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Co-convenors and workshop organisers

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Bridging Worlds - Trade, Biodiversity and Sustainable Development

A diverse group of participants at the 18th session of the Global Biodiversity Forum (GBF 18), held from 5 to 7 September 2003 in Cancun, Mexico, sent a strong message to governments around the world "of our growing concern about the urgent need to mitigate the negative impacts of the current trading system on the closely entwined fates of local communities, to which we all belong, and the ecosystems upon which our livelihoods depend".

The Forum was convened by IUCN - The World Conservation Union and its Commission on Environmental, Economic and Social Policy (CEESP), the International Centre for Trade and Sustainable Development (ICTSD), the Mexican Ministry of Environment and Natural Resources (SEMARNAT), Mexican Centre for Environmental Law (CEMDA) and some 30 other institutions to discuss biodiversity and sustainable livelihood issues related to international trade. It brought together 140 participants from over 40 countries, representing a wide range of views, experiences and communities. In his remarks at the closing session of the GBF, Mexican Minister of Environment Alberto Cárdenas Jimenez described the GBF as a unique platform to express the views of different sectors, emphasising that economic growth must take place within the natural limits of ecosystems while respecting the environment at all times.

The interlinkages between trade and biodiversity were discussed in three areas: trade and sustainable livelihoods; risk, precaution and biosecurity; and the relationship between the Convention of Biological Diversity (CBD) and the

Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). Each workshop raised significant concerns over the impacts of trade liberalisation on biodiversity conservation and use. As Mark Halle from the International Institute for Sustainable Development (IISD) noted in his closing remarks, efforts to discuss the interlinkages between trade and biodiversity have to date remained scattered with little interaction between the communities involved. However, the recent broadening of the agenda in the WTO to cover more and more aspects that directly impact on peoples livelihoods -- most recently reflected in the explicit inclusion of environmental issues in the trade round launched in Doha in November 2001 -- has made understanding the intersections between trade and biodiversity increasingly important as advocates in one area find their work impacted by activities in another. "The environmental movement woke up one day to find the WTO in our backyard," Halle noted. He stressed the need to identify and use the opportunities provided by the multilateral trading system to achieve the goals of sustainable development, while minimising the obstacles it presents. He called on the environmental community to remind WTO Members what they have engaged to do -- to promote a global trading system that supports sustainable development.

Also speaking at the closing session, Laurence Tubiana from the Institut de Développement Durable et Relations Internationales (IDDRI) noted that the multilateral trading system was in crisis, highlighting the need for a "joint vision". She stressed the importance for countries to preserve their flexibility to define their own development strategies within the overall framework of the Millennium Development Goals. The challenge, she said, was to identify the sustainable development objectives and assess how trade policy can help or hinder the achievement of these objectives.

The results of the GBF-18 will be presented to the Cozumel Meeting of Ministers of Trade and of Environment, to be held on 9 September 2003 under the auspices of the Mexican Ministry of Environment. They will also be widely distributed at the Fifth WTO Ministerial Meeting in Cancun on 10-14 September, and the World Parks Congress to be held in Durban, South Africa, from 8 - 18 September 2003. The final workshop report will be available on the GBF website at <http://www.gbf.ch>.

WORKSHOP 1: TRADE AND SUSTAINABLE LIVELIHOODS

The trade and sustainable livelihoods workshop focused on the linkages between trade policy, trade rules and sustainable livelihoods as well as the potential of sustainable trade initiatives as tools for poverty alleviation and environmental conservation. 25-50 participants from a range of countries representing poor communities, NGOs, international institutions, research institutes and donors participated in the seven workshop sessions.

The relevance of trade to sustainable livelihoods objectives

Setting a framework for the workshop stream, participants were introduced to ideas and perspectives on how sustainable livelihoods objectives are linked to international trade policy. Amongst others the crucial need to identify the barriers and conditions for entering global markets as well as to ensure that profits are distributed to the actual producers of agricultural commodities was pointed out. Workshop participants furthermore discussed to what extent the WTO is the main rule setting body. While some participants stressed the need to accept existing trade rules when entering international markets, others fundamentally questioned whether sustainable trade could be developed in this context. Participants agreed that the WTO is the main rule setting body and that it is necessary and indeed possible to influence its decision making process. The case of TRIPs and Health was mentioned as an example of what can be achieved if civil society groups work together with interested governments. Questions arose with regards to how the multilateral trading system could be influenced in such a way that it promotes sustainable livelihoods and the conservation of biodiversity. Several groups also pointed out that the environmental community need to build a positive and proactive agenda if it wants to successfully influence the trade policy debate.

