

# Regional Trade Agreements

By Steve Charnovitz

The initiation of two major regional trade negotiations in late 1994—the Asia-Pacific Economic Cooperation Forum (APEC) and those aimed at establishing a Free Trade Area of the Americas (FTAA)—has opened a new debate over the linkage between trade and the environment. Environmentalists want to incorporate “sustainable development” as an explicit objective of the new agreements. The business community is wary of promoting a policy linkage because it may lead to new trade barriers. Governments are split over how to handle the issue. Amid this wide range of views, many outcomes remain possible.

Both sets of negotiations will be multi-year endeavors. APEC, which includes countries in East Asia, the Pacific Ocean, and North America, along with Chile, aims to achieve “free and open trade and investment” among industrial countries by 2010 and among developing countries by 2020. The FTAA negotiations, which involve virtually all the countries in the Western Hemisphere, are to be concluded by 2005.<sup>1</sup> These faraway dates provide time for negotiators to give close attention to environmental issues.

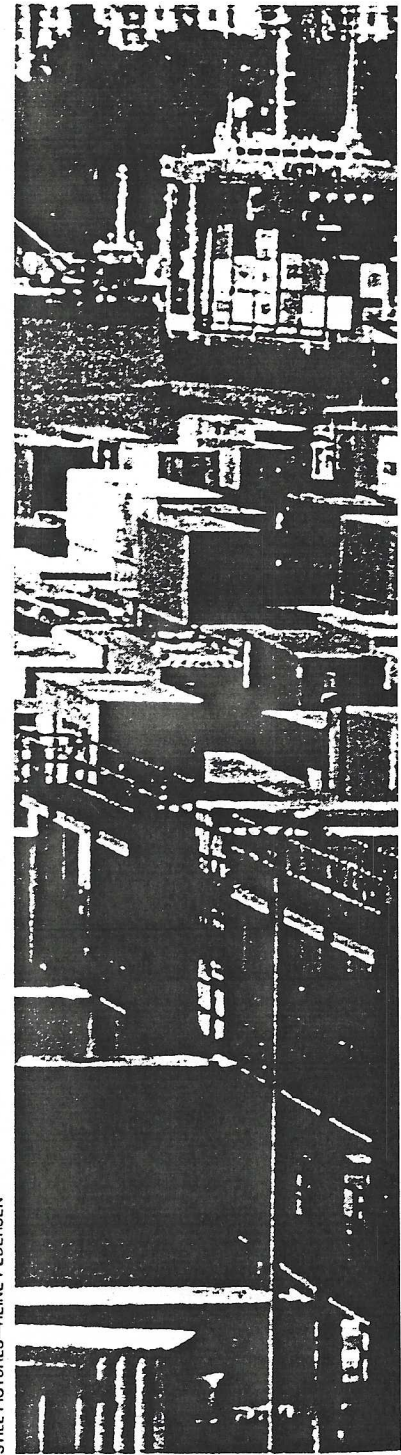
Regional negotiations may offer a better opportunity for an ecological nexus than exists in highly diverse multilateral fora. Although environmentalists sought to “green the GATT” (the General Agreement on Tariffs and Trade) during the recently completed Uruguay Round of trade negotiations, no progress was made toward that end. By contrast, the North

American Free Trade Agreement (NAFTA) shows some environmental sensitivity and is accompanied by a parallel environmental agreement.<sup>2</sup> Environmental issues are especially likely to arise in negotiations involving contiguous countries because the parties often share ecosystems.

Environmental issues are intertwined in the economic cooperation envisioned by both APEC and FTAA and should be incorporated into the resulting agreements. Trying to evade these issues may hinder economic as well as environmental goals.

