

**GATT LAW ON AGRICULTURAL TRADE
IN LIGHT OF THE UNITED NATIONS
CONFERENCE ON ENVIRONMENT AND
DEVELOPMENT**

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3.1 Introduction

The evidence is clear that worldwide demand for agricultural products will grow dramatically during the following decades. This growth in demand will largely arise as a consequence of population growth in developing countries.¹ As agricultural production increases to meet demand growth, there will inevitably be an impact on the environment. The precise nature and extent of this impact may at present be difficult to gauge, but in view of serious existing environmental problems, for example with respect to land degradation, close attention certainly must be paid to the environment-related consequences of those governmental policies intended to stimulate growth in agricultural production and those likely to shift agricultural production among nations.

Over the past several years the present and prospective environmental impact of the rules governing the conduct of international trade, and particularly the rules of the General Agreement on Tariffs and Trade (GATT), has become the subject of intense scrutiny and controversy among governments, interest groups and scholars.² Much of the discourse on this topic reflects a tension between those who advocate liberal trade

1. *See, e.g., Agenda 21*, U.N. Conference on Environment and Development, U.N. Doc. A/CONF. 151/4, pts. I & II paras. 14. 1., 14. 34 (April 22 & May 1, 1992) (provisional agenda draft) [hereinafter *Agenda 21*]; PAUL HARRISON, *THE THIRD REVOLUTION, ENVIRONMENT, POPULATION AND A SUSTAINABLE WORLD* 9, 41-44 (1992); JIM MACNEILL, ET AL., *BEYOND INTERDEPENDENCE* 5-6 (1991).

2. For a description of major developments in this area, see Frederick M. Abbott, *International Trade Rules, World Market Conditions and Environmental Effects*, 2 (1991) *Y.B. OF INT'L ENVTL. L.* 227 (1992) [hereinafter *Abbott 1991 Review*]; 3 (1992) *Y. B. OF INT'L ENVTL. L.* (1993) (forthcoming).

policy because of its promise of promoting global economic growth and development, and those who advocate restraints on economic growth because of the adverse consequences of uncontrolled economic activity on the environment. There has developed an excellent scholarly literature on the relationship between the rules of the GATT and the developing law on the protection of the global environment. Professor Thomas Schoenbaum, a participant in this symposium, is the author of a particularly noteworthy study which lucidly defines the parameters of the debate.³

Rather than focusing on the broad theme of the relationship between trade and environmental law, this article will concentrate specifically on the subject of the rules of the GATT which affect agricultural trade and their present and prospective impact on the environment. This examination will be undertaken in the context of the results of the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in June 1992. The general conclusion of this study is that the results of UNCED and the present direction of the GATT in regards to agricultural trade, in terms of the GATT Uruguay Round negotiations and the work of the Group on Environmental Measures and International Trade, are largely complimentary. The agricultural-trade-related instruments which emerged from UNCED are supportive of an open international trading system in recognition of the need to enhance global agricultural production, while at the same time drawing the attention of the GATT to the requirement that agricultural development be undertaken in a sustainable manner.

In light of the global commitment to sustainable development, the GATT should pursue a comprehensive evaluation of the impact of its policies and law on the agricultural environment in conjunction with relevant international and national organizations. It would not appear practicable to complete such an evaluation, develop tentative proposals and complete negotiations with respect to changes considered necessary within the presently contemplated time schedule for concluding the Uruguay Round. Nevertheless the Dunkel Draft proposal for a Decision on Sanitary and Phytosanitary Measures deserves further attention from an environmental perspective prior to completion of the round. This Decision would establish a preference for the adoption of internationally-based sanitary and phytosanitary standards, permitting deviations for higher levels of protection if scientifically justified or if based on an objective risk assessment. The Decision implicitly would place the burden of proof for justifying a deviating measure on the party adopting it. The approach taken by the Decision is inconsistent with that taken by the North American Free Trade Agreement (NAFTA). The NAFTA

