joined together to create the International Centre for Trade and Sustainable Development (ICTSD), located in Geneva. ICTSD provides a forum for consideration of major issues relating to trade and sustainable development and can act as a conduit between the Geneva-based trade community and environment and development organizations from around the world. It is not, however, designed to be a negotiating forum.

The various efforts to address trade, environment and sustainable development, whether in trade policy forums, environmental organizations, national governments or based on private initiative, are dispersed. The results of their work do not cumulate effectively. Above all, they remain incapable of delivering what is most urgently needed: an agenda for action, which identifies the underlying principles, the major issues requiring attention, and can serve as a tool for setting priorities in the trade and sustainable development debate.

Continuing inaction on these issues exacts several significant penalties. For trade policy the stakes are particularly high. Following several years of dramatically expanded acceptance of the process of globalization, there are signs of resurgent doubts. These are emerging in developed and developing countries alike. In the late nineties, the roiling crisis in emerging markets has exacted a fierce price from developing countries. Developed countries feel a renewed sense of vulnerability. Trade policy has never enjoyed broad public support. The manifest inability of the WTO to appropriately address issues of environmental management that intersect with the trade policy adds to the risk of increasing public estrangement from the trade agenda.

The agenda of sustainable development is also at risk if the opening of markets and societies is stopped. Sustainable development requires open societies and an unprecedented level of international cooperation. There is no reason to suppose that doubts about international markets will stop there and not extend to other areas of international action and engulf the responsible organizations, the United Nations in particular, in a miasma of doubt and resistance to necessary measures to promote sustainable development.

A “Standing Conference on Trade and Environment,” which will have no permanent existence and bring actors to the table who have been unable to participate thus far, can provide a vehicle to articulate the sustainable development agenda more cogently as it relates to trade policy. It will permit all those, public or private, concerned with the issue, to contribute to articulating the environmental interest in trade policy in a manner, which allows governments and international organizations to move forward constructively. A Standing Conference on Trade and Environment is also in the interest of those concerned primarily with trade, since it will permit the articulation of clear environmental priorities that need to be addressed in the trade regimes.

The Standing Conference on Trade and Environment

A Standing Conference is a meeting of parties with a shared interest, for example in identifying the major environmental issues that need to be addressed by trade regimes. Participation can be based on mutually agreed criteria. The Conference meets only as often and as long as it appears useful to the participants. Arrangements for a secretariat are made in such a manner that it does not create an incentive to institutionalize the Conference, for example located in the country where the next meeting will be held and including representation from the country where the previous one was held. This approach has worked for the Antarctic Treaty system and is applied in other international regimes as well.

The difficulties that have emerged in articulating the environmental interest in trade regimes are deeply rooted in the structure of international society and the characteristics of international organizations. International organizations, whether small environmental secretariats or the United Nations itself, are most effective when addressing a clearly defined agenda within a limited range of activities. There is also a clear relationship

between the precise definition of tasks and the willingness of states to transfer authority to an international organization. The secretariat of the stratospheric ozone regime is widely considered effective because it has a highly focused mandate and states recognize that they are incapable of solving this particular problem on their own. The secretariat of the Basel Convention is generally considered weak, not least because the important distinction between hazardous wastes and materials for recycling has never been adequately established leaving large areas of ambiguity; many states remain unwilling to permit the convention process to continue. A new international organization would get bogged down in much the same way as the CTE has done and would be subject to many of the pressures that have rendered UNEP largely ineffective in this area.

States remain the rule-makers of international society. A forum that addresses the linkages between environment, trade and sustainable development must articulate the issues in a manner that facilitates decision-making by states. Indeed, such a forum should not benefit from the presumption of continuing existence. A “Standing Conference” can exist as long as it is useful in articulating the agenda. It will cease to exist when states have developed an adequate response to this agenda, as they presumably will once it is clearly developed and represents a broad consensus of key international interests.

Participants: The range of issues and interests in many arenas of international action has grown so extensive that states alone cannot adequately articulate them. Some environmental and some trade issues are more effectively articulated by the international regimes that have arisen to represent them than by individual states, even large states. The number, variety and forcefulness of nonstate actors has grown large and includes organizations whose focus is exclusively international. States no longer fully represent all these interests. Many nonstate actors have learned to take their case to the international level after exhausting domestic options. The result is an international process that is fast outgrowing its institutional frameworks.

