

**Report of  
Informal Workshop of Experts and Government Officials on  
Environment and Trade:  
Commission for Environmental Cooperation  
Montreal, 13 December 1999**

The Commission for Environmental Cooperation (CEC) hosted an informal workshop of experts on trade and environment, on Monday, 13 December 1999, in Montreal, Canada. The workshop agenda, a background note prepared by the Secretariat, and list of participants can be found in Annex A of this note.

The purpose of the workshop was twofold: (a) to facilitate an informal exchange of views among experts from nongovernmental organizations, industry, research and academic institutions and government officials from the three Parties to the North American Agreement on Environmental Cooperation (NAAEC) on the links between the environment and trade agendas, and (b) to clarify the role of the CEC in addressing the trade-environment agenda. This note does not attribute perspectives of individuals who attended the one-day workshop, nor does it summarize all views raised. Rather, it highlights some prevalent themes that emerged during discussions.

#### **THE TRADE-ENVIRONMENT AGENDA AND THE ROLE OF THE COMMISSION**

A recurring theme throughout discussions was the need for the CEC to clarify its institutional mandate and operational niche in addressing trade and environment issues. It was noted that, although the CEC remains a unique institution, since it was established six years ago explicitly to ensure that environment and trade policies are mutually supportive, it has not lived up to the high public expectations in providing leadership on this core issue. Many noted that the institutional role of the CEC is of pivotal importance, given the concerns expressed at the Third WTO Ministerial meeting about different aspects of trade-environment linkages. These include institutional cohesion as a means to support policies on trade, the environment, development and economy. They also include transparency and public access issues, developmental assumptions and the relationship between poverty, environmental quality and sustainable development.

While the WTO and other organizations continue to struggle with these issues, it was noted that the CEC was established precisely to address trade-related environmental issues associated with the NAFTA. For this reason, the CEC should now be in a position, six years into its mandate, to provide leadership by example on how to build policy integration between trade and environmental policies. Indeed, it was noted that since trade-environment remains at the core of the CEC's mandate, its credibility will be judged by the progress it makes on trade and environment linkages.

Experts noted that progress has been made by the CEC in several areas, including completing an Analytical Framework to assess the environmental effects of NAFTA; identifying components needed at the micro-level to ensure that "win-win" trade-environment links move from theory to action; supporting technical cooperation among the three Parties in such areas as comparability of environmental data; establishing databases and capacities for the transfer of cleaner technologies; supporting mechanisms for citizens submissions on enforcement matters; and other areas. At the same time, it was suggested that the CEC has been silent or ineffective in public debates regarding the use of NAFTA Chapter 11 investor-state disputes to challenge changes in domestic environmental regulations, or in addressing the relationship between the prohibition of bulk transfers of freshwater and NAFTA rules. Many participants noted that among the clear lessons to be learned from the Seattle meeting is that the role of institutions in the trade-environment debate

do matter. As public concern deepens about the environmental effects of trade liberalization, global governance and public participation, many experts noted that the CEC should focus its resources on making tangible progress with trade-environment integration. This includes forging institutional cooperation with the NAFTA Free Trade Commission (FTC) and its working groups and committees.

## **THE PRECAUTIONARY APPROACH**

Experts discussed general principles and underlying operational dimensions of the precautionary approach. This included its application in formulating domestic environment and health regulations and standards, and the evolution of the approach since its expression in Article 15 of the Rio Declaration of UNCED.

It was noted that the precautionary approach has been applied in various domestic environmental laws for some time, although these applications have not always been explicitly referred to in the context of "precaution." Issues related to the principle include the assessment and management of risk in both environmental and health policies. Different views were expressed regarding to what extent, and at what point in the sequence of public policy formulation, the precautionary approach can be applied. For example, one aspect of the debate is whether minority scientific opinion constitutes scientific uncertainty about a given risk. It was also noted that invoking the precautionary approach may raise questions of timing, including the degree to which the principle is embedded in all stages of regulatory formulation, or is considered at the end of policy formulation.