## The Environmental Dimension

In establishing a free trade area, countries agree to eliminate tariffs and reduce other government controls over voluntary trade. The countries do not need to be at similar stages of development to benefit from freer trade. This was recognized as long ago as 1861, when Senator Stephen A. Douglas, one of the earliest 19th century advocates of a commercial agreement between Canada, the United States, Mexico, and Central America, argued that differences in government and “systems of civilization” were not a valid objection to a “union for commercial purposes only.”<sup>3</sup> In 1956, a commission of experts examining European integration concluded that intercountry differences in social policies do not as a rule reduce the advantages that countries derive from freer trade.<sup>4</sup> But clearly, the more asymmetric

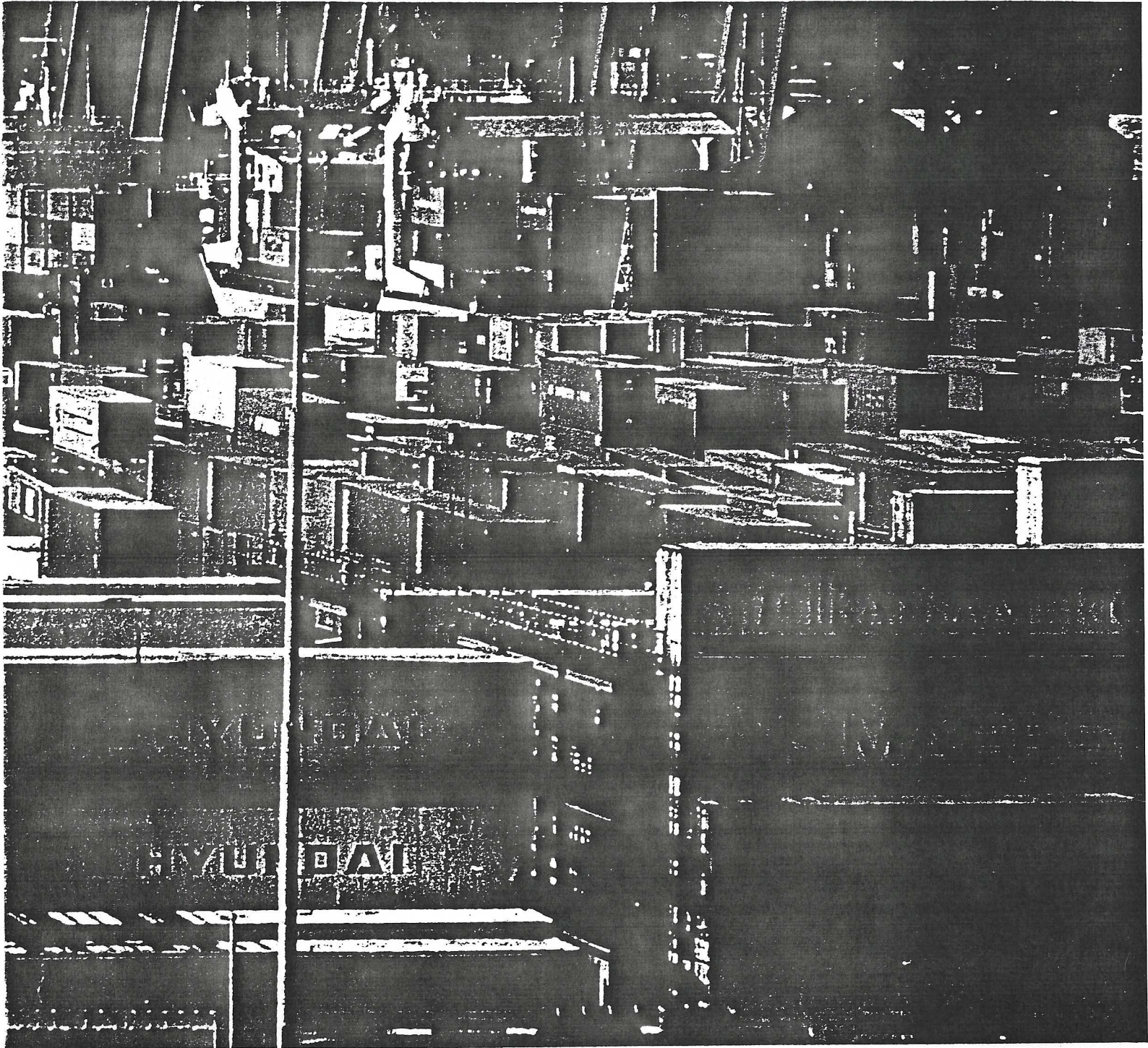


STILL PICTURES—HEINE PEDERSEN



---

# and the Environment





the newly trading countries are, the more likely it will be that expanded trade will cause economic dislocation.

