

## The Green Trade Debate

- *The environment-trade link is under scrutiny in international organizations as well as by many governments. The North American Free Trade Agreement and the recent multilateral trade agreement under GATT both take significant steps but deal with only narrow aspects of the issue.*
- *Unless the environment-trade link is better managed, trade disputes will continue to occur, often pitting industrial against developing countries. Conflicts may occur over process standards on traded goods, eco-dumping, eco-taxes, environmental subsidies, waste trade, labeling, and trade in endangered plants and animals.*
- *Countries producing goods under high environmental standards worry that they will not be able to compete with countries producing under low standards and want international rules to establish a "level playing field". On the other hand, developing countries view low environmental standards as a manifestation of poverty, not a deliberate strategy.*
- *The U.S. Congress will not be able to change the environmental aspects of the Uruguay Round agreement. But it could legislate guidelines on how the United States handles international challenges to our environmental laws. The Congress may also write new objectives for future negotiations on the environment and trade.*

As national policymakers grapple with the need to understand and positively affect the link between the world economy and the global ecosystem, the issue of the environment (including public health) and international trade has increased in policy importance. There have only been a handful of environment-related trade conflicts so far, but they are expected to occur with greater frequency, especially if environmental problems worsen. Many of these conflicts would take place on a North-South axis, as nations with high environmental regulations or taxes seek comparable controls in developing countries. To avoid such conflicts, there is growing support for more judicious international rules. The process of developing such rules will be advanced this April, when the GATT meets in Marrakech to sign the new multilateral trade accord. At that time, GATT will set up a committee with a mandate to report on aspects of the environment-trade nexus.

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## The Trade and Environment Debate

Developing countries have a large stake in the environment and trade debate. First, the continuing momentum of trade liberalization—so critical to developing country progress—depends on popular support in industrial countries; that support is undermined by the view that trade may be bad for the environment. Second, new environmental regulations imposed by industrial countries can be an unintentional (sometimes intentional) barrier to exports from developing nations. Third, developing countries that are natural-resource intensive are vulnerable to “eco-imperialism” by industrial countries trying to influence use of those resources. For certain resources (e.g., plants with medical uses), the industrial countries may seek to maintain their access. For other resources (e.g., tropical forests or elephants) the industrial countries may seek to prevent harvesting.

However, developing countries can use the high-level attention accorded to the trade-environment link as an opportunity to press for a broad agenda including technology transfer, more funding for environmental projects, and reduced protectionism in industrial countries.

The issue of the environment and trade has several important dimensions. Some analysts contend that international trade itself may endanger the environment unless all nations require prices to reflect full environmental costs.<sup>1</sup> This critique challenges the conventional economic perspective that trade helps all nations increase their wealth, and therefore enables poor nations to afford better environmental protection. In the conventional view, trade increases efficiency, and thus reduces the waste of natural resources.<sup>2</sup> In the new critique, trade is viewed as driving the overuse of natural resources and energy. The intellectual gulf between these divergent perspectives is enormous. Those who regard trade with skepticism will also doubt the benefits of the trade liberalization obtained in the Uruguay Round.

Another dimension to the debate is “fairness.” There is a concern that countries producing goods under high environmental standards cannot compete with countries producing under low standards. It is often suggested that international rules are needed to establish a “level playing field.” Otherwise, investment and jobs may migrate to low-standard countries. So far, empirical studies have found little movement resulting from environmental regulation.

<sup>1</sup>For example, see Charles Arden-Clarke, “South-North Terms of Trade, Environmental Protection and Sustainable Development,” WWF Discussion Paper (1992); Ralph Nader et al, *The Case Against Free Trade* (1993); Ravi Batra, *The Myth of Free Trade* (1993); and Tim Lang and Colin Hines, *The New Protectionism Protecting the Future Against Free Trade*, (1993).

<sup>2</sup>See Kym Anderson and Richard Blackhurst (eds.), *The Greening of World Trade Issues* (1992) and Patrick Low (ed.), *International Trade and the Environment*, World Bank Discussion Papers 159 (1992).

Developing countries also have fairness concerns. They see low environmental standards as a manifestation of poverty, not a conscious development strategy. If it has any impact on competitiveness, a dirty environment is more likely to be a handicap than a boon. Therefore, they view the prospect of international rules that penalize them for lax standards as unfair, tantamount to a tax on poverty.

The most controversial dimension of the debate concerns trade restrictions for environmental purposes. Although such trade measures have been employed since the 19th century, they have grown in intrusiveness in recent years as nations link the acceptability of certain imported products to the environmental standards followed in producing that product.<sup>3</sup> For example, the U.S. government refuses imported tuna from nations whose dolphin kill rates exceed the levels attained by U.S. fishing vessels. (See Box.)

Another key dimension is the quest for international environmental cooperation. Although import measures have been used as an environmental tool since the Bird Treaty of 1902, whether this is permitted under international trade rules has become an issue only recently. For two major environmental treaties—the Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention on the Transboundary Movements of Hazardous Waste—the consistency with GATT rules is especially problematic since these treaties require parties to ban certain trade with non-parties. Such discrimination violates GATT’s most-favoured-nation principle.

GATT Article XX (which permits general exceptions to GATT rules for measures “necessary to protect human, animal, or plant life or health” and measures “relating to the conservation of exhaustible natural resources”) was viewed as applying to such treaties when they were approved. The 1991 dolphin decision has forced a rethinking of all environmental trade measures. Existing environmental treaties are unlikely to be challenged in the GATT. But if the architects of new environmental treaties are denied the use of trade measures, it may prove more difficult to obtain effective agreements in the future.

## North American Free Trade Agreement

The successful implementation of NAFTA and its environmental side agreement has important implications for future multilateral cooperation. NAFTA is the first trade agreement to impose special constraints on the application of health and environmental standards to imports.<sup>4</sup> For example, health measures must not be

<sup>3</sup>See Steve Charnovitz, “A Taxonomy of Environmental Trade Measures,” *Georgetown International Environmental Law Review*, Winter 1993.

<sup>4</sup>As the GATT Secretariat has pointed out, the GATT places “essentially no constraints on a country’s right to protect its own environment against damage from either domestic production or the consumption of domestically-produced or imported products.” See GATT, *International Trade 90-91*, Vol. 1, p. 23.



maintained when "there is no longer a scientific basis for it." These constraints will probably not interfere with legitimate public health measures. In the Uruguay Round, GATT members could impose much tighter constraints on environmental and health regulations. Some environmental groups consider these constraints onerous.

NAFTA pioneers the two-track approach of an environmental side agreement linked to a trade agreement. The side agreement builds on the existing environmental cooperation between Mexico and the United States, and between Canada and the United States, and creates a Commission for Environmental Cooperation. Among other functions, the Commission may convene panels to review whether there has been a "persistent pattern of failure" by one country to enforce its own environmental law effectively. Such a finding may lead to trade sanctions against Mexico or the United States (but not against Canada).

Perhaps most important is the general influence of NAFTA on the environment and trade debate. NAFTA is widely perceived as embodying the principle that trade agreements need to show sensitivity to environmental concerns. Although NAFTA contains only weak environmental commitments, the possibility exists of using future regional negotiations for environmental purposes.

## GATT and the Environment

Although GATT has no special constraints on the application of domestic environmental standards to imports, it imposes the traditional trade rule of national treatment, meaning that imported products cannot be treated less favorably than domestic products. GATT also prohibits the use of import bans and of discriminatory trade restrictions. In recognition that commerce is not all-important, GATT provides exceptions under Article XX for reasons of life, health, and conservation.

In the most famous trade dispute in GATT history, Mexico challenged U.S. import bans on tuna imposed under the Marine Mammal Protection Act. The U.S. Department of Commerce had banned tuna from several countries whose dolphin kill rates were significantly higher than those of the U.S. fishing vessels. In September 1991, the GATT panel found that the U.S. law violated the GATT national treatment obligation and could not be defended through Article XX because GATT exceptions did not apply to animal life or natural resources outside of the United States. Because of NAFTA politics, Mexico chose to postpone official GATT consideration of the panel's report. But the dolphin panel's ruling alarmed environmentalists around the world who saw the decision as a threat to numerous environmental laws and treaties aimed at protecting resources in the global commons or in other countries.

Within GATT, the dolphin report was widely praised, particularly by developing countries. They had already begun to express a concern that industrial

## Recent Environment and Trade Conflicts

*United States–Mexico (1991).* Mexico complaint involved U.S. ban on tuna from countries with high dolphin-kill rates. GATT Panel rejected U.S. claim that GATT permits import bans to save dolphins in ocean.

*Austria–Malaysia (1992).* Austria imposed a requirement that tropical wood products be labeled. Malaysia did not take Austria to GATT, but threatened trade sanctions. Austria rescinded law.

*United States–European Union (1993).* EU complaint that U.S. fuel economy standards and gas guzzler tax violate national treatment against autos made in Europe. Case pending in GATT.

*United States–China and Taiwan (1993).* President Clinton did not impose trade sanctions against either country for trafficking rhino horns and tiger parts, but threatened sanctions if progress is not made by the CITES meeting in March 1994.

nations would begin disguising trade barriers as environmental standards. Developing countries were also worried that trade bans or sanctions might be used to press them into making costly improvements in their own environmental policies. For example, the European Parliament was considering proposals for limiting timber imports from regions using unsustainable timber logging practices. They were further alarmed by a bill in the U.S. Senate to impose offsetting tariffs on countries with lower environmental regulations.<sup>5</sup>

Concurrently in 1991, GATT's governing Council was considering a proposal by Austria (on behalf of countries in the European Free Trade Association) to revive the long dormant GATT working group on Environmental Measures in International Trade (established in 1971). Austria argued that the environmental issue was becoming increasingly important in trade policy and suggested that a systematic examination was needed. Yet the revival of the working group proved difficult. It was strongly opposed by developing countries worried about where such discussions might lead. After months of haggling, the working group was reconstituted at the end of 1991. The group has not held any public sessions. But the documentation that has been released demonstrates little, if any, progress since then.

In addition to GATT, the intersection of environment and trade is being considered in other international institutions including the Organisation for Eco-

<sup>5</sup>The International Pollution Deterrence Act of 1991, introduced by Senator David Boren.



conomic Co-operation and Development (OECD), the U.N. Environment Programme (UNEP), and the U.N. Conference on Trade and Development (UNCTAD).

## The World Trade Organization

The recently completed agreement of the Uruguay Round of multilateral trade negotiations will transform GATT into the World Trade Organization (WTO) sometime next year. It will be broader than the GATT (for example by including services) and will have more enforceable dispute settlement. The WTO agreement contains several provisions relating to the environment, but only a few have major significance.<sup>6</sup> By far the most important are the two new agreements that impose substantive limits on the application of domestic environmental standards to imports. Under the Agreement on Technical Barriers to Trade, product standards cannot be more "trade-restrictive than necessary to fulfill a legitimate objective." The Agreement on Sanitary and Phytosanitary Standards states that food safety and other health measures must not be maintained "without sufficient scientific evidence" or "pertinent information." These agreements have tighter constraints on environmental standards than analogous provisions in NAFTA.

The WTO takes no position on whether trade measures can be used "extrajurisdictionally" to protect the global commons (that is, to the environment outside of a nation's own country). Nevertheless, the WTO may influence such actions by its new dispute adjudication procedures. These procedures allow a plaintiff country winning a dispute to impose trade sanctions on the losing country if that country refuses to alter the law in contention (or otherwise satisfy the winning country).

The WTO agreement states that "to achieve greater coherence in global economic policymaking," the Organization shall cooperate with the International Monetary Fund and the World Bank. Throughout negotiations on establishing the WTO, environmental groups such as the World Wildlife Fund had urged that any new trade institution needed to start making a connection between the global economy and the global environment. But the WTO takes no steps to coordinate its work with environmental institutions.

The weaknesses of the environmental aspects of the WTO are not likely to be a roadblock to U.S. Congressional approval of the Uruguay Round agreement later this year. No major environmental group has endorsed the agreement so far, but many are expected to do so if GATT ministers create a permanent WTO committee on environment and trade.

## Linking Environment and Trade

Below is a brief summary of the key issues facing policymakers:

### Environmental Supervision

There is widespread agreement in the domestic and international trade and environment communities that it is appropriate for GATT to examine product regulations to assure they are not disguised protectionism. It is too easy for nations to restrict imports, ostensibly for reasons of health, when the real motive is to reduce competition. A controversial issue among health and environmental groups is whether GATT should be given a broader mandate to determine when such regulations are too restrictive given the actual risks involved or too costly for exporting nations to meet.

GATT is based on the long-established principle of "national treatment." This means that countries can apply domestic standards and taxes to imported products, but cannot treat imports less favorably. Both the NAFTA and the WTO move toward a new norm of what might be called "international treatment." Under this norm, international standards can be applied to imports. But a country that wants to apply its own standards must meet special tests prescribed in the trade agreement.

The new rules in the WTO may lead to an increasing number of trade complaints. If such complaints are to be handled by a system in which all sides have confidence, many improvements will be needed. For example, WTO panelists might be drawn from a much broader pool than just trade experts.

Another issue relates to process standards on traded goods (for example, a regulation against the sale of driftnet-caught fish). There is disagreement over whether GATT permits such regulations, and the Uruguay Round pact does not address the point. Such process standards are most contentious when they are unilateral, but even the multilateral process standards (such as the Wellington Convention on Driftnet Fishing) are controversial. Many environmental groups want this issue to be discussed in the new GATT/WTO committee. It might be useful to start with the question of whether GATT permits nations to require eco-labels that disclose the production process. There might be less opposition to labels than to outright bans on the sale of goods made with processes thought to be environmentally damaging.

### Fairness

GATT recognizes the unfairness of commercial practices such as dumping and subsidization, and permits nations to respond unilaterally with countervailing duties (i.e., penalty tariffs). Some analysts have suggested that GATT should also permit antidumping duties against "eco-dumping" and countervailing duties against "pollution subsidies." Eco-dumping occurs when a good is traded at a price that does not internal-

<sup>6</sup>For a more complete discussion of the environmental aspects of the Uruguay Round, see Steve Charnovitz, "The World Trade Organization and Environmental Supervision," *International Environment Reporter*, January 26, 1994.



ize environmental costs, such as the cost of the disposal of waste from the manufacturing process. A pollution subsidy occurs when the environmental regulations in the country of production are less than some international reference standard.

The issues regarding trade fairness are complex.<sup>7</sup> A core question is whether countries should be allowed to compete on the basis of 1) a high tolerance for environmental injury or 2) a low weight attached to the global commons. On the first point, many economists say that competition based on a high tolerance for domestic environmental injury is reasonable because developing countries need to achieve a satisfactory level of national income before they can afford environmental protection. Moreover, there is no reason to assume that preferences for environmental protection should be uniform across countries. In response, it is argued that no country is too poor to follow sustainable development practices.

On the second point, many environmentalists believe that nations should not be able to derive competitiveness from policies that degrade the global commons, such as harvesting fish with driftnets or continuing to rely upon chlorofluorocarbons. Actually, there is a stronger argument for the use of penalty duties against transnational environmental injury than there is for penalty duties against domestic commercial injury. Many economists have pointed out that the commercial dumping condemned by GATT may actually benefit consumers in importing countries.

The European Parliament says that GATT should prohibit "environmental dumping."<sup>8</sup> Vice President Al Gore has written that "weak and ineffectual enforcement of pollution control measures should also be included in the definition of unfair trading practices."<sup>9</sup> But changing GATT rules to permit unilateral penalty duties for environmental purposes would be counterproductive. There is too great a danger of protectionist abuse. However, as part of a multilateral regime on environmental protection, there could be a use for penalty duties against free riders. This issue should be taken up by the WTO.

## Subsidies

The Uruguay Round agreement on subsidies has two main implications for the environment. First, the new rules would render "non-actionable" limited government aid to promote adapting facilities to new environmental requirements. A non-actionable subsidy means that countries could not impose penalty duties against that subsidy without specific WTO approval. The subsidy is limited to 20 percent of the cost of the adaptation. This might help Eastern European countries that want to

upgrade their standards quickly.

The Uruguay Round agreement would also curtail certain product subsidies in agriculture. This could have a pro-environmental impact if production of certain commodities in high-income countries is phased out in favor of developing countries. At present, agricultural competitiveness is maintained in some industrial countries through practices that erode land, overuse water, and rely heavily on pesticides. These practices can occur in countries at any stage of development.

## Border Adjustments

Although GATT has no authority over domestic measures, it does have rules about applying domestic measures to imports and exports. GATT permits levying internal taxes on imported products in a non-discriminatory fashion. For example, a gasoline tax can be applied to domestic and foreign gasoline.

GATT rules are murky on when internal taxes on processes or on non-material inputs can be applied to imports produced using such processes or such inputs. This issue arose several months ago when Congress was considering a BTU energy tax. The industries affected by the tax complained that it would hurt their competitiveness because they would have to pay a tax that competing foreign producers did not pay. The Congress tried to deal with these concerns by permitting certain border adjustments on imports and exports, but several of these provisions may have been GATT-illegal (in the end, the BTU tax was dropped for other reasons).

The question that needs consideration is whether nations that levy appropriate energy and eco-taxes can compete on a level playing field with nations that do not levy such taxes.<sup>10</sup> Ideally, nations could agree to apply the same taxes or use a common approach to taxation. But in the absence of such an agreement, countries that initiate these taxes may try to use a border adjustment, which will lead to conflict in GATT. If GATT gave countries greater scope for border adjustments, that might facilitate international agreements—for example, an international carbon tax to combat global warming.

## Sovereignty

When the United States imposed a trade ban on tuna from countries using dolphin-unsafe practices, some Mexicans considered that a violation of their sovereignty. When a GATT panel ruled that the United States could not keep out dolphin-unsafe tuna, some Americans considered that a violation of their sovereignty.

It remains to be seen how the new disciplines on product standards and sanitary measures established by the Uruguay Round agreement will operate. There is

<sup>7</sup>For further discussion, see Steve Charnovitz, "Environmental and Labour Standards in Trade," *The World Economy*, May 1992.

<sup>8</sup>Resolution A3-0329/92.

<sup>9</sup>Al Gore, *Earth in the Balance* (1992), p. 343.

<sup>10</sup>See *Environmental Policies and Industrial Competitiveness*, OECD, 1993.



a possibility that they will hinder environmental standard-setting. If so, the smallest, weakest countries will be most at risk. Economically powerful countries will always be freer, realistically speaking, to delay compliance with adverse panel rulings.

Sovereignty is not a zero-sum game. No country can truly be sovereign over its territory when the health of the global ecosystem is at stake. The European Union used an apt analogy in stating that nations must "pool" their sovereignty. Joint efforts can help all countries improve their standards of living.

### **GATT Article XX Exceptions**

It is often suggested that the WTO should consider the adequacy of Article XX's exceptions for the environment. Some environmental groups would like to reverse recent GATT jurisprudence declaring that nations must use the least-GATT-inconsistent method of protecting human, animal, or plant life. For example, in the dolphin dispute, the GATT panel indicated that a cooperative agreement with Mexico would have been less GATT-inconsistent than the import ban actually used by the United States. The panel decreed this even though the United States had been trying for years to attain such an agreement with harvesting nations.

The U.S. government has argued in GATT that Article XX was meant to apply "extrajurisdictionally." The historical evidence buttresses the U.S. position. Nevertheless, no other country has supported the United States on this point in the GATT Council, including countries that have extrajurisdictional measures of their own. Given this basic disagreement, there is probably little to be gained from concerted efforts to "clarify" Article XX.

### **Encouraging International Cooperation**

Because cooperation among nations is essential for addressing many environmental problems, a basic issue is how the community of nations can best facilitate such cooperation. Trade measures can often be instrumental to such treaties either in enforcing compliance (e.g., the Fur Seals Convention of 1911) or in encouraging membership (e.g., the Montreal Protocol).

The logic used in the dolphin panel report implies that numerous international environmental treaties are illegal under GATT. Many observers had hoped that the Uruguay Round would sanctify multilateral environmental agreements vis-à-vis GATT rules, but the agreement does not deal with the issue. One option is that the WTO should accord the same status to treaties on the environment as it does to treaties on intellectual property. The WTO requires members to adhere to certain rules in intellectual property treaties. Yet presently there is no corresponding obligation to adhere to any environmental treaties.

Another issue is what actions nations should take in the absence of treaties. One school of thought is that no unilateral trade measures ought to be used. But

unilateral measures are often part of the political dynamic that leads to a treaty. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was preceded with unilateral action by countries such as the United Kingdom and the United States.

The question for the international trading system is whether more prohibitive GATT disciplines on the use of unilateral environmental trade measures would encourage or discourage the necessary environmental policy convergence. If trade measures were foreclosed, countries desiring higher environmental standards globally would have to rely to a greater extent on incentives to encourage cooperation. Some see the use of "carrots," such as foreign aid, as more effective than the use of "sticks," such as trade bans. But it is uncertain whether high-income countries will increase their flows of development aid at this time. Along these lines, the European Commission's ambassador to GATT recently offered a thoughtful proposal for a small international tariff on imports to raise funds for environmental programs in developing countries.<sup>11</sup>

### **Green GSP**

The U.S. Generalized System of Preferences (GSP), which provides duty-free treatment for most developing countries, expires in September 1994. Several Members of Congress have suggested that environmental conditions be added to any renewed GSP program. Because GSP already has labor conditions, such environmental conditions seem likely.

Although GSP is not a GATT program, GATT gets involved in enabling such efforts (approval was needed because lower tariffs on developing countries violate GATT's non-discrimination rule). One useful item for the GATT's environmental committee would be to formulate common environmental conditions for all 16 national GSP programs. Now is an opportune time before the Congress writes new conditions into U.S. law. If this new conditionality were accompanied by expanding the GSP programs to include more products, many developing countries might support such a "Green GSP."

### **Institutional Transparency**

Many environmental groups have recently complained about the lack of transparency in GATT operations. Unlike many international organizations, meetings of the GATT Council are closed to the media. The Council minutes are "restricted" documents. Dispute panels take no public testimony. The reports of GATT panels are not normally released to the public until after the reports are adopted. GATT has never established a

<sup>11</sup>See John Zarocostas, "Import Tax Proposed to Protect Environment," *Journal of Commerce*, January 27, 1994, p. 1A. For an analysis of a general import tax, see Eleanor B. Steinberg et. al., *New Means of Financing International Needs* (1978), ch. 3.



process for consultation with non-governmental organizations. Even GATT's current working group on the environment has not met formally with environmentalists.

GATT officials recognize this problem, but point out that a strategy of openness risks increasing the influence of interests that do not share GATT's anti-protectionist stance. Perhaps, but the WTO will not be able to enjoy the anonymity that GATT did in its first 40 years. International trade has become a very high profile issue. The WTO needs to build public support (as GATT Director-General Peter Sutherland seems to recognize). This will require a new attitude about transparency.

### Role of the WTO

Many environmental groups suggest that the WTO should promote sustainable trade, while discouraging trade that is harmful to the environment.<sup>12</sup> Yet it is unclear whether the WTO is the appropriate organization to undertake such a mission.

From 1947-1993, GATT promoted mainly deregulation of border restrictions. GATT contains no rules regarding the way goods are made. The Uruguay Round agreement breaks important new ground by mandating national regulations on intellectual property. While it might be argued that intellectual property is a private "right" while a healthy environment is a public policy, that is a weak rationale for considering one but not the other. Moreover, antitrust is a public policy and there is widespread interest in incorporating it into future trade rules.

It can be argued that GATT is too commercially-oriented to give proper weight to environmental concerns. But keeping this issue off GATT's table will require that some other international institution take up the task of preventing environmentally harmful production and commerce. It is the unlikelihood of such an institution being created that has driven environmental groups to a flirtation with GATT.

### International Environment Organization

In 1972, the OECD recommended that "Where products are traded internationally and where there could be significant obstacles to trade, Governments should seek common standards for polluting products and agree on the timing and general scope of regulations for particular products." This recommendation remains timely and useful. What is lacking is a forum for countries to devise common strategies for dealing with the most critical environmental problems. When new

<sup>12</sup>There are no good estimates on the quantity of world trade that is environmentally harmful. If one considers only the problems caused by trade itself, the quantity is probably small. If one considers trade in goods produced under sub-optimal environmental standards, the quantity could be huge.

international standards are required, the industrial countries should work together to provide technical assistance and financial aid to the developing countries to assist them in meeting the standards. If trade controls are to be used, the decision should be taken multilaterally, so that it is less likely to be protectionist or appear to impinge on sovereignty.

The ideal forum for devising and implementing environmental standards would be a new international organization.<sup>13</sup> Rather than a government-only forum, the new organization could be composed of government, business, and nongovernmental organization delegates from environmental and consumer groups. This might be modeled upon the International Labour Organization (ILO), which has operated since 1919 with government, business, and labor union delegates.

A new institution might draw upon the best aspects of both the GATT and the ILO. The GATT has invented the concept of negotiating "rounds" which bundle disparate issues into a package acceptable to industrial and developing countries. The ILO has shown how non-governmental groups can help governments devise international social standards. ILO standards are also notable in recognizing rights of individuals.

The ILO is also relevant because employment policy relates both to trade and the environment. As the European Commission has noted in its recent White Paper, there are important structural links between environment and employment. The world economy is over-utilizing environmental resources and under-utilizing human resources. That is a bad arrangement on both counts.

### Future U.S. Trade Legislation

The WTO agreement does not permit "reservations." Thus, the Uruguay Round agreement's implementing legislation cannot be used to protect any U.S. environmental laws from WTO review. Nevertheless, this law can be used to regulate any action the U.S. Trade Representative might take in response to adverse panel rulings on federal and state environmental laws. For example, if a panel found that a state government's recycled content law (e.g., on newsprint or bottles) violated the GATT, the U.S. Trade Representative might promise other countries to bring action in federal court to overturn the state law.

If new trade negotiating authority is granted for continuing international (or bilateral) trade talks, Congress may wish to update the non-binding negotiating objectives on trade and the environment that it approved in 1992. At that time, Congress favored a modification of GATT articles to take into consideration environmental treaties and existing national laws of GATT members. While this objective was not achieved in the Uruguay Round, progress did occur in other

<sup>13</sup>Daniel Esty has suggested a good name for such a forum—the Global Environmental Organization (GEO).



areas. It would be timely at this point for Congress to establish a "trade and environment" policy for the U.S. government. The Congress might also seek to set up an environmental advisory group on trade policy akin to the labor and industry advisory groups. Both the Bush and Clinton administrations have resisted this idea.

## Conclusion

There is consensus that policies on environment and trade need to be mutually supportive. But little agreement exists on whether reforms are necessary or,

if so, on what those reforms might be. Many issues in the environment and trade debate go far beyond the current role of GATT. Whether the WTO should be broadened, or whether some new organization should be created for environmental governance, will be a key topic in the months ahead.

—**Steve Charnovitz**  
for the Overseas Development Council  
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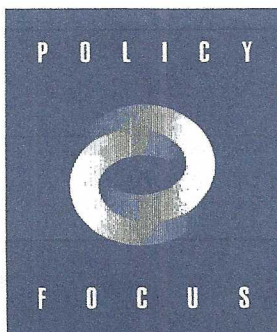
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