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Symposium: Managing the Global Environment Through Trade: WTO, TPP, and TTIP Negotiations, and Bilateral Investment Treaties Versus Regional Trade Agreements: Introduction

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SYMPOSIUM: MANAGING THE GLOBAL ENVIRONMENT THROUGH TRADE: WTO, TPP, AND TTIP NEGOTIATIONS, AND BILATERAL INVESTMENT TREATIES VERSUS REGIONAL TRADE AGREEMENTS

INTRODUCTION

TIFFANY MATHIASON* & ANGELA CABRAL**

From rare earth metals to labels on cans of tuna, international trade regulations and laws touch diverse sectors of society and have far-reaching implications. There has been debate as to whether trade practices conflict with environmental protection. The Preamble in the Marrakesh Agreement establishing the World Trade Organization (“WTO”) reads that members recognize “that their relations in the field of trade and economic endeavor should be conducted with a view to . . . allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment.” So while members agree that environmental concerns need to be part of the conversation in negotiating and establishing trade agreements, the question is to what degree and how to enhance environmental protections and sustainable development while encouraging trade.

The panelists in the 2014 *American University International Law Review*’s Annual Symposium addressed this inquiry. Practitioners, representatives of NGOs, and academics spoke about WTO decisions concerning environmental protection and questioned the kind of role the WTO should play in enforcing environmental agreements. The

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General Counsel for the United States Trade Representative, Timothy Reif, gave the keynote address highlighting how the United States works on bilateral and multilateral trade agreements to encourage environmental protection. Participants explored how the Trans-Pacific Partnership (“TPP”) and the Transatlantic Trade and Investment Partnership (“TTIP”) would enhance or limit environmental protection measures. Last, the panelists expanded the dialogue to cover the intersection of regional trade agreements (“RTAs”), bilateral investment treaties (“BITs”), and the environment.

This issue of the *American University International Law Review* contains timely and exceptional work that advances the Symposium’s exchange on international trade and the environment. Andrew Lurie and Maria Kalinina writes on the essential intersection of trade and animal welfare in their article, “Protecting Animals in International Trade: A Study of Recent Successes at the WTO and in Free Trade Agreements.” Christina L. Beharry and Melinda E. Kuritzky’s article, “Going Green: Managing the Environment Through International Investment Arbitration,” takes up the essential matter of international investment arbitration and environmental protection. Special thanks to Padideh Ala’i, Professor of Law, for facilitating the coming together of some of the most brilliant minds dealing with international trade and the environment for the American University International Law Review 2014 Symposium.

PANEL 1: THE WTO AND ENVIRONMENTAL PROTECTION

This panel explored what WTO decisions have been significant for environmental protection and sustainable development efforts. Panelists addressed whether the WTO should play a more proactive enforcement role to safeguard environmental protection. Is the WTO an effective system for environmental protection? What capacity does the WTO have to enforce multilateral agreements relevant to environmental protection? Should the WTO be more of an arbitrator or affirmative power with regard to disputes that have consequences for environmental protection going forward? Can WTO decisions be used to benefit animals and promote animal welfare?

The Panel remarked on the implications of the US-Gasoline case,

the *US-Tuna* case, and the *US-Seal* case for environmental protection. However, panelists observed that the WTO is likely to be more focused on even-handedness of regulations concerning environmental protection instead of taking more affirmative steps on environmental concerns. Many environmental concerns like trade in water will push the WTO to decide whether it is going to be an arbitrator or an affirmative power in such disputes going forward. Indeed, the WTO has the capacity to do more for environmental protection, but whether it is the appropriate forum for such measures is a matter of debate. Speakers on this panel included Andrew Shoyer, Partner, Sidley Austin LLP; Jennifer Hillman, Former WTO Appellate Body Member and Partner, Cassidy Levy Kent; Masha Kalinina, International Trade Policy Specialist, Humane Society International. The panel was moderated by Marcos Orellana Cruz, Director of CIEL's Human Rights and Environment Program.

KEYNOTE ADDRESS

In his keynote address, General Counsel for the United States Trade Representative, Timothy Reif, highlighted how the intersection of trade and the environment is of concern in bilateral and multilateral trade agreements as well as other negotiations. He cited Peru's forestry and logging agreement that was concluded as part of the U.S. free trade agreement with Peru as an example of how the United States works with countries to implement environmental initiatives. In the time this agreement has been in effect, Peru has created a ministry of environment with an enforcement arm and designated ministries of environment and agriculture for carrying out its agreements. It has also established an independent forestry oversight board to make sure foresting is done in accordance with the agreement and it incorporated Convention on International Trade and Endangered Species standards into its domestic enforcement regime. Such successes take place by having an enforcement wing on the ground to ensure that efforts go beyond the scope of the U.S.-Peru bilateral agreement. The United States continues this work by negotiating new agreements like TPP and taking care to enforce agreements on the books.

PANEL 2: TRANS PACIFIC PARTNERSHIP (TPP)

TALKS AND TRANSATLANTIC INVESTMENT PARTNERSHIP (TTIP) NEGOTIATIONS

This panel addressed potential environmental provisions and problems in the ongoing TPP negotiations among nations in the Pacific region and the upcoming anticipated TTIP negotiations between the United States and the European Union. Panelists discussed current developments as well as predictions for how environmental issues will be resolved. How do these agreements address environmental concerns over issues like climate change and biological conservation? Will these negotiations strike an effective balance among business interests, investment interests, and sustainable and environmental protections? How will dispute settlement be addressed and what will be the impact on WTO dispute settlements? What impact will these agreements have on domestic environmental standards? Are industries likely to be exported from or to the United States because of these agreements? Are controversial processes like fracking going to expand through the TPP or TTIP?

During this panel, speakers discussed the potential impacts that these trade negotiations could have on environmental conservation efforts and how environmental concerns are likely to be addressed through these agreements. Panelists speculated that environmental issues would be of high concern among the negotiating nations and discussed the important issue of how those agreements will be enforced by the United States. Speakers on this panel included Frank Samolis, Partner at Patton Boggs LLP; Ilana Solomon, Director of the Responsible Trade Program at the Sierra Club; Simon Lester, WorldTradeLaw.net LLC; and Amelia Porges, Principal at the Law Offices of Amelia Porges PLLC. The panel was moderated by Professor William Snape, Practitioner in Residence and Fellow at American University Washington College of Law.

PANEL 3: BILATERAL INVESTMENT TREATIES VERSUS REGIONAL TRADE AGREEMENTS

Going beyond the TTIP and the TPP, this panel compared RTAs and BITs from an environmental perspective. The panel addressed the question of how RTAs and BITs have balanced business and environmental interests. What are the issues of environmental impact

arising from existing RTAs and BITs? How will these past experiences influence the future of dispute settlement regarding environmental claims arising under RTAs or BITs? How has investor-state arbitration addressed environmental concerns and would environmentalists consider these efforts a success?

In this panel, speakers discussed the history of environmental protection provisions within regional agreements, beginning with the North American Free Trade Agreement (“NAFTA”). Though NAFTA dispute resolution mechanisms have been disappointing at times, environmentalists have had more recent, limited successes through newer RTAs. BITs are a more likely future avenue for international environmental litigation, as they are prevalent and allow for more individual claims to be brought for settlement under investor-state dispute settlement provisions. Speakers on this panel included David Downes, Assistant Director for Policy at the Office of International Affairs, U.S. Department of the Interior; Christina L. Beharry, Senior Associate at Foley Hoag LLP; Carroll Muffett, President and CEO of the Center for International Environmental Law. The panel was moderated by Professor Padideh Ala’i, Professor of Law at the American University Washington College of Law.