Both APEC and FTAA involve more than deregulating trade because they will also include rules on investment, subsidies, standards, and possibly antitrust, exchange rate, and technology policies. This kind of domestic policy harmonization can make markets work better. But it also opens the door to other efforts for improving markets, such as coordinated environmental management. Of course, neither APEC nor FTAA will be a full economic union; they will not replicate the economic cohesion or central regulatory authority of such arrangements as the European Union. How much economic integration the new agreements will engender will thus be a matter of intense debate over the next several years.

Trade usually has mixed effects on the environment. By expanding potential markets, trade improves efficiency through economies of scale. But trade can also lead to inefficiency. As Sandra Postel of the Worldwatch Institute has noted, trade may "foster unsustainable consumption by creating the illusion of infinite supplies."<sup>5</sup> Trade also alters the structure of world production, and this can change the location of polluting activities. Some commentators, like Tim Lang and Colin Hines (professor of food policy at Thames Valley University, London (U.K.) and coordinator of Greenpeace International's economics unit, respectively), suggest that corporations will relocate production to countries with

less stringent environmental regulations.<sup>6</sup> Others, like Martin Wolf (a writer for the *Financial Times*), argue that "global trade liberalization is like-

ronmental impact.<sup>10</sup> According to Agenda 21 (the international agreement on the environment adopted at Rio de Janeiro in 1992), the challenge

---

---

## Unfortunately, trade policymaking has often been carried out in an environmentally blind way.

---

---

ly to shift the production of the most polluting industries toward countries with the strictest pollution controls."<sup>7</sup> Whichever scenario proves accurate, the implications for trade will be significant.

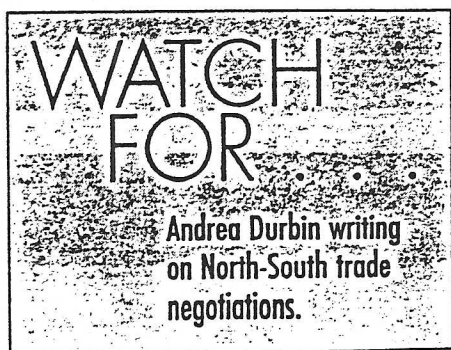
Trade can also affect environmental protection programs. By making societies wealthier, trade may increase public demand for pollution control. By opening markets, however, trade puts pressure on regulators to give more weight to competitiveness concerns. These fundamental issues of political economy have yet to receive as much attention as they warrant.

Increasing trade in the Asia-Pacific and Latin American regions will have a significant impact on key environmental problems like biodiversity, climate, air quality, and fisheries. Given the wide range of potential damage, it is imperative that the trade talks systematically consider environmental repercussions.<sup>8</sup> Unfortunately, trade policymaking has often been carried out in an environmentally blind way. For instance, the Convention Establishing the European Free Trade Association includes the objective of expanding trade in fish but does not address the need for conservation.<sup>9</sup> Similarly, for years GATT has promoted increased trade in tropical goods without any consideration of the envi-

ronmental impact.<sup>10</sup> According to Agenda 21 (the international agreement on the environment adopted at Rio de Janeiro in 1992), the challenge for policymakers "is to ensure that trade and environment policies are consistent and reinforce the process of sustainable development."<sup>11</sup> As the first major trade agreements to be initiated since Agenda 21 was propounded, APEC and FTAA will be important test cases.

