

## *Discussion Summary*

### **CSIS Trade Policy Seminar**

#### **Trade, the Environment, and Public Health: Allies or Adversaries? May 24, 2001**

##### **Panel 1 – Trade and the Environment: Production Methods and Multilateral Environmental Agreements (MEAs)**

*Tom Jacob – Senior Advisor, Global Affairs, Dupont* [[\*Click here to view Tom Jacob's Powerpoint presentation\*](#)]

- Globalization, increasing financial interdependence, and growing environmental awareness have broadened the scope of people and interests engaged in trade policy discussions.
- There is growing pressure on governments to try to control environmental problems and outcomes.
- Many in the corporate sector are concerned that MEAs are being used as tools for broader social agendas. They believe that MEA negotiators are often under pressure to serve social equity goals. The Convention on Biological Diversity is a case in point.
- MEAs have tended to be shaped by large contending blocs of countries – e.g., the developing countries operating through the G-77 grouping, the EU, and the United States. This negotiating structure produces skewed agreements. WTO disciplines, in contrast, have evolved much more homogeneously.
- The principal concern of many companies about both MEAs and the use of trade restrictions to regulate production methods is that scientific discipline is not being applied with sufficient rigor.
- Firms are also concerned about the proliferation of so-called “exceptions clauses” – MEA provisions that specify that provisions in other agreements (i.e., WTO agreements) may not supersede the environmental protection provisions of an MEA.
- Article 20 of the GATT is satisfactory, and should not be revised.
- MEAs need greater discipline. They should have a more substantive focus and increased scientific rigor.
- The international community needs to invest greater resources in environmental protection. We also need to address more systematically and directly the social dimensions of sustainability issues. That will increase the likelihood of successful social policies while minimizing harm to the multilateral trading system.

*Jake Caldwell – Program Director for Trade and Environment, National Wildlife Federation*

- Trade measures have been included in MEAs for many years. MEAs have used trade measures in several ways to promote their environmental protection objectives:
  - Some MEAs directly target trade in items of environmental concern. They expressly limit or prohibit trade in endangered species, for example, or pollutants.
  - Other MEAs use trade as an incentive to promote improved environmental protection. Under these MEAs, countries that support an agreed set of environmental norms may be eligible for trade preferences from other cooperating parties.
- To date, there have been no clashes between WTO rules and the trade provisions of any MEAs. This reflects, in part, the discipline exercised by governments. It also reflects the fact that MEA negotiators have taken pains to ensure that final agreements are GATT- or WTO-consistent.
- There is the possibility of conflict in certain areas, however:
  - A WTO member that was not party to an MEA could initiate WTO dispute proceedings against another WTO member that took trade action against it under an MEA.
  - A country that was a member of both an MEA and the WTO, might find that it could not initiate WTO dispute proceedings against another WTO member that took trade-restrictive action under an MEA, because the first country could be judged to have “waived” its WTO obligations upon becoming a party to the MEA.
  - Some MEAs establish different classes of parties, to which certain trade preferences may be linked. These trade preferences could clash with the principle of non-discrimination in international trade.
- It could be politically costly to the WTO if a member country were to launch a challenge in the WTO to a trade provision in an MEA.
- For these reasons, some clarification of the relationship between MEAs and the WTO would be useful. One possibility would be for WTO members to grant “waivers” to MEAs that include trade provisions.
- With respect to the debate over the regulation of trade on the basis of production methods, the key issue is the definition of a “like” product. According to the GATT and the WTO, governments may only consider the physical characteristics of a finished product when deciding whether and how to regulate imports. Even when two products are made differently, if they have similar end uses and physical characteristics they are considered “like” products and cannot be treated differently under the trade laws of a WTO member country. Environmentalists and others argue that differences in production processes or methods are a valid basis for discriminating between different products.
- The WTO’s recent ruling in a case concerning French restrictions on Canadian exports of asbestos-containing products suggested that countries can potentially weigh the health risks posed by the manufacture of a product when setting their import policies. Some say this is the end of the debate. It is more likely that this issue will continue to play out under Article XX.

***John Audley – Senior Associate, Carnegie Endowment for International Peace (former Trade Policy Coordinator, U.S. Environmental Protection Agency)***

- The United States government believes WTO jurisprudence – the shrimp-turtle case, in particular – has established that trade measures that make distinctions between production methods can be consistent with WTO rules.
- The shrimp-turtle case suggested, however, that the United States erred in its application of its measure barring shrimp imports from countries that did not use turtle excluder devices. The United States should have negotiated more with the Asian countries targeted by the law, seeking a multilateral solution.
- The U.S. government worries that even well-intentioned efforts to reopen GATT Article XX for certain clarifications could have counterproductive results. Some governments might use the opportunity of a renegotiation of Article XX to seek measures making it easier to protect their economies from U.S. exports.
- The U.S. view is that current WTO rules accommodate MEAs. The U.S. takes an “if it isn’t broken, don’t fix it” attitude toward proposals to clarify or adjust the relationship between the WTO and MEAs.
- The definition of “MEA” could use some clarification. The term means different things to different people.