Among the issues briefly discussed was the different application of the precautionary approach in various international environmental instruments, most recently as contained in the draft Biosafety Protocol of the Convention on Biodiversity. For example, it was suggested that the absence of full scientific knowledge or scientific consensus about a particular risk is not the same as proving its existence, which in turn raised questions about the allocation of burden of proof in risk assessment.

Discussions briefly touched on the relationship between the precautionary approach and trade policy. It was noted, for example, that the sanitary and phytosanitary rules set forth both by NAFTA and the WTO underscore the importance of scientific evidence in domestic standards, while at the same time allowing countries to provisionally adopt measures that constrain market access based on less than complete scientific information. It was suggested that, in cases where the precautionary approach affected trade obligations, less trade restrictive measures, notably labeling and certification, should be pursued.

More generally, it was suggested that trade liberalization exerts considerable pressure on the agricultural sector, and includes a shift from a larger number of crop varieties to a concentration on single-variety or monoculture crops. Such a shift away from diversity is consistent with general assumptions in trade theory about production specialization. Some participants considered that this contrasts fundamentally with efforts to protect biodiversity, and weakens the importance of local communities and traditional knowledge. It was suggested that trade-related intellectual property rights in the agricultural sector marginalized the poor in developing countries. The example of corn and maize was cited.

Experts suggested several roles for the CEC with regard to the precautionary approach. They noted that this approach is being discussed on an *ad hoc* basis in several intergovernmental organizations, and suggested that the CEC could provide a valuable forum for the three Parties to

exchange views informally. The CEC could also examine the comparability of interpretations and applications of the precautionary approach among the three NAAEC Parties. The importance of opening a transatlantic dialogue on this issue was also highlighted, given differences in the interpretation of the precautionary approach between North America and Europe. Among the specific issues that could be examined are similarities and differences among the Parties in maximum allowable tolerances for different pollutants or toxic substances, as well as other thresholds set forth in the Parties' domestic environmental regulations.

## **ENCOURAGING “WIN-WIN” RELATIONSHIPS**

Experts noted that while it is difficult not to be supportive of “win-win” trade-environment links, in practice they are neither automatic nor without costs. Indeed, it was noted that in the case of win-win scenarios, there can be both winners and losers in the broader context.

In order to support win-win links, experts suggested that analysis needs to continue at both the micro and macro levels. On the micro level, this would include focusing on specific challenges facing small and medium-size enterprises in building win-win outcomes, including access to credit, protecting community values and traditional knowledge as international markets are accessed, and addressing the core issue of poverty and its link to the environment and development. The CEC's work in linking biodiversity conservation with Mexican shade-grown coffee production, technology transfer, sustainable tourism and sustainable trade in wildlife were noted as examples of clarifying the operational aspects of win-win outcomes.

At the macro level, it was noted that various policy reforms could be introduced into trade policy, environmental policy and financing to bolster win-win outcomes. As a general point, several experts noted that the challenge in building win-win outcomes is to craft policy reforms that mitigate negative environmental effects and maximize positive ones.

One way of doing so is by building complementary trade, finance and environmental policies, beginning with identifying and removing policy failures linked to environmental degradation. In trade policy, several experts noted progress in assessing the environmental effects of subsidies, and emphasized opportunities in the agriculture, energy and transport sectors to remove subsidy-related environmental degradation. In general, subsidies and trade restrictions shield inefficient and obsolete industries from international competition, and such protected industries are more often than not dirty and dependent upon obsolete and pollution-intensive technologies. It was suggested that analysis also needs to consider environmental or green subsidies, which can support environmental goals. In this regard, subsidies need to be considered within the context of the “Polluter Pays” Principle (PPP).

In building complementary policies, experts pointed to the challenge of internalizing environmental externalities through the use of different market-based instruments, including fees, charges, taxes and other instruments, which were noted as means to help address pricing failures. Environmental taxes in general, and energy taxes in particular, were cited in this regard, although it was suggested that such issues bring with them considerable economic and political baggage. It was also noted that environmental regulations have an important role in internalizing environmental externalities.