3. Thomas J. Schoenbaum, *Free International Trade and Protection of the Environment: Irreconcilable Conflict?*, 86 AM. J. INT'L L. 700 (1992).

approves the adoption of higher levels of protection than those based on international standards, and places the burden of proof with respect to challenging an allegedly unjustifiable environmental measure on the party challenging the measure. The NAFTA tilts more strongly in favor of environmental protection, even though its approach may be more likely to result in some degree of over-protection from a trade standpoint, and reflects a new approach to trade liberalization in the environmental context. While the UNCED instruments do not provide specific guidance as to the approach which should be taken on this issue by the GATT, the contracting parties should evaluate the Decision on Sanitary and Phytosanitary Measures in light of the UNCED instruments and the approach taken by the NAFTA.

While the UNCED instruments do not call for or imply a radical restructuring of the GATT, they do suggest that the GATT pay serious attention to areas where reform may be appropriate. This article suggests that the theory of comparative advantage underlying the GATT regime need not be viewed as antithetical to environmental interests. In view of UNCED and global recognition of the need to promote sustainable development, the GATT may well begin to encourage a long term perspective on comparative advantage that would require exporting nations to assure that the cost structure of their producing enterprises includes the domestic and global environmental costs of their activities.

The GATT is currently undertaking a reexamination of its rules with respect to the conduct of trade in agriculture. The principle focus of this Uruguay Round reexamination is to provide for a reduction in agricultural export subsidies and specified domestic subsidies, and to reduce national barriers to trade in agricultural products. These changes in GATT law and policy are expected to result in partial shifts in agricultural production from high income countries to low income countries,⁴ and to facilitate developing country participation in agricultural export trade.

When the more than 170 nations which met at Rio de Janeiro concluded their work, the results of UNCED included a Declaration on Environment and Development, the signature of Conventions on Biological Diversity and Climate Change, other statements of principle, and approval of a comprehensive Agenda 21 proposal for coordinated international action with respect to the environment.⁵ Developing countries face particularly acute needs with respect to improving their agricultural development, while at the same time they face perhaps the most serious potential

4. See *Trade and the Environment*, GATT Secretariat, GATT Doc. 1529 (Advance Copy, Feb. 3, 1992), at 33-34 [hereinafter GATT Study].

5. Documents from United Nations Conference on Environment and Development, Rio de Janeiro, June 3-14, 1992, reprinted in 31 I.L.M. 814 (1992), and Agenda 21, *supra* note 1 [hereinafter UNCED Instruments].

problems regarding agriculture-related environmental degradation. Nevertheless, since the agricultural trade policies of the industrialized countries result in local environmental degradation and contribute to the problems affecting developing country agricultural development, this paper will consider the situation of both developed and developing countries.

This paper will first briefly summarize the problem of the potential impact of international trade rules on the agricultural environment. This paper will then review the results of UNCED which may be relevant to agricultural trade. Next, the existing GATT situation regarding agriculture and development will be described. This paper will then evaluate the legal relationship between the GATT and the results of UNCED, considering whether the results of UNCED mandate specific GATT action with respect to agricultural trade. The Dunkel Draft proposals with respect to an Agreement on Agriculture and a Decision on Sanitary and Phytosanitary Measures will be evaluated in the context of UNCED. Finally, the agenda of the revitalized GATT Group on Environmental Measures and International Trade will be addressed.

3.2 The Problem of Agricultural Development, Trade and the Environment

Chapter 14 of Agenda 21, "Promoting sustainable agriculture and rural development," observes that:

By the year 2025, 83 per cent of the expected global population of 8.5 billion will be living in developing countries. Yet the capacity of available resources and technologies to satisfy the demands of this growing population for food and other agricultural commodities remains uncertain. Agriculture has to meet this challenge, mainly by increasing production on land already in use and by avoiding further encroachment on land that is only marginally suitable for cultivation.⁶

Paul Harrison, in *The Third Revolution*, makes the following observations:

In practice the world is not one big happy family, and does not go in for feeding itself. There are surpluses in some countries and deficits in others. Average food intake in 1986-8 ranged from 1604 calories per day in war-torn Mozambique, all the way up to 3901 in carnivorous Belgium.