### *Trade Agreements and Linkage*

Some argue that trade agreements should be about trade and environmental agreements about the environment, and never the twain should meet. This doctrinaire view of the world is both flawed and ahistorical, however. For the last century and a half, trade commitments have often been part of larger treaties on friendship, peace, or economic relations. And while the modern preference is for distinct commercial or trade agreements, few of these are exclusively about trade. GATT, for example, has several provisions on economic development, including one calling for "an economic deployment of productive resources."<sup>12</sup> Environmental concerns are also included in some regional economic agreements. For example, the Convention Establishing the Latin American Economic System (SELA) of 1975 includes the goal of cooperating "for the protection, conservation and improvement of the environment."<sup>13</sup>





Governments enter into trade agreements to secure changes in the policies of other governments. Because the point of the exercise is to influence other countries through bargaining, there is no reason in principle for the concessions to be strictly commercial. Like commercial negotiations, environmental negotiations involve mutual concessions that increase efficiency and promote economic growth. Thus, there is a natural symmetry between the two. Environmental considerations cannot be entirely separated in any case. Even with free trade, countries retain the right to impose quarantines and related measures to ensure their health and well-being. To preclude such measures from being protectionist, however, certain rules are necessary, and these are commonly included in trade agreements.<sup>14</sup>

Historically, trade agreements largely mandated "negative" harmonization. That is, they told governments what not to do (such as impose tariffs) rather than prescribing policies to address market failures. Recent trade agreements, on the other hand, often attempt to achieve "positive" harmonization. For example, both NAFTA and the Uruguay Round agreement specify the type of intellectual property protection governments must accord. The rationale for this rule is that a common standard on intellectual property will safeguard innovation—which has clear social benefits—from being undermined by free riders.<sup>15</sup> Common standards would also be highly appropriate in the environmental area as improved environmental policies can generate social benefits. In fact, protecting shared ecosystems may be even more critical to economic growth than protecting copyrights or lowering tariffs.

If all a free trade agreement did was to liberalize trade, it would be hard to argue for including objectives such as environmental protection. Such agreements, however, usually attempt to

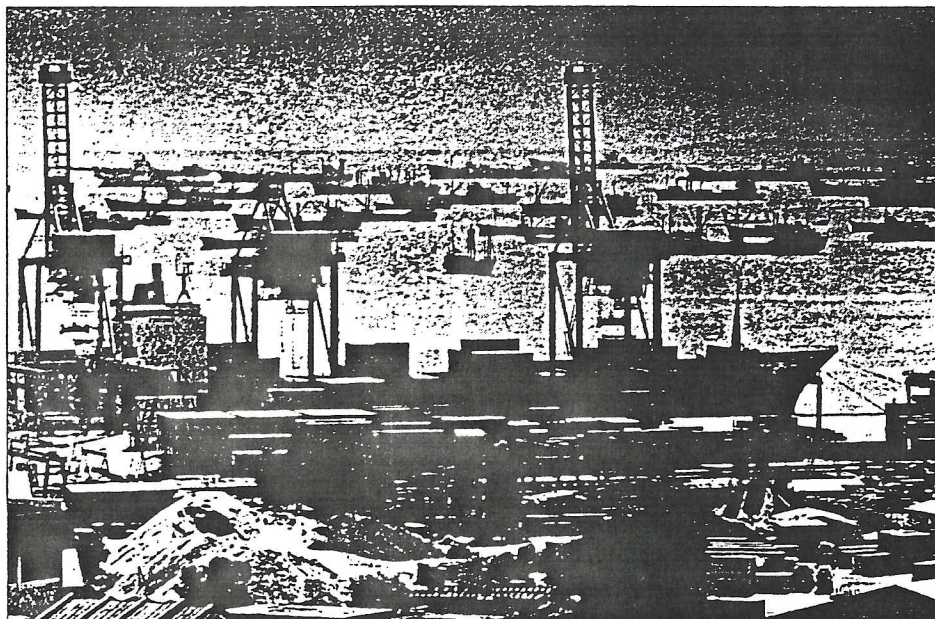
phase in and manage the effects of liberalization. NAFTA, for example, provides for "emergency action" to respond to competitiveness problems. The environmental repercussions of trade are significant enough to warrant attention within trade agreements.

There is also a practical reason for linkage: Democratic governments cannot enter into free trade agreements without popular support. As the U.S. debate over NAFTA demonstrated, environmentalists can be a potent political force on trade. After all, the Bush administration had to stress NAFTA's "greenness" to sell the pact to the public.<sup>16</sup> Furthermore, because protectionism exacerbates some ecological problems (through such measures as agricultural controls and subsidies), there are areas where free traders and environmentalists can find common ground.