Commodity chains setting a framework for producers of Cotton, Coffee and Cocoa

The analytical framework of commodity chains was presented during the workshop as a useful way to analyse the connection between producers and markets as well as to determine who reaps the profits in a particular chain.

Presentations on sustainable forest management, the commodity chains of cotton, coffee and cocoa, and the ensuing discussion made apparent that in most agricultural chains producers are squeezed by market dynamics. Discussions on how these dynamics develop touched upon the fact that although producers are the main users and custodians of natural resources and biodiversity, they do not receive enough profit from their production to take care of their surrounding environment in a sustainable manner. In most agricultural commodity chains both profit and power is located with intermediaries or larger processing firms, resulting in the marginalisation of the actual producer. Another point raised was that markets and trade rules do not differentiate between specific production processes or the particular needs of producers -- the commodity chains approach allows for such a differentiation, and market differentiation along specific commodities is essential to change the dynamics in a particular commodity chain. During the workshop session participants discussed whether premium prices paid by consumers for products from sustainably managed resources are really sufficient to substantively improve the livelihoods of marginalised farmers. Often price premiums are too small to make it worthwhile for producers to change to more sustainable production practices. Against this background some participants stressed the need for a compensatory mechanism to re-balance market failures; a mechanism that would pay farmers not only for the products they produce, but also for conserving biodiversity and preserving ecosystem services.

Touching upon the subject of eco-labelling and certification, workshop participants discussed the market barriers faced by developing country farmers who engage in organic agriculture. Highlighting the competitive advantage of developing country farmers in organic agriculture, some participants stressed the need that developing country governments look afresh at the issue of process and production methods in the WTO. This point was raised in particular in relation to the ongoing negotiations on environmental goods and services. Some participants, however, warned that these negotiations should be handled with great care, considering their broader implications for public services such as water and sanitation in developing countries. As an alternative it was suggested to explore the extent to which geographical indications might be useful to distinguish agricultural products from ecologically sensitive regions such as Amazonia or Ramsar protected areas.

Sustainable trade initiatives - creating opportunities for sustainable livelihoods

Representatives from developing countries shared their experiences from various initiatives that use trade as a tool to alleviate poverty, foster the sustainable use of natural resources and the conservation of biological diversity. Experiences from these initiatives confirmed that there is indeed a large and rapidly growing market for sustainably produced products and services. There exist, however, many difficulties in efforts to connect producers to markets. Participants stressed the importance of creating links between rural and urban areas and creating new networks to assist small producers to engage efficiently in these markets. Representatives from Brazil, Mexico, Costa Rica and Guatemala briefed the workshop on their experiences in creating sustainable trade initiatives. One of the key questions raised in this regard was whether and how producers from sustainable trade initiatives could increase their market shares. In this context participants also pointed to the need for capacity building as well as the need to clarify in what way WTO rules support or undermine sustainable trade initiatives and how these can compete in markets shaped by large multinational companies. The discussion furthermore highlighted the importance of domestic and regional institutions in the development of such initiatives.

Labelling and certification - economic incentives opening spaces

With regards to economic incentives, labelling and certification schemes the workshop initially focused on the potential for developing environmental labelling schemes within the framework of Multilateral Environmental Agreements (MEAs). CITES and RAMSAR were cited as examples for ongoing efforts to develop such schemes that support local producers in environmentally sensitive areas. Concerns were raised with regards to how a meaningful standard could be defined and how meaningful links between the multiple existing labelling and certification schemes could be established. It was agreed that labelling and certification schemes could be an important tool to support the development of sustainable livelihoods and provide producers with positive incentives to manage natural resources in a sustainable manner. However, it was also highlighted that currently there was a lack of definition of what a useful standard is - in particular from the perspective of the conservation community. Participants furthermore recognised the concerns of developing countries that environmental standards could be used by developed countries to protect their markets. In this context the need for greater transparency and developing country participation in international standard setting bodies was stressed. In conclusion participants

agreed that labelling and certification schemes provide opportunities for sustainable rural development and nature conservation and should thus receive greater attention by the conservation community.