Those who have money to buy food can always get it. Those who don't starve in the midst of plenty. The reassuring global

6. Agenda 21, *supra* note 1, at para. 14.1.

trends are no comfort to the world's 1100 million poor, nor to the 500 million who cannot afford a minimum diet for good health and normal activity. . . . In 1980 there were forty-six countries with average daily intakes below 2300 calories. Intakes in twenty-three of these actually fell during the next eight years (footnotes omitted).⁷

There appears to be a complex web of factors that are causing the developing countries to underproduce agricultural products and therefore to fail to meet their growing food requirements. Harrison suggests that uncontrolled population growth is perhaps the principal factor creating undue pressure on developing country agricultural resources.⁸ As population increases, average farm size decreases and individuals are forced to attempt to work marginal land. Land and associated resources are generally overused and depleted, reducing yields.

Other factors undoubtedly also adversely affect developing country agricultural production. These include: (1) a lack of attention to employing the appropriate farming technologies for local conditions; (2) uncertain or inequitable land tenure policies; (3) government policies which exacerbate deficiencies in land use practices, e.g. through underpayment to farmers on purchases by government-run sales cooperatives; (4) inadequate infrastructure development for storage and distribution, and; (5) deficiencies in agriculture-related education.⁹

A study of rural development in Africa undertaken under the auspices of the International Labor Organization¹⁰ suggested that policies on land tenure and population growth would be primary determinants of the future rate of economic development.¹¹ Slow growth in agriculture was viewed as a major reason for lack of overall economic growth, and a major reallocation of government resources in favor of increasing agricultural production was suggested.¹² The authors stated:

An issue of particular complexity and urgent importance is the striking of an appropriate balance between food crops for export and for domestic consumption. Neglect of the latter over a number of years has resulted in the paradoxical situation that a growing number of African countries with an overwhelming proportion of their population in rural areas are increasing their dependence on food imports. It is important, both for rapid growth and for poverty relief, that the

7. HARRISON, *supra* note 1, at 42-43.

8. See, e.g., *id.* at 128-29, 135-36.

9. See generally HARRISON, *supra* note 1; PAUL HARRISON, *THE GREENING OF AFRICA* (1987), and; Agenda 21, *supra* note 1, at ch. 14.

10. *AGRARIAN POLICIES AND RURAL POVERTY IN AFRICA* (Dharam Ghai & Samir Raswan eds.) (1983).

11. *Id.* at 27.

12. *Id.* at 28.

imbalances in resource allocation and other policy biases against the food sector be eliminated rapidly.¹³

Nevertheless, while it is not infrequently suggested that developing country attention to the production of cash crops for export reduces local food production and results in more rapid land degradation, this suggestion may well not be subject to empirical verification.¹⁴

John Mellor, in *The Role of Agriculture in Development*,¹⁵ observed:

The speed with which poverty has been reduced in association with rapid economic growth has been extraordinary, through little noted. This lack of attention to the connections among agricultural growth, overall growth, growth strategy, and poverty alleviation is unfortunate.

* * *

There is clear evidence to support the close relation between agricultural growth and poverty reduction.¹⁶

* * *

In those rural areas where Africa has the potential for high densities of population and substantial income generation, the highest potential for growth seems to be in export crops. This implies that, in Africa, export agriculture will be the most economically-sound activity for which to develop both institutions and physical infrastructure. This also implies that trade will be more important to the process of modernization of Africa. . .¹⁷

Despite varying emphasis among scientists, governments and private organizations as to the particular international and national policies that cause or aggravate the problems of agricultural underdevelopment and land degradation in developing countries, there appears to be a consensus that the factor which places the greatest stress on agricultural land and production is rapid population growth. Studies of the relationship between agricultural production and development consistently stress that land degradation is a serious threat to the future security of food supplies and that population growth aggravates land degradation.¹⁸ While politics may

13. *Id.*

14. HARRISON, *supra* note 1, at 122-25.

15. 1 TRANSNATL. L. & CONTEMP. PROBS. 313, 322 (1991).

