



**Suggested Amendments to the Chairman's Paper dated 12 February 2002
Second Session of the Preparatory Committee for the
World Summit on Sustainable Development
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The Chairman's Paper to be considered at PrepCom 3 raises several serious concerns.

The paper, including most prominently its Introduction, focuses on the economic aspects of sustainable development at the expense of environmental protection and social development. It is inexplicable, for example, that the paper's Introduction does not mention protecting human health and the environment or the observation of human rights. In order to promote sustainable development, it is essential that WSSD documents carefully balance all three pillars of sustainable development (social, economic and environmental).

In addition, much of the language in the Paper reveals a trend to move responsibility from the international back to the national level, with a particular focus on domestic good governance. While it is axiomatic that good governance is an essential element for the promotion of economic and social development as well as for environmental protection, it is also the case that many problems are international and simply cannot be solved without multilateral or regional efforts. Moreover, developed countries, which tend to have good governance domestically, often engage in environmentally harmful production and consumption patterns, demonstrating that sustainable development cannot be achieved through good governance alone. The WSSD should recognize the essential role of multilateral and regional cooperative efforts, identify issues that are best addressed internationally, and, where possible, set out measurable and time-bound commitments.

It is widely recognized that, in many instances, international institutions have failed to be as effective as they need to be. The World Summit should be used as an occasion to address institutional deficiencies at all levels (local, national and international) and to find better solutions. The Chairman's Paper should underline the

¹ The Center for International Environmental Law (CIEL) is a public interest, not-for-profit environmental law firm founded in 1989 to strengthen international and comparative environmental law and policy around the world. CIEL's goals aim, among other things, at solving environmental problems and promoting sustainable societies through the use of law and at incorporating fundamental principles of ecology and justice into international law.

need for international cooperation and provide an outline for a new coherent structure for international sustainable development governance.

There is an emerging understanding among governments that partnerships or coalitions of the willing for implementation (“Type 2 outcomes”) should be a central part of the Johannesburg outcomes. While partnerships can play an important role in addressing problems relating to sustainable development, the fact that governments still need to perform traditional governmental functions, including regulating to correct instances of market failure, and the importance of multilaterally negotiated outcomes should not be downplayed. Implementation can not be left to partnerships alone, and WSSD documents, including this Paper, should not imply otherwise. Type 2 outcomes should supplement, not replace Type 1 outcomes.

Finally, we encourage WSSD participants to explore the possibility of a new global compact, in which, for example, the achievement of good governance occurs in the context of increased bilateral and multilateral development assistance and increased market access for developing countries’ goods and services, as well as in the context of greater cooperation among all countries on specific problems. This is not an easy issue, and it raises delicate political sensitivities. But we believe it is at least worth discussing given the severity of the challenges facing the international community, including the plight of the world’s poor and the dangerous degradation of the biosphere.

Detailed suggestions for textual changes follow.

Suggested Amendments with Comments

I. Introduction (Paragraphs 1 to 3)

The introduction focuses almost exclusively on economic growth and development. While these are crucial issues, they alone cannot lead to sustainable development. The protection of human health and the environment, respect of human rights, and sustainable and equitable use of natural resources are all essential elements, which must be addressed in the introduction if the world community truly wants to pursue development that is sustainable.

Para. 2, s. 3: After “monetary and trading systems are essential for sustainable development” insert new sentence: *“Policies to protect human health, the environment, and natural resources are critical to achieve sustained economic growth, poverty eradication, and improved living standards.”*

After “peace” insert: *“the observation of human rights.”*

II. Poverty Eradication (Paragraphs 4a-m)

Para. 4(a), s.1: At the end of the paragraph or in additional paragraph add: *Enhance greatly the availability of sanitation services to the poor, particularly in urban areas.*

Para. 4(c), s. 1: After “as well as provide” insert: *a healthy environment for workers and residents*”.