Standards can potentially have a competitive impact, so far the effects on trade flows, profitability, or the location of investment have been small.<sup>17</sup> For example, economist Robert Repetto notes that foreign investment is not being channeled toward polluting industries in countries with lax standards such as South Korea, Malaysia, the Philippines, and Thailand.<sup>18</sup> Furthermore, there are many valid reasons for environmental standards to vary across countries, including climate, population density, and level of development. Thus, President Clinton overreached in asserting that NAFTA's side agreement on the environment would lead to "less difference in the cost of production on either side of the border because of different environmental regulations."<sup>19</sup> That is ultimately a protectionist argument.

Another problem with fairness is

PANOS PICTURES—RON GILING



*Increased trade will harm the environment unless governments agree on measures to forestall this.*

One reason *not* to pursue linkage, however, is to assure "fairness" in trade. Those who advance this reason believe countries with different environmental standards lack a level playing field because their production costs differ. While differences in stan-

dards that it is inherently subjective. What seems fair to the importing country may seem unfair to the exporting country and vice versa. The strongest case for a fairness test in trade occurs in applying an internationally agreed standard to traded goods. This





STILL PICTURES—NIGEL DICKINSON

*Trade in wood products has given rise to a number of environment-related conflicts.*

approach was taken with intellectual property in the Uruguay Round, which directs countries to adhere to certain treaties and provides for trade bans against products not carrying authentic labels or certifications. Nationally set fairness standards, on the other hand, are often improperly based on comparative costs: The mere fact that a trade competitor's production costs are lower does not imply unfair practices.

Some analysts doubt the need for environmental agreements in the first place. If all countries existed in sealed bubbles, environmental protection would be an exclusively domestic issue. Because environmental effects sometimes cross borders, however, optimal environmental policies may require cooperation among govern-

ments. Moreover, international trade can hinder environmental policymaking by increasing the commercial benefits from both underregulation (e.g., an export processing zone with weak environmental standards) and overregulation (e.g., a product standard that is unnecessarily stringent). Policy coordination between governments helps to avoid this problem.

Among those who support environmental agreements, some oppose linkage because they prefer to reserve whatever trade leverage exists for mercantilist goals, such as lowering trade barriers in export markets. While this is understandable in the case of exporting companies, governments may want to utilize trade agreements to achieve broader objectives. Of

course, the case for broadening trade agreements is somewhat weaker when separate negotiations on the environment are occurring simultaneously. But even then, linkage would probably lead to more effective negotiations.

### *Methods of Linkage*

There are two general methods of linking trade and the environment in plurilateral agreements. First, environmental and trade commitments can be incorporated into the same agreement. For example, the Convention for the Establishment of an International Central American Bureau of 1907 included both goals on the development of commerce and on "general sanitation."<sup>20</sup> Similarly, the Compact of Free Association between the United States and Palau of 1986 includes specific provisions on environmental protection and trade.<sup>21</sup> The second method is to adopt separate, parallel agreements, as in NAFTA. (The Bush administration originally sought to pursue environmental concerns separately from NAFTA, but the Clinton administration ultimately linked NAFTA to an environmental side agreement.<sup>22</sup>)

Each method has its advantages and disadvantages. Direct incorporation forces policymakers to consider the interaction between trade and the environment, but this may delay and complicate trade negotiations. The parallel approach recognizes differences in goals (and provides specialized institutions to administer the two agreements), but problems can arise if the two agreements lead to conflicting results.

In considering linkage options, it is also important to remember that trade agreements are likely to include negative harmonization via restrictions on environmental regulations and taxes.<sup>23</sup> Thus, negotiators may want to incorporate some positive environmental provisions for balance. The preambles to both NAFTA and the Uruguay

*(continued on page 40)*



## Regional Trade Agreements

(continued from page 20)

Round agreements include references to the environment for this purpose. The preamble to NAFTA includes a resolve to "promote sustainable development" and to "strengthen the development and enforcement of environmental laws and regulations."<sup>24</sup> The Agreement Establishing the World Trade Organization notes the parties' recognition that economic relations should be conducted with a view to expanding the production of and trade in goods and services

*while 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 and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.*<sup>25</sup>

Preambles, of course, are considerably less important than the actual provisions of an agreement.