16. *Id.*

17. *Id.* at 338.

18. *See, e.g.*, Agenda 21, *supra* note 1, at para. 14. 44, stating:

Land degradation is the most important environmental problem affecting extensive areas of land in both developed and developing countries. The problem of soil erosion is particularly acute in developing countries, while problems of salinization, waterlogging, soil pollution and loss of soil fertility are increasing in all countries. Land degradation is serious because the productivity of huge areas of land is declining just when populations are increasing rapidly and the demand on the land is growing to produce more food, fibre and fuel. Efforts to control land degradation, particularly in developing countries, have had limited success to date.

preclude that the observation be made directly by government officials, there can be little doubt that control over population growth is imperative to reducing stress on developing country agricultural land and production. What perhaps may also be said is that because there is a high correlation between improved standards of living and reduction in the rate of population growth,¹⁹ the key to reducing stress on developing country agriculture may well be a general attention to increasing economic welfare in the developing countries.

Agriculture-trade-related environmental issues are by no means limited to the developing countries. The high the level of agricultural subsidies paid by OECD country governments encourages high intensity farming by allowing farmers to recover non-market-recoverable costs, encourages the expansion of farming activities onto marginal land more susceptible to rapid degradation,²⁰ and results in surplus production that enters world markets at low prices that interfere with the development of production by and markets for developing countries.²¹ Payments of farm subsidies by OECD governments are not necessarily undertaken to increase world market share, but in many cases are paid for domestic policy purposes, e.g. to assure food security or for the nominal purpose of protecting the family farm. Nevertheless, present GATT law permits the payment of export subsidies with respect to primary agricultural products and undoubtedly contributes to their widespread usage by OECD countries. The GATT Uruguay Round negotiations are intended to reduce agricultural subsidies and are likely to have a beneficial impact on the environment in the OECD countries by causing marginal land to be taken out of production and by eliminating incentives for high intensity agricultural practices.²² Reductions in OECD country export subsidies are likely to shift agricultural production to the developing countries. Attention must be paid so that such shifts do not result in adverse environmental consequences in these countries.

The term adopted in the UNCED instruments for the proper balance between the requirements of economic development so as to promote global economic welfare and the need to preserve a vital global environ-

19. *See* WORLD BANK, WORLD DEVELOPMENT REPORT 1990 (1990), at 228-29, Table 26.

20. DENNIS T. AVERY, GLOBAL FOOD PROGRESS 1991, 214-21 (1991); OECD, RENEWABLE NATURAL RESOURCES 136-44 (1989).

21. *See, e.g.*, MACNEILL, ET AL., *supra* note 1, at 23.

22. Although the details of the recent settlement of the EC/US oilseeds dispute are not entirely clear at the time this article is written, it appears that the settlement principally involves a cap on EC acreage devoted to oilseeds production. *See* Keith Bradsher, *Trade Tug-of-War*, N.Y. TIMES, Nov. 23, 1992, at D3. If there is no corresponding tonnage limitation, this will on the one hand encourage more intensive agriculture on the acreage devoted to oilseeds production, and on the other hand result in marginal land being taken out of production or shifted to other uses. The settlement will thus potentially have both positive and negative environmental consequences.

ment for long-term survival and human welfare is "sustainable development." Embodied in this term is the idea that economic development must be approached in a manner that will not deplete the resources on which long-term welfare is dependent. With specific respect to agriculture, sustainable development appears to embody the idea that two goals must be pursued simultaneously: first, agricultural production must be increased/developed to meet the demands of a rapidly growing global population (concentrated principally in developing countries); second, the methods used to increase agricultural production must reflect an attention to short and long term impact on the resources which permit agricultural productivity.