Para. 4(e), s. 1: Begin paragraph with: *“Provide funding to support, develop and implement”* instead of “provide funding for”.

After “enterprise development” insert: *“environmental protection”*.

Para. 4(g), s. 1: After “*desertification*” insert: *“deforestation, and other forms of environmental degradation”*.

Para. 4(h), s. 1: After “to land” insert: “and in a sustainable manner.”

Para. 4(k), s. 1: After “*Improve*” insert: *“significantly”*.

After “*the lives of*” insert: *“at least”*.

Instead of “100 million poor people living in inadequate human settlements” use: *“100 million slum dwellers”* or *“100 million poor people living in inadequate urban human settlements”*.

Comment: Far more than 100 million poor people are living in inadequate human settlements. The Millenium Declaration refers to “100 million slum dwellers”.

Add new

Para. 4 (b) bis: *“Ensure that multilateral, regional and bilateral negotiations on the liberalization of trade in services support rather than undermine the goals of poverty eradication, the protection of natural resources and the environment and the protection of public health and human rights.”*

Comment: Services constitute an important aspect of poverty eradication, covering activities as diverse as education and health services, the provision of water, or services related to the extraction of natural resources. Services are highly regulated, amongst others for economic, environmental or social reasons. Liberalization of international trade in services could limit the ability of governments to regulate in order to pursue domestically determined policy objectives. Nevertheless, such liberalization is currently being pursued in the multilateral, regional and bilateral level. It is crucial that these negotiations be based on a thorough, comprehensive and transparent assessment of impacts, in order to identify the sectors where liberalization could have negative social, health and environmental implications. Assessments should focus on the particular need of developing countries and their societies. Developing countries should be given adequate financial assistance to carry out their national assessment.

III. Changing Unsustainable Patterns of Consumption and Production (Paragraphs 5a - v)

While equitable, reliable access to markets and investment capital are important components of sustainable development, an over-reliance on unregulated markets as the drivers of sustainable development can lead to unsustainable consumption and production patterns, as exemplified by those of many northern countries, especially the United States. The text in this section could be improved by making clear that regulatory, not just economic, instruments have an important role in achieving sustainable development, and by stressing that among the most important economic instruments are transparency and expanded access to consumer information. We commend the inclusion of energy efficiency targets for developed countries, and recommend that targets also be included for developing countries and economies in transition. Additionally, as we point out in our specific suggestions below, the section should focus more on implementation of sustainable policies, instead of simply advocating the development of such policies. Finally, we note that there are unsustainable patterns of consumption and production among certain portions of the population in less developed countries, though we have not provided specific suggested language in this regard.

Para. 5(a)(ii), s.1: After “tools” insert: *“such as environmental labelling”*.

Para. 5(b), s. 1: After “Use” insert: *“an appropriate balance of economic and regulatory” instead of “economic”*.

Para. 5(c), s. 1: At the end of this paragraph add: *“and a x-fold increase in developing countries and countries in transition”*.

Para. 5(f), s. 3: After “accelerate” insert: *“the diffusion, including, as appropriate, commercialization of those technologies”*.

Para. 5(g), s. 1: Replace “adopt” with: *“implement”*.

After “voluntary initiatives” insert: *“designed for encouraging sustainable development”*.

Para. 5(h), s. 1: After “verifiable” delete: *“non-misleading and non-discriminatory”*.

Comment: The US has argued that many GMO labelling schemes are “misleading” as they imply that there is something different in the characteristics of GM and non-GM products. This view, however, is not shared by many countries that have implemented GMO labeling schemes. As the purpose of voluntary labels is to discriminate between products, we are also concerned about the term “non-discriminatory”. Application of this term without the qualifications contained in trading rules (including Article XX of GATT) may unduly restrict the freedom of voluntary labelling bodies. The reference to “disguised trade barriers” should be enough to strike a balance between the environmental and trade implications of voluntary labelling.