***Key Discussion Points***

- Caldwell suggested MEAs could be seen as “sustainable trade agreements.” He said he was worried about the consequences of doing nothing to avert potential clashes between MEAs and the WTO.
- Audley stressed the risks of reopening WTO agreements. He pointed out that some governments may want to go in precisely the opposite direction from the United States on the MEA/WTO relationship.
- Audley suggested it would be unwise to let the WTO’s dispute-settlement mechanism become the chief arbiter of national obligations under various environmental agreements.
- Audley said the principles and the toolbox proposed by President Bush deserved a serious examination.
- Turning to the issue of new trade negotiating authority for the President, Caldwell argued that the administration’s suggestion that the U.S. government should have at its disposal a “toolbox” of measures to address the relationship between trade policy and environmental and labor standards lacked credibility given the administration’s proposed reductions in spending on international labor programs, its policy on the global warming treaty, and other policies. Environmentalists have reason to question the seriousness of the administration’s commitment to addressing environmental issues in a trade policy context when it is still not clear how strongly it is committed to environmental objectives in its broader foreign policy.
- Caldwell argued that any new formula for trade negotiating authority should place no restrictions on the ability of U.S. negotiators to address environmental issues in trade

negotiations. It should be possible to address linkages between trade and the environment. Environmental provisions should have “parity” with trade provisions.

- Caldwell also argued that requiring countries to enforce their own environmental laws – the approach adopted in NAFTA – seemed like a reasonable compromise.
- Tom Jacob asserted that linking environmental concerns with trade policy and agreements could unnecessarily harm trade and investment. Trans-boundary environmental issues should be addressed with multilateral agreements that were specifically designed for them.

## **Panel 2 – Trade and Food Safety: GMOs and Multilateral Trade Rules**

***Karil Kochenderfer – Director, Environmental Affairs and New Technologies, Grocery Manufacturers of America***

- Foods created through biotechnology are as safe as their conventional counterparts; there is broad agreement on this point.
- The food industry increasingly sees the labeling of biotech foods as a problem, because it believes that labels may convey to consumers that biotech foods are “potentially” unsafe. Labels can “stigmatize” products.
- The WTO’s Sanitary and Phyto-Sanitary Agreement already applies to biotech foods. No additional WTO agreements are needed. GMA would be pleased if the WTO could affirm the adequacy of existing rules for the regulation of trade in biotech foods. They would also like the WTO to affirm that the Agreement on Technical Barriers to Trade also applies to biotech food.
- Labeling regimes need to be as least trade-restrictive as possible. It will be difficult to craft a reliable labeling regime, though, because there exist no definitive tests for biotech content in food, testing approaches are not consistently applied internationally, and the results of tests are often in dispute.
- Labeling can add 6-10% to the cost of manufacturing and marketing a biotech food product. An entirely new infrastructure will be required to validate claims about the presence or absence of biotech content. Biotech and conventional foods will also need to be carefully segregated and handled separately. All this will impose enormous and costly technical hurdles.

***Robbin Johnson – Senior Vice President and Director, Corporate Affairs, Cargill, Inc.***

- Products of agricultural biotechnology (PABs) is a preferable term to genetically modified organisms (GMOs).
- Governments could choose not to regulate PABs at all, relying instead on existing product liability laws to protect consumers. Governments could also choose different levels of regulation. The approach in the United States is to regulate products only if they are substantially different from conventional products. Others regulate food products on the basis of how they were produced. In the EU, for example, foods are regulated more strictly if they are transgenic in character.

- National differences in approach to the regulation of biotech foods can lead to trade discrimination.
- As the science of biotech food matures, and risks become clearer, national differences over regulation will narrow.
- Risk management policies must address three sets of process in the manufacture and marketing of biotech food: labeling, separation, and traceability. Several approaches to labeling are possible:
  - Voluntary labeling, which tends to mean no labeling gets done;
  - Positive labeling, which provides positive reasons to use a product and is “educational” in nature;
  - Negative labeling, which may confirm risks in the minds of consumers; and
  - Mandatory labeling, which can alerts consumers that certain perceived risks are real.
- The purpose of traceability is to permit authorities to remove bad products if risks are confirmed. The structure of a traceability system needs to be consistent with the scientific probability of risk. The system should not be burdensome to products for which there may be perceived but not proven risks.
- Risk management systems are being created by people and groups with political agendas. Some of these systems do not appear designed to increase informed consumer choice.

***David Victor – Robert W. Johnson, Jr. Senior Fellow and Director, Science and Technology Program, Council on Foreign Relations***

- In a number of areas, we are seeing a greater intrusion of international legal scrutiny into matters that used to be restricted to domestic regulatory policy. In the area of trade, this has meant trying to make legal determinations of what is a legitimate restriction or what is a protectionist barrier – determinations that law is not necessarily well-equipped to make. The beef hormones case illustrates this point.
- International jurisprudence is under increasing pressure to give special deference to domestic regulations.
- Especially in Europe, there is growing public concern about the adequacy of the food regulatory system. But Europe is not alone in its decision to base regulatory policy on considerations beyond scientific evidence.
- Some of the trade disputes that may arise with respect to food safety could prove intractable. It would not be easy for a country to back down if its restrictions on GMO products were hit with a WTO challenge.
- International conflict over GMO regulation could also harm investment in the industry. That is why the long-term costs of EU restrictions on the importation of GMOs could be considerably larger than the cost of the first round of regulations.