Trade policy supportive of sustainable livelihoods

During the final session workshop participants agreed that developing countries and the conservation community need to make use of all the available tools to promote sustainable livelihoods and sustainable trade. However, in doing so, attention has to be given to the specific concerns of developing countries and civil society such as market barriers that may arise from domestic environmental measures and the potentially negative impacts of the negotiations on environmental goods and services. The concluding remarks focused on the urgent need to create a knowledge community and a network of individuals and institutions working on issues of sustainable trade, sustainable livelihoods and biodiversity conservation from a developing country perspective. Finally, participants stressed the urgency to end agricultural dumping on world markets as part of efforts to eradicate poverty, improve livelihood conditions in rural areas and provide primary producers with opportunities and openings to engage effectively in trade on the basis of their competitive advantage.

WORKSHOP 2: RISK, PRECAUTION AND BIOSECURITY

The Workshop brought together participants from many different backgrounds working on issues related to trade, biotechnology and invasive alien species (IAS). Ranging from the contamination of native maize varieties in Mexico to the threats posed by species carried in ballast water, the discussions raised a number of broader issues, such as precaution, transparency, the relationship between the environmental and trade regimes, and flexibility for decision making. Participants from the biotechnology and IAS communities recognised the importance of learning from each other's experiences and joining their efforts to address the overarching issue of trade as it might foster or alleviate biodiversity loss and ultimately the pursuit of sustainable development.

The pervasiveness of uncertainty

Participants recognised the pervasive and often irreducible nature of uncertainty, calling for a greater emphasis on anticipation rather than reaction as a significantly less costly approach. This emphasis was apparent in the IAS context, where participants noted the importance of prevention and the control of pathways, rather than dealing with invasive species once they have become established. Similar concerns were also raised in the context of biotechnology, in particular with regards to the contamination of native maize varieties. Many stressed the need for the WTO to take this reality into account. At the same time, there was widespread recognition of the difficulty in separating legitimate environmental and conservation concerns from protectionist intent. Indeed, this dilemma was seen as endemic to the entire trade and environment debate and as a central concern that should be reflected in the articulation of problems and proposed solutions.

Transparency and inclusiveness in research and decision-making

The need for increased transparency and inclusiveness in the formulation of national regulations (including biotechnology regulations), WTO dispute settlement processes and in multilateral trade negotiations repeatedly arose in the discussions. Konrad von Moltke used the inadequate reflection of uncertainty in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), which he said was largely a result of poor negotiations, as an example to highlight the need for more openness of trade negotiations. The importance of inclusiveness was also stressed with regard to the settlement of disputes in the WTO, which continues to be conducted with little input from stakeholders, as well as in the area of biotechnology, including the case of contamination of native maize varieties in Mexico (see below). The issue also arose during discussions on possible conflicts of interest regarding research funded by the private sector. Citing evidence that the source of funding can indeed affect the outcome of research, participants stressed the need for involving all stakeholders, including local communities, in the research, for complete and open transparency on funding sources, and for the dissemination of research results to the public.

Maize contamination in Mexico - a wake-up call for the global community

The contamination of Mexican native maize varieties with genetically modified organisms (GMO) was seen as a "wake-up" call for the global community to act and take steps that such contamination will not be repeated, including for other staple crops important to developing countries, such as rice, mustard seed, cotton and soy. Representatives from the Consejo Indigena Popular de Oaxaca made a strong case for the cultural and social importance of maize to their peoples, and their dependence on native varieties for their livelihoods. It was widely recognised that any discussions on biotechnology, in particular in centres of origin, needed to integrate indigenous peoples' voices and concerns. Participants also stressed the need to take into account the unpredictable nature of introducing living modified organisms into the environment due to the complexity of ecosystem processes.