- Para. 5(k) s.1: Promote regional, cultural and ethical values in carrying out sustainable development initiatives.
Comment: This paragraph is unclear, and we suspect it represents an attempt to undercut human rights, including the rights of women. If that is the interest or could be the effect, it should be deleted.
- Para. 5(m), s. 1: After “use of natural gas” insert: *“instead of other forms of hydrocarbons”*.
- Para. 5(n), s. 1: At the beginning of this paragraph delete: *“Adopt policies that”*.
- Para. 5(v), s. 1: After “conservation” add: *“and clean fuels”*.

IV. Protecting and Managing the Natural Resource Base of Economic and Social Development (Paragraphs 6 to 16)

The paper’s references to intellectual property, especially in Section IV, cause concern. Innovation and technological development are essential prerequisites to sustainable development. Promoting innovation requires a system of intellectual property rights that simultaneously balances the interests of developed and developing countries, and the interests of the consumers and producers of technological knowledge. The current tendency in multilateral, regional and bilateral intellectual property agreements to promote overly strong intellectual property rights could undermine, rather than promote, the creation, transfer and dissemination of technology, and may benefit the producers of formal innovation (located mainly in the North) at the expense of its users (located mainly in the South). The chairman’s text should assert the importance of an international intellectual property system that addresses the needs of poor countries and peoples. In addition, discussions on intellectual property rights are taking place in a number of international forums, including the WTO, WIPO and the Convention on Biological Diversity. References in the chairman’s text to WIPO’s processes should be complemented by references to the Convention on Biological Diversity’s discussions on Article 8(j), and to the WTO TRIPS Council’s mandate to review the relationship between the TRIPS Agreement, the protection of traditional knowledge, and the Convention on Biological Diversity, though we have not provided specific language in this regard.

- Para. 6(c), s.1: At the end of the paragraph after “gender sensitive” add: *“and sustainable”*.
- Para. 8(f), s. 1: After “impact of disasters” add: *“and measures to ensure that the benefits of such knowledge are shared with source countries and communities”*.
Comment: “Dissemination and use” must be complemented by explicit measures to ensure benefit sharing.
- Para. 11(f), s. 1: After “tenure” insert: *“including community-based property rights”*.
Comment: The terms “land rights” and “security of tenure” have often proven to be conceptually insufficient in gaining legal recognition of the community-based property rights (CBPRs) of indigenous and other local communities. The concept of “rights” is better understood

legally than the concept of tenure. More natural resources than land are often covered. The term “community-based” indicates that the property rights being secured emanate from the local communities, and not necessarily from the nation states, where they are located.

Add new

Para. 11(g) bis: “ *Protect the genetic diversity of food crops by guarding against the introduction of invasive species and harmful genetically modified crops, promoting intellectual property right reform, preserving land races, and supporting farmers’ rights to save and use their own seed stock.*”

Para. 15(c), s. 1: After “genetic materials” insert: “*and traditional knowledge and folklore*”.

Comment: Need to ensure that the benefits derived from each of these three sources are equitably shared.

Para. 15(d), s. 1: After “genetic resources” insert: “*and traditional knowledge*”.

Comment: Could also include “folklore” here, but it is not directly covered by the CBD mandate, which is presumably the mandate addressed by this paragraph (as WIPO is addressed in previous paragraph).

Para. 17, s. 1: After “such projects” add: “*and in sharing the benefits of such projects*”.

Comment: Participation in decision making is only a means to the end of benefiting local and indigenous communities if the projects do, in fact, go ahead.

V. Sustainable Development in a Globalizing World (Paragraphs 18a-p)

Section V on globalization is particularly problematic because it fails to balance the elements necessary for truly sustainable development. While actions to reduce barriers to trade and investments have stimulated economic growth, there are deep concerns about the uneven distribution of these economic gains among and within countries, the growing pressure on natural resources, and increasing pollution. The failure to address these tensions provides the impetus for unrest, social conflict and violence. The current draft reads more as a restatement of the World Trade Organization’s Doha Agenda than as an honest attempt to define steps necessary to balance trade objectives with other important societal and environmental objectives because it fails entirely to recognize that unless trade and investment liberalization take place within a strong framework of environmental and other social policies, any resulting “development” will not be sustainable.