Another issue involves trade sanctions, that is, the use of import or export bans to change another coun-

try's policy. Although opposition to environment-related sanctions is often portrayed as an objection to meddling, extraterritorial lawmaking, in reality what is being said is that trade sanctions should be reserved for commercial issues like the protection of intellectual property and not wasted on "less important" problems like the protection of the global commons. But it seems odd to argue that trade sanctions are an appropriate response to traffic in bootlegged videos but not to traffic in ozone depleting chemicals.

### Linkage in Regional Agreements

The different regional agreements have approached the question of linkage in different ways. The Association of Southeast Asian Nations (ASEAN) first took up the issue of regional environmental cooperation in 1981 when it approved the Manila Declaration.<sup>26</sup> In the Singapore summit of 1992, members agreed to work toward harmonized environmental quality standards as well as to establish a free trade area over a 15-year period. As yet, however, ASEAN has not directly addressed the connections between these two

goals. The Southern Cone Common Market (Mercosur), established in 1991, has been actively promoting regional trade liberalization. Mercosur also has a significant environmental program, as shown by its attempt to adopt a uniform approach to transborder polluters. Even so, the group's efforts on trade and the environment have not yet been fully integrated.

The European Union provides for a common market among member nations and also pursues regional environmental objectives. In recent years, it has signed agreements with Eastern European nations containing (separate) provisions on trade and the environment. In 1994, the European Commission also endorsed NAFTA-like "clauses to avoid social and environmental dumping which would inevitably create protectionist tensions."<sup>27</sup> And recently there has been a revival of interest in a Trans-Atlantic Free Trade Agreement between Europe and the United States.

The APEC declaration of 1994 calls for developing "effective cooperation" on environmental issues, "with the aim of contributing to sustainable development."<sup>28</sup> But this is not stated in the trade part of the declaration, even though many of the region's environmental problems have a direct relationship to trade.<sup>29</sup> The ministers took note of ongoing talks in energy, marine resources conservation, and fisheries, but no agreements have yet emerged. Some countries, such as the Philippines and Canada, favor much greater attention to the environment by APEC.

Environmental issues were also discussed at the Summit of the Americas in Miami in December 1994, which approved the FTAA concept. The resulting plan of action stipulates that the participating countries will "strive to make our trade liberalization and environmental policies mutually supportive."<sup>30</sup> Beyond the trade section the plan includes three environmenta



THE PICTURE CUBE, INC.—SUSAN VAN ETTEN

*Trade agreements should preclude countries from using lower environmental standards to attract foreign investment.*



provisions regarding sustainable energy use, biodiversity, and pollution prevention. One of these calls for developing environmental policy "with the

Economic Association agreement of 1960 stated that "[i]n order to create a reasonable degree of equality in the trade relations between them, the Con-

---

---

## Many trade agreements have recognized the benefits of harmonizing manufacturing standards.

---

---

goal of ensuring that economic integration of the region occurs in an environmentally sustainable manner."<sup>31</sup> However, the vagueness of these provisions suggests that the parties have not yet decided how to link trade and the environment. The United States pushed hard for linkage, but other countries opposed it.<sup>32</sup>

The environmental provisions of both APEC and FTAA are still in flux; however, there are a number of issues that will almost certainly arise during the negotiations:

**Investment**—NAFTA includes a nonbinding provision stating that the parties should not waive environmental measures to encourage investment.<sup>33</sup> The APEC investment experts group has suggested a similar provision for that agreement.<sup>34</sup> Many environmental groups would like to see this provision strengthened, however. This could be done either by making the provision binding or by requiring governments to report any environmental inducements offered. The agreements might also include a code of conduct to discourage multinational corporations from bargaining with governments over environmental standards.