Affirming the equal status of the trade and environment regimes

Participants called on governments to affirm that there is no hierarchy between the environmental and trade regimes; rather each should deal with its own jurisdiction, which should not be prescribed by the negotiations under paragraph 31(i) of the trade and environment mandate. Also, disputes and issues should be addressed in the appropriate forum with the expertise and jurisdiction to address them. Moreover participants noted the inadequacy of the WTO system to deal with certain environment-related issues and to take into account biological realities, including uncertainty. The WTO was seen by many as placing trade liberalisation above the pursuit of environmental, socio-economic and cultural priorities. They also stressed the need for greater dialogue between the WTO and Secretariats of multilateral environmental agreements (MEA), including the involvement of MEA Secretariats as observers in the relevant negotiations.

One participant noted that the relationship between the regimes should not only be looked at from a legal perspective, but also within the political context. Thus, while there might legally be no hierarchy, the political reality was often different due to power imbalances within and outside the WTO and the dependence of developing countries on market access and the resulting exposure to 'coercion'.

Preserving flexibility for decision making

Participants stressed the need to provide countries with the space to decide what risk they were willing to accept and whether to adopt biotechnology. This issue was also cited in the context of African countries' approach to the negotiations of the Cartagena Protocol on Biosafety, where countries had aimed to entrench their sovereign rights in the Protocol. The Protocol was seen to provide a reference point to invoke a common sense concept like precaution and recognise space for domestic decision making. Similarly, the rejection of GM food aid was cited as an example for countries' desire for space to decide on the appropriateness of biotechnology for development.

Konrad von Moltke encouraged countries to take advantage of the "multi-unilateral" nature of the SPS Agreement, which has led countries to interpret and implement the Agreement according to their priorities until challenged in the WTO dispute settlement system. The example of New Zealand dealing with IAS by regulating pathways was cited as a good example of this approach.

Biotechnology and invasives - a rose by another name

There was widespread agreement regarding the need to identify and take advantage of the overlaps between the GMO and IAS issues and to identify specific areas where both communities could work together. Some areas could include the improvement of risk assessment methodologies, the integration of precaution in risk assessment and management, capacity building, and development of appropriate legal and regulatory measures. While IAS have already had significant environmental, social and economic impacts, the issue continues to attract limited attention. Participants noted the potential of looking at the experiences gained in the biotechnology debate, including the establishment of the Biosafety Protocol, in an effort to give more impetus for the development of international and national measures to combat the spread of IAS. The communities can also join efforts and resources to develop appropriate tools that can address issues arising from IAS and GMOs, and explore further the synergies of the two issues.

WORKSHOP 3: CBD-TRIPS RELATIONSHIP

Participants from a broad range of groups discussed the link between the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement and the Convention on Biodiversity (CBD) called for the protection of traditional knowledge and biological and cultural diversity in the face of trade liberalisation. A variety of opinions were expressed at the workshop, reflecting the diversity of perspectives that have characterised the TRIPs-CBD debate since the end of the Uruguay Round in 1994.

Deliberations were held on prior informed consent (PIC) in access agreements; access and benefit-sharing regimes; options for the protection of traditional knowledge (TK), and the mandate of para. 19 of the WTO's Doha Ministerial Declaration, which instructs Members to examine, inter alia, the TRIPs-CBD relationship and the protection of TK and folklore.

A central controversial issue was over the legitimacy and appropriateness of any regime that protects intellectual property over life forms. One group of participants was of the view that granting IPRs over life forms is incompatible with the conservation of biological and cultural diversity. Another group, however, was of the view that the best solution was to reform the TRIPs Agreement in light of the CBD, in an effort to find synergies and mutual supportiveness.

Local communities must play key role in PIC procedures

Workshop participants reviewed several international instruments (in particular the CBD) that support recognition of the rights of indigenous peoples and other local communities to prior informed consent (PIC) for access to genetic resources and TK. While it was clear that uncertainties regarding the implementation of PIC remain, the successful utilisation of PIC in some cases -- together with best practices guidelines -- were said to provide valuable lessons and guidance for future application of PIC. Some participants in the session expressed concern that the discussion on PIC must first address the underlying problem: patents on life. If the issue is not addressed, in their opinion, PIC could be used to legitimise the patenting of life forms and thus the monopoly of private companies over genetic resources.