Para. 18, s. 2: After “international economic and financial system” insert: “*as well as unsustainable consumption patterns; over-exploitation of natural resources; and stress on the environment – locally, regionally, and globally.*”

Para. 18(b), s.1: After “World Trade Organization” add: “*and the secretariats of multilateral environmental agreements, inter alia, by establishing a process of meetings among environment, trade, and other officials*”

from governments, inter-governmental and non-governmental organizations, to examine the relationship between international economic and environmental governance, and to report back to the 12th CSD meeting with recommendations.

Comment: To complement discussions at the WTO's Committee on Trade and Environment (CTE), the paper should recommend the establishment of a multi-stakeholder process, drawing on expertise in governments, intergovernmental and non-governmental organizations, to examine the relationship between international economic and environmental governance.

Add new

Para. 18(b) bis: *“Affirm that MEAs and the WTO are separate but equal bodies of law, that MEAs are the preferable institution for defining trade-related environmental measures and for resolving conflicts regarding their use, and that trade measures pursuant to MEAs are consistent with WTO rules; and identify mechanisms to ensure that trade liberalisation is accompanied in parallel by effective strengthening of environmental governance, at both the national and international levels.”*

Comment: A critical issue for the WSSD is the need to strengthen coherence between international economic and environmental governance. As has been noted in recent high-level UNEP meetings, the mutual supportiveness of these systems cannot be assumed, and proactive efforts are required to maximize synergies, reduce tensions, and promote an architecture that maximizes net contributions to sustainable development. Currently, the Chairman's paper fails to adequately address this issue. The text should affirm that the main elements of environmental and economic governance.

Para. 18(c), s. 1: After “multilateral trading system that” add: *“respects legitimate regulatory efforts at the national level and”*.

Para. 18(d), s. 1: Replace “so that” with: *“in a manner that ensures”*.

Comment: “so that” assumes that the goals will be achieved merely by implementing the outcomes of the Ministerial. As we know, this is not necessarily the case.

Para. 18(d) s.1: Replace “keep” with: *“place”*.

Add new

Para. 18(d) bis: *“Encourage full environmental and social assessment of past and proposed future trade liberalization undertaken under the auspices of the WTO and regional and bilateral trade agreements.”*

Add new

Para. 18(e) bis: *“Consider elaborating and adopting binding instruments to promote corporate responsibility and accountability that include enforceable obligations to respect basic human rights and adopt best environmental practices and build on initiatives.”*

Para. 18(f), s. 1: After “negotiations” add: *“and full consideration of non-trade concerns such as protection of the environment.”*

Para. 18(g), s. 1: After “implement” insert: *“capacity building efforts such as”*.

After “Growth and Integration” add: *“and the joint UNEP-UNCTAD Capacity Building Taskforce on Trade, Environment and Development.”*

Para. 18(i): Begin paragraph with: *“Within a framework of binding environmental and social guidelines”*.

Replace “increase their support for” with: *“further promote”*.

Para. 18(j), s. 1: At the end of the paragraph add: *“only after conducting environmental and social impact analyses and only to projects that meet or exceed environmental standards.”*

Comment: This paragraph calls for government incentives to the private sector to increase foreign direct investment (FDI) —through such mechanisms as export credit agencies — *but does not mention* that such incentives need to be offered within a binding framework of environmental and human rights guidelines.

Add new

Para. 18(j) bis: *“Develop and implement common binding environmental and social guidelines for Export Credit Agencies (ECAs) encouraging the strengthened integration of environmental and social considerations, including human rights, in investment decisions.”*

Comment: Given the important function of ECAs in supporting export trade and facilitating investment in economic development and infrastructure projects, ECAs can play a key leadership role in fostering sustainable development. In order to do so, however, it is essential to ensure that the debt implications and the socially and environmentally negative impacts arising from the projects benefiting from their support are minimized and mitigated. This can best be done through binding international guidelines.

Para. 18(k), s. 1: After “contract enforcement” add: *“while preserving the ability of governments at all levels to adopt and implement environmental and other social policies necessary to achieve sustainable development.”*

Comment: This paragraph calls for creating an attractive climate for FDI based on property and contractual rights, but does not stress the importance of preserving the ability of governments to regulate in the public interest. Such an imbalanced approach to the issues of

globalization sets the Stockholm/Rio process back 20 years and must be remedied.

Para. 18(o), s. 1: After “responsibilities” add: *“as well as promote strong national measures to prevent or sanction failure by economic actors to fulfill their responsibilities.”*

Para. 18(p), s. 1: Replace “standards” with: *“guidelines”*.

After “Principle 10 of Rio Declaration” add: *“as well as develop new and effective mechanisms for civil society participation in international organizations, including in the UN, the WTO and international financial institutions.”*

VI. Health and Sustainable Development (Paragraphs 19a-l)

Add new

Para. 19(a) bis: *“Ensure that the liberalization of international trade in health, water, sanitation and environmental services does not inhibit the provision of these services to the poor and disadvantaged and ensure that governments retain the right to regulate in order protect public health and the environment.”*

Para. 19(e), s.1: Begin paragraph with: *“Phase out the use of lead in gasoline completely by the year 2007 and”*.

Comment: The international community committed to eliminate lead from gasoline “as soon as possible” at the 1996 Second U.N. Conference on Human Settlements (Habitat Agenda, 91 43 (bb)). It is time to set a date.

Add new

Para. 19(e) bis: *Strengthen regional and national programs, with technical and financial assistance for developing countries, to reduce the body burden of toxic chemicals, including mercury and dioxins, caused by combustion processes such as incineration, the burning of coal, and motor vehicle exhaust.”*

Add new

Para. 19(j) bis: *“Ensure that intellectual property rights support and do not undermine efforts to provide affordable access to medicines.”*

Para. 19(k), s. 1: Replace “intellectual property rights protection” with: *“measures to maintain and share benefits derived from the use of traditional knowledge”*.

Comment: The reference here to “intellectual property rights” is too narrow. Many other measures are required to promote the use of traditional medicines – including measures to ensure effective benefits sharing, and to support the local communities that are the custodians of genetic resources and traditional knowledge.

**VII. Sustainable Development of Small Island Developing States
(Paragraphs 20a-j)**

Add new

Para. 20(i) bis: *“Promptly reduce global emissions of greenhouse gases to minimize the threat SIDS face from rising sea levels caused by global warming.”*

VIII. Sustainable Development Initiatives for Africa (Paragraph 21)

IX. Means of Implementation (Paragraphs 22 to 28)

Para. 24(b), s. 1: After support measures add: *“while preserving the ability to subsidize the provision of basic services to the poor and disadvantaged”*.

Add new

Para. 25(c) bis: *“Promote complementary implementation of technology transfer obligations embodied in multilateral environmental agreements and in intellectual property agreements, such as the WTO’s Agreement on Trade Related Aspects of Intellectual Property.”*

Para. 25(i), s. 1: After “patent laws” insert: *“or sui generis systems”*.

Comment: Without this language, this may be construed as encouraging patents to protect indigenous knowledge, rather than sui generis systems, as permitted by the TRIPS Agreement.

X. Strengthening Governance for Sustainable Development at the National, Regional and International levels

Contact: Nathalie Bernasconi-Osterwalder
Senior Attorney
Center for International Environmental Law (CIEL)
Tel: 1-202-785-7800
E-Mail: nbernasconi@ciel.org