To be useful, the SCTE must include a range of nonstate actors, international regimes and subnational authorities which are not sufficiently represented in current international forums.

The SCTE should include representatives of states, of international regimes responsible for environmental management, and of key nonstate actors, including industry, research, and environmental organizations. It should also be open to interested representatives of

trade regimes. The precise composition remains to be determined in subsequent discussions. Precedents exist for “hybrid” forums, including environmental regimes that have become a joint enterprise of public and private actors, the increasing cooperation between international organizations and private voluntary organizations in the delivery of development services and humane interventions, the Toronto Conference on the Atmosphere which first articulated a number of key goals for the Framework Convention on Climate Change (FCCC), and the newly created Arctic Council. Provided the ultimate decision-making authority of public authorities remains in focus, a wide range of creative solutions can be utilized in the establishment and operation of the SCTE.

Because of their central role in subsequent rule-making based on the conclusions of the SCTE, the Conference should be open to any representatives of states willing to participate and a special effort, including a funding effort, needs to be made to ensure that developing countries in particular are adequately represented.

Certainly such an undertaking is unlikely to prove successful without the participation of key actors from each of these groups. On the environmental side, this will include the major intergovernmental organizations with environmental responsibilities, the secretariats of major multilateral conventions (including at least some regional bodies). Indeed, it is the lack of participation of certain key actors in each of the existing fora that has been a major source of ineffectiveness and distrust.

The central conundrum in identifying participants is to ensure that all key actors are adequately represented while maintaining an overall size that is conducive to the development of results. Presumably representatives from both global and regional trade regimes need to be included, as well as representatives of the key international organizations with environmental responsibilities. Of the more than 200 multilateral environmental regimes all those with global responsibilities should be included as well as a number of those with regional focus (on wildlife, regional seas, river basins, or the regional management of toxic substances for example).

Venue: The venue chosen for the SCTE needs to reflect the range of interests, which are at stake. The “host” country, including its state and non-state actors, will play a prominent role in defining the operations of the SCTE and managing the process of its preparation.

The host country should reflect the concern for environment and development. It is preferable that a non-OECD country be chosen for the first meeting, so as to emphasize the development dimension of the agenda.

The host country would coordinate the conference secretariat, augmented as appropriate by outside support.

It will be necessary to identify a possible venue for a subsequent meeting in advance. The continuing procedures of the SCTE will presumably involve decisions on future meeting(s) at each conference. Before launching, it is desirable to have a commitment from a country to host the second meeting. This could be an OECD country.

No commitment to a third or subsequent meetings should be made until it is clear that the process can produce useful results. In other words, while it is necessary to identify a potential host for the second meeting in advance of the first, such a commitment should remain conditional on the results of a first meeting.

Agenda and Preparatory Process: It is essential to ensure that the first SCTE is preceded by a preparatory process that includes both analytical effort and consultation between prospective participants. Agreement on the agenda is the most important outcome of the preparatory process and details obviously need to be left to those who are involved in it. For current purposes it suffices to identify a number of issues that could usefully be addressed by the SCTE.

The first meeting of the SCTE must develop widely acceptable procedures. The Conference must address at least one major substantive issue at each session. It will need to produce demonstrably useful results quickly so as to justify the effort and the resources involved. It is advisable to address the more contentious issues indirectly at first. The agenda of the first meeting must include items which also reflect the development concerns of developing countries.

Ultimately, SCTE will need to address the central issue of process and production methods and how to ensure that verifiable information becomes the basis for integrated management of environmental risks from goods that move through international trade.

Output: The SCTE must produce a report that includes all background materials, conference proceedings and a consensus statement. The latter should be brief and enunciate actions that specific agencies need to undertake, possibly including key elements for the development of legally binding agreements.

Follow-up: The decision to continue the process will be in the hands of the inaugural SCTE. It is preferable not to establish a permanent secretariat but to develop a process of revolving secretariats that has been used in a number of international regimes. The host country will be expected to manage the agenda of the meeting, assisted by a bureau composed of the previous host country, the prospective host country and representatives of other key actors, to be determined by the SCTE. It will be important to identify at an early stage a potential host for the follow-up event.

Budget: The SCTE will require a budget to fund preparatory meetings, analytical work and the participation of key actors from developing countries who would otherwise be unable to participate. This common budget is limited but substantial, probably on the order of \$1-2 million per conference.