Various issues emerged from the PIC session. Inter alia, these included: Members of the WTO and other relevant institutions should include the requirement of evidence of PIC of local communities for granting of patents; PIC should be necessary even for knowledge considered to be in the public domain; and countries should support articulation by local communities of prior informed consent procedures.

Whether, when and how to create an international ABS regime?

Many of the workshop participants called for an international legally binding system on access and sharing of benefits (ABS) from the use of genetic resources (as called in para. 44(o) of the Johannesburg Plan of Implementation), since national instruments alone were not seen as sufficient to guarantee the rights of states nor the rights of local communities. However, others did not see an international regime negotiated by national governments as an adequate and trustful framework to protect local community rights, and called for a system based on needs expressed by communities themselves. A number of participants emphasised that IPR regimes developed within the WTO or the World Intellectual Property Organization (WIPO) are inconsistent in many aspects with the objectives of CBD, and failed to foster traditional knowledge, conservation of biodiversity, and innovation and technology transfer. Others reminded the session of the intrinsic value of genetic resources and TK, and said it was impossible to put a price on these and treat them as economic goods.

Presentations on the group of megadiverse countries emphasised the need for both positive (i.e. recognition of community rights over traditional knowledge) and defensive strategies (i.e. defend from 'biopiracy'), as well as certificates of origin, for these countries to promote an appropriate distribution of benefits and technology transfer.

Traditional Knowledge and IPRs - irreconcilable differences?

This session addressed possible 'sui generis' options for positive protection of TK. Discussants noted the fundamental incompatibility between current mainstream structures, on the one hand, and indigenous and local communities' beliefs and livelihoods, on the other. A key concern was that there is a need to recognise the fundamental rights of indigenous peoples as a precondition to any negotiations involving TK, and develop institutional mechanisms for the effective participation of these groups. Many participants recognised that prior informed consent of indigenous peoples must not only reflect communities' cultures and indigenous views, but also ensure their right to prevent access to genetic resources or TK. Some indicated that certificates of origin should not be considered as an implicit approval of IPRs over life forms.

Session discussants noted that since TK systems are extremely complex and embedded in specific socio-cultural understandings, IPRs offer several limitations. As such, sui generis systems could be a mix of IPR-like rights and other non-IPR mechanisms that allow for the dynamic evolution of knowledge systems and preservation of traditional lifestyles. Participants said that 'positive' TK protection can serve several objectives, such as moral entitlement, commercialisation, self-determination, dissemination, and biodiversity conservation. Such TK protection should be geared towards creating a balance between holders of knowledge and the potential users of such knowledge. It should also respect health, food and needs of populations in developing countries that rely on traditional medicine and traditional crop varieties. Further, sui generis structures should focus more on building upon customary laws than on the needs of the biotechnology industry.

Calls to amend TRIPs on life patents and disclosure

There was much discussion around para. 19 of the Doha Declaration (on the examination of the TRIPs-CBD relationship and the protection of TK and folklore): participants noted that this paragraph needed to be addressed at the Cancun Ministerial and solutions found. In particular, many were of the view that due to environmental and ethical concerns, patents for products and processes for life forms should not be allowed -- a position taken by the African group of WTO Members. As a result, they urged that the TRIPs Agreement should be revised to establish a mandatory exception to the patentability of life.

There was also general agreement that irrespective of whether patents over life forms are allowed, disclosure of the origin of genetic resources and TK should be required. This could be addressed for instance in the ongoing review of TRIPs Agreement, where participants also noted that the link between IPRs and human rights should be explored.

Co-convenors and Workshop Organisers

African Center for Technology Studies (ACTS)
American Lands Alliance (ALA)
Center for International Environmental Law (CIEL)
Consumer Unity and Trust Society (CUTS)
Environmental Development Action in the Third World (ENDA)
Equator Initiative
Foundation for the Revitalisation of Local Health Traditions
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