On the finance side, some experts expressed the view that financing and investment plays an important role in environmental performance. Of special interest was the relationship between recent trends in foreign direct investment (FDI) and environmental performance. It was suggested that more work needs to be done in assessing the environmental implications of FDI, in

particular, FDI flows to Mexico, including the identification of opportunities for FDI to deliver improved environmental outcomes at the firm and economy-wide levels. More generally, the role of the financial services sector in integrating environmental considerations in credit risk and investment decisions was noted. The importance of transparency and efficient information exchange within financial markets was underscored as one means of improving environmental performance.

Experts also felt that in building win-win outcomes, the issue of harmonizing domestic environmental standards and regulations among trading partners merited closer analysis. While some regulatory harmonization is important, differences in domestic policies as manifested in regulatory frameworks, traditions and environmental conditions, and these can influence legitimate differences in comparative advantage. The experts noted that while actual regulatory harmonization is complex and elusive for different reasons, the harmonization of methodologies used to formulate environmental policies could be examined. For win-win relationships to be encouraged, transparency and accountability must be supported by all actors, including industry, NGOs and the public sector.

Voluntary codes of conduct adopted by the private sector were other mechanisms suggested to improve environmental performance. Examples noted include the ISO 14000 series and the Responsible Care program of the chemicals sector.

Experts expressed the view that the CEC should concentrate on various aspects of the win-win relationship. This includes the possibility of the CEC periodically publishing a list of subsidies in place in each of the three countries, possibly with an analysis of their environmental impacts. A related suggestion was that the CEC examine tax expenditures and deferrals as a means to quantify fiscal distortions that, in turn, have an environmental impact. It was also suggested that the CEC might play a supporting role in assisting the financial services sector to address environmental issues in credit and investment decisions.

## **INVESTMENT AND THE ENVIRONMENT**

Experts examined the relationship between trends in investment, financing and the environment. Among the issues discussed was the effect of investment on patterns of production and consumption within markets. As a general point, it was noted that among the problems within the current debate on both win-win outcomes and linking investment and environmental considerations is that objectives are based on a single, neo-classical economic model of development. It was suggested that alternative development paradigms need to be considered in linking investment with both environmental and development objectives. In this way, the overarching issue of poverty and its link to environmental quality and development objectives can be brought more sharply into focus.

Experts noted that, although the current debate tends to link either trade and environment, or investment and environment, there has been scarce opportunity to examine these issues together. That is, trade and investment represent both sides of the same coin, and work at the sectoral level points to the important links between trade, finance and enhanced environmental performance. In examining these issues, it is important to look at them from a bottom-up perspective, taking into account needs at the firm level. Among the factors that can affect the environmental outcomes of investment are incentives provided to large-scale industries.

In looking at the environmental implications of investment, it was suggested that to distinguish between commercial lending and portfolio investments would be useful. In the latter area, recent

experience shows that investors may enter and exit markets very quickly, and the accelerated nature of investments may affect longer-term environmental planning. The example of sustainable forest use was noted: longer-term horizons of sustainable forestry targets may affect short-term expectations regarding returns on investment.

In looking at investment-related issues, the important role of consumer demand in supporting the environmental goods and services sector was noted by some participants. For example, experts asked how public concern for forest conservation could be translated into consumer demand for non-timber forest products. Among the factors that experts put forward for consideration were: (a) changing basic market incentives, such as fiscal policies or subsidies, to forge stronger links between investments and environmental outcomes; (b) improving information within markets, including better information regarding potential market demand, as well as regulatory screening or audits linked to investments; and (c) sharing investments among different actors.

Experts also expressed the view that Chapter 11 issues point to a need for greater institutional integration between the CEC and FTC, as outlined in Article 10(6) of the NAAEC. In their view, the lack of action by the CEC on Chapter 11 issues continues to have a major negative impact on the credibility of the institution to address trade-environment issues.