What are the consequences for international agricultural trade inherent in the idea of sustainable development? The theory of comparative advantage that underlies the liberal international trading system teaches that, in the absence of barriers, nations will be encouraged to grow those agricultural products which as a consequence of their resources or technology they can produce most efficiently, trading those products for agricultural and other products produced comparatively more efficiently by other states. Through such production and trade, aggregate global output of agricultural products increases. But does comparative advantage contain an environmental component? This perhaps depends upon whether individuals and nations view economic development as a short or long term phenomenon.

It is possible to posit a view of comparative advantage in which each actor attempts only to maximize short term economic advantage and therefore is content to deplete the resource base upon which comparative advantage is built. Having exhausted its most efficiently used productive resources in the short term, each actor turns to its next most efficiently produced good or service. We may on the other hand posit the idea of comparative advantage viewed as a long term phenomenon. Within this construct, each actor attempts to secure the most productive long term use of its resources, employing conservation measures to assure that the resource base for its most efficient use of resources is not depleted. There is nothing about the theory of comparative advantage which teaches that enterprises within each state should not take into account the external economic effects of their activities, e.g., the health-related effects of their activities, on the social structure of the nation and the global community as a whole, thereby requiring these enterprises to impute the costs of environmentally-destructive activities to the cost of goods or services. There is no reason to assume within the theory of comparative advantage that each enterprise is entitled to shift the social costs of its activities to society as a whole. In a more highly evolved view of comparative advantage, a nation will be considered to be the most efficient producer of a good or service only when the full social cost of production is included

within the cost equation, and enterprises will continue to specialize, but in a "sustainable" manner. The consequence of "sustainable development" for liberal international trade therefor should be a shift to long term perspective. Each trade policy official should ask not only what is the short term economic interest of my country or its enterprises in the outcome of these negotiations, but how will the outcome of these negotiations be structured so as to reasonably assure that all parties, including those that I represent, absorb the social and environmental costs of their productive activities.

International trade law should not encourage agricultural practices which demand a rapid depletion or pollution of land if the long term cost of these activities to the global economy will exceed the short run advantage. Developing countries should be encouraged to reward farmers with the full value of their crops if that will encourage social stability and minimize violence and the social and environmental costs connected with it.²³ If current GATT tariff policies encourage developing country exports of tropical products when neutral policies would encourage crop diversification, higher income and reduction in the rate of population growth, then perhaps a change in GATT policy is in order. The GATT must attempt to incorporate longer term economic goals into its policy-making—economic goals which reflect the social costs of trading activities.

3.3 The UNCED Instruments

Among the instruments that emerged from UNCED²⁴ those of the most interest for present purposes are:²⁵

23. On the potential social costs of land degradation, see Thomas F. Homer—Dixon, et al., *Environmental Changes and Violent Conflict*, SCI. AM., Feb. 1993, at 38.

24. UNCED Instruments, *supra* note 5.

25. The Framework Convention on Climate Change, *reprinted in* 31 I.L.M. 849 (1992), and Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests, *reprinted in* 31 I.L.M. 881 (1992), are indirectly related to trade in agriculture. The Convention on Biological Diversity, and particularly Resolution 3 on the Interrelationship between the Convention on Biological Diversity and the Promotion of Sustainable Agriculture, recognizes the close interrelationship between *in situ* on farm and *ex situ* conservation of plant genetic resources and sustainable agriculture, and recommends that programs be adopted by the year 2,000 to, *inter alia*, promote, crop diversification taking into account the availability of plant genetic resources. It "[u]rges that ways and means should be explored to develop complementarity and cooperation between the Convention on Biological Diversity and the Global System for the Conservation and Sustainable Use of plant Genetic Resources for Food and Sustainable Agriculture." Convention on Biological Diversity, done at Rio de Janeiro, June 5, 1992, *reprinted in* 31 I.L.M. 818 (1992) (including Resolution 3). The Interrelationship between the Convention on Biological Diversity and the Promotion of Sustainable Agriculture, adopted on 22 May 1992, 31 I.L.M. 846, quote at para. 2, 31 I.L.M. 847.