***Mark Silbergeld – Co-Director, Washington, DC Office, Consumers Union***

- The biotech industry has mistakenly assumed that consumers will accept the fact that biotech foods are not significantly different from conventional foods.

- It is misleading for representatives of the food industry to say that there are no safety problems associated with biotech products. We don't know that this is the case at this time.
- But it is also incorrect to say that people should not be allowed to taste a product until we know everything there is to know about it.
- There can be no "one size fits all" policy for the regulation of GMOs. We need "categories of concern" in our regulatory system, and these should be linked to the extent to which a biotech product is unlike traditional products.
- Policies designed to protect consumer interests cannot be built solely upon scientific assessments of risk. Consumer values are also important, and values differ from country to country. The WTO's SPS agreement recognizes that different countries will accept different levels of risk, and that those differences are social decisions.
- The United States should not seek to resolve the beef hormone dispute with the EU through the WTO dispute-settlement system. The United States should recognize the values dimension of disputes like this one. It should also recognize that WTO agreements generally do not give dispute panels the tools they would need to address the political and social issues involved in food-related disputes.
- There have been some cases, including Japan's regulation of cherries and Korea's regulation of beef, in which there was no demonstrable evidence of a safety concern. WTO dispute settlement was appropriate in those cases to remove protectionist barriers disguised as health regulations.
- If there is a consumer market for products differentiated in terms of how they are produced or whether they have biotech content, companies will find ways to exploit that market, to satisfy consumer preferences. This product differentiation will require a labeling system.

***Peter Scher – Partner, Mayer, Brown & Platt (former U.S. Special Trade Negotiator for Agriculture and former Chief of Staff, Office of the U.S. Trade Representative)***

- Public concerns about biotech products are real and legitimate. Industry representatives and policymakers need to acknowledge that we do not yet have all the answers consumers want concerning the quality and safety of these products.
- It is a fundamental role of government to protect public health. But government must be able to do this through a fair, transparent, and independent regulatory process. These regulatory processes must be based on science.
- Governments should be able to establish whatever regulatory standards and risk assessment mechanisms they choose. But once they make these decisions, they need to implement them consistently. EU regulators have not done this.
- In addition, once a government has settled on its regulatory approach, consumers need some objective basis for evaluating its quality and effectiveness.
- It is important for national regulatory systems to be transparent.
- Regulatory authorities should also be independent. Regulatory authorities that can be influenced or overruled by legislative bodies may not be credible or effective.
- The regulatory systems of some leading U.S. trading partners seem to lack objectivity.

- Even in the United States, decisions have sometimes favored advancement of technology over safety.
- WTO agreements permit governments to regulate imports on a precautionary basis even in cases where scientific evidence of risk is not definitive. In some cases, precaution is being applied not because foods are unsafe but because they are unpopular.
- The EU's system for regulating food has failed. Consumers have no confidence in their food regulators. Their concerns about food safety are legitimate, because the regulatory system is in such bad shape.
- EU regulators have not yet reached a conclusion on acceptable levels of risk for biotech foods, but they already confront a political reality in which large numbers of consumers have concluded that these foods are not safe. This explains the current moratorium on import and sale of biotech foods.

### ***Key Discussion Points***

- Silbergeld argued that governments have a responsibility to respond to unjustified consumer fears and concerns about food safety.
- Silbergeld also said that governments should set standards for industry claims that a given food product is "GMO free." Consumers need to feel confident that a "GMO free" certification is as scientifically valid and objective as the "organic" certification will soon be in the United States.
- In the United States, Silbergeld suggested, if it has become clear that consumers prefer certain products because of attributes that may not be immediately apparent, the Food and Drug Administration has required producers to apply distinguishing labels.
- Silbergeld asserted that U.S. consumer advocates believe the FDA has been making decisions that favor export over consumer interests in recent years.
- Johnson agreed with Scher that biotech risk assessment mechanisms must be perceived to be independent.
- Scher argued that if EU regulators perform poorly, they will not only undermine their own credibility but also harm U.S. interests by restricting market access for U.S. firms.
- If they are to help inform consumers better, Johnson said, risk management policies (such as labeling) must be accurate, verifiable at the point of consumption, and understandable.
- Victor argued that biotech risks are greatest "upstream," in the handling of genetically engineered material in laboratories and other facilities involved in the development of new products. Trade policies offer the United States and other countries very little leverage over what happens upstream from consumers. Most countries have laws on the books that regulate biotech product development, but these laws are not being implemented well in many developing countries. These countries need help implementing their laws, strengthening their regulatory capacities. Building regulatory capacities may be a productive area for U.S.-EU cooperation. Biotech firms in the United States and Europe should also take an interest in promoting

improved biotech regulation abroad, because their own business could suffer if safety is compromised in developing countries.