## **ASSESSING THE ENVIRONMENTAL EFFECTS OF TRADE**

It was suggested that, in assessing the environmental effects of trade liberalization, most methodological assumptions—including those of the CEC—rely on a single development paradigm that fail to take account of poverty, inequitable income distribution, indigenous knowledge and community values. It was suggested that the CEC broaden its work on environmental assessments to include not only environmental indicators, but also the social impacts of NAFTA.

It was also suggested that the CEC's work in developing the Analytical Framework to assess the environmental effects of NAFTA was flawed and ineffective, and therefore failed to win the support of NGOs. Among the problems cited with respect to the CEC framework is its attempt to isolate and quantify the economic consequences of NAFTA from other economic policies that also exert environmental effects. It was therefore suggested that, rather than undertaking an assessment of the environmental effects of NAFTA, the CEC ought to examine both trade and non-trade pressures that affect environmental quality (that is, effects of NAFTA and the WTO, monetary, fiscal, investment and other factors), as well as the environmental effects of policy frameworks within the three countries.

A preference was expressed for identifying environmentally sensitive sectors, then determining the extent to which current activities are sustainable, and finally assessing the extent to which further liberalization would or would not alter the sustainability of the sectoral activity. It was also suggested that analysis focus on identifying mitigating actions that would minimize negative environmental effects. It was noted that the CEC's work on environmental assessments emphasizes a sectoral approach, including past case studies on maize, feed cattle production and electricity in North America.

Several experts noted that the post-Seattle agenda is likely to increase calls for undertaking environmental impact assessments of trade liberalization. In this regard, efforts by Canada, the US and the EU in environmental and sustainability impact assessments were referenced. The CEC's work in this area is of considerable interest to countries and the public, in the context of integrating environmental and trade policies. At the same time, it was also suggested that

environmental assessments are important in bolstering public support for further trade liberalization.

## CONCLUDING POINTS

In closing the workshop, the following suggestions were noted regarding the role of the CEC in the trade-environment agenda:

- I. *Facilitate policy dialogue:* It is important to continue bringing together different constituencies of the trade-environment debate, including government officials representing environment, trade and development-related departments. Although progress has proven to be neither simple nor quick, the process of encouraging dialogue is important.
- II. *Undertake an OECD-like function:* As an intergovernmental organization, the CEC's role should be similar to the OECD, albeit on a more modest level. Emphasis should be placed on focused analysis and the convening of the three Parties with representatives of civil society. Although it was acknowledged that the CEC could not implement all of the suggestions, potential areas of analysis included:
  - Identifying comparable and different approaches among the three countries towards the role of science and precaution in policy formulation. This could include a technical meeting of experts, facilitated by the CEC;
  - Gathering tangible examples of win-win relationships, as a way of showing that the relationship between trade and environmental policies is not necessarily negative. The win-win nexus needs to be examined within the context of poverty, alternative development assumptions and sustainable development;
  - Promoting public-private sector partnerships in the area of investment and the environment; supporting the role of commercial banks in integrating environmental risk assessment; undertaking research on the harmonization of differing methodologies related to environmental standards;
  - Examining voluntary initiatives, including those from Europe, and comparing them with initiatives originating in North America;
  - Publishing on a regular basis papers addressing the trade-environment linkage, similar to the UNEP Environment and Trade Series; and
  - Examining the relationship between transparency and the trade-environment agenda, including the extent to which the CEC can be a model to other organizations on trade-environment issues.
- III. *Assist with fact finding:* The CEC can play an important role in fact finding pursuant to the Council's mandate to cooperate with the FTC by contributing to the avoidance of potential trade disputes related to the environment.
- IV. *Assist policy integration:* Find specific examples demonstrating how to build up policy integration between the trade-environment agendas.
- V. *Conduct environmental assessments of trade:* In order to make progress on understanding environment-trade linkages, the CEC might wish to consider pursuing the various suggestions made regarding how to implement the existing Analytical Framework or expand it to include social and development indicators, or to change the approach altogether in order to look at sustainability indicators within specific sectors.

Finally, it was proposed that similar environment-trade workshops be held on a regular basis.

-----