**Standards**—Many trade agreements have recognized the benefits of harmonizing manufacturing standards. For example, the Central American

tracting Parties shall endeavour to achieve uniformity in the legislative or other provisions affecting the production of goods."<sup>35</sup> The Latin American Free Trade Area calls on parties to "promote progressively closer coordination of the corresponding industrialization policies."<sup>36</sup> And even GATT includes a little-known provision calling on the organization to expand trade "through technical and commercial standards affecting *production*, transportation and marketing [emphasis added]."<sup>37</sup> NAFTA directs parties to use "relevant international standards" and to "work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers."<sup>38</sup> But these NAFTA provisions are narrower than those of the other treaties because they apply only to product standards. Moreover, NAFTA does not contain any specific product harmonization.

The plan of action adopted at the Summit of the Americas contains one specific provision in this area, namely a phaseout of leaded gasoline. Negotiators could add more areas of harmonization, such as tolerances for pesticide residues. Because raising environmental standards may entail significant costs, there could be economic and political advantages for

governments to act in unison.

In their report for the summit of 1994, APEC's Eminent Persons Group recommended "the gradual convergence of environmental standards among APEC members."<sup>39</sup> According to the group, this could begin with efforts to develop common methodologies for risk analysis and test protocols, along with the exchange of scientific data. The APEC governments did not accept this proposal but may seek harmonization of product standards.<sup>40</sup>

Harmonization of standards is not appropriate in all cases, however. Countries differ in topography, population density, climate, income level, and other ways that can make their optimal environmental policies different. Harmonization should only be used for ecological problems that transcend national borders. Even in those situations, however, the goal should not be identical laws but rather commensurate levels of protection (or levels of effort).

**Energy**—NAFTA contains a short chapter on energy that addresses trade restrictions and access to supplies.<sup>41</sup> In future regional trade agreements, or in any revisions to NAFTA, countries should consider other energy issues such as its production, conservation, and taxation. The FTAA plan of action includes very general provisions on energy cooperation and sustainable energy use, but none of these is connected to the goal of more internationally open markets. New international agreements may provide an opportunity to link policies on energy with policies on trade as well as the environment. Energy issues are especially important for APEC because one member, China, may have considerable impact on global warming.

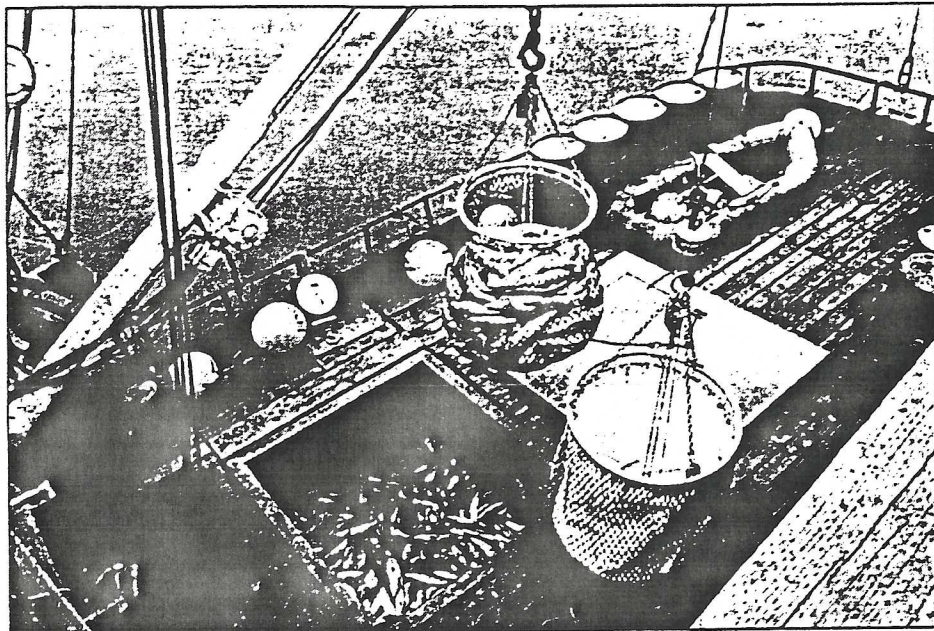
**Forest products**—There have been more environment-related trade conflicts over wood than over any other product.<sup>42</sup> Given the important forests in South America and Southeast Asia, both FTAA and APEC might include



provisions on sustainable logging to head off conflicts.<sup>43</sup> Interestingly, the Guatemala-Honduras Free Trade and Economic Integration Treaty of 1956

political resistance to liberalization.

*Waste*—The environmental effects of trade in wastes are more direct than those of other forms of trade. Trans-



WOLFGANG KAHLER

*Fisheries pose a difficult question for trade agreements regarding how to handle the global commons.*

required the parties to coordinate their activities with a view to “protecting forest reserves and water resources.”<sup>44</sup> But even a mild provision like that may be politically impractical today.

A more feasible opportunity for agreement may lie in eco-labeling. Although Brazil or Malaysia may be able to prevent their regional trading partners from setting standards on the harvesting of timber, they will not be able to forestall labeling systems that supply information about harvesting to consumers.

*Agriculture*—Knocking down agricultural trade barriers can change the patterns of land use and thus have either positive or negative effects on the environment. These effects should be discussed by governments negotiating trade agreements. Another problem is agricultural subsidies, which engender inefficient production and put more stress on ecosystems. Thus, agriculture may be an area where environmentalists can help overcome strong

porting waste can be hazardous because importers must process or store it, both of which can have significant environmental impacts. Although there are both international and regional treaties on such trade, so far these have been negotiated separately from trade liberalization treaties. Clashes may occur if a country in a free trade pact wants to bar imports of wastes at some point in the future.

*Endangered species*—Regional agreements are also appropriate for pursuing wildlife conservation. One early example was a Pan American treaty of 1935 that regulated the export of “beautiful and rare species threatened with extermination or natural extinction.”<sup>45</sup> However, easing trade barriers between countries may facilitate traffic in wildlife that violates the Convention on International Trade in Endangered Species (CITES).<sup>46</sup> Because there are many endangered wildlife populations in APEC and FTAA countries, they should probably

adopt stricter rules than those in CITES. Such rules could also apply to transactions within countries, which CITES does not cover. The United States already has laws that extend wildlife protection beyond that provided by CITES. For example, it is illegal to import shrimp from countries that do not have turtle-protection regulations comparable to those in the United States.<sup>47</sup> Because several Latin American countries have been affected by these bans, this issue is sure to arise in upcoming negotiations.

*Fisheries*—Trade measures have long been employed in fishing treaties as a means of enforcement. For example, the Baltic Sea agreement of 1929 forbade the landing of plaice during the annual close season.<sup>48</sup> Similarly, the Wellington Driftnet Convention of 1989 requires parties to prohibit the transshipment of driftnet-caught fish.<sup>49</sup> The World Trade Organization (WTO) is currently considering whether the use of trade bans in fishing treaties can be challenged under its rules. New regional trade agreements may either follow whatever rule WTO adopts or devise their own.

The issue of fisheries raises the larger question of how the new trade agreements will affect the global commons. This question is bound to be pressing because the Caribbean Sea is bordered by FTAA countries and the South China Sea by APEC countries. Although both of these biological communities may be damaged by greater trade, there is no international authority to safeguard them. (As a positive step, Latin American countries could ask the Organization of American States to “represent” the regional commons during the FTAA negotiations.)

*Treaty conflicts*—NAFTA includes a provision permitting trade measures in several listed environmental treaties (CITES, the Montreal Protocol, and a U.S.-Canada agreement on movements of hazardous wastes across bor-



ders) if such a measure is the option least inconsistent with NAFTA among equally effective and reasonably available alternatives.<sup>50</sup> Such provisions are useful to specify treaty hierarchy. APEC and FTAA could adopt this same provision or strengthen it. NAFTA, for instance, requires the concurrence of all three parties before an environmental treaty is added to the list; this could be changed to majority rule. Another approach would be to require that parties ratify listed environmental treaties. Although this approach has not been taken with environmental issues, it has with others. For example, the Treaty of Versailles (which included trade provisions) required parties to ratify the International Opium Convention.<sup>51</sup> While NAFTA does not require ratification of other treaties, it does require parties to "make every effort to

accede" to four listed intellectual property conventions.<sup>52</sup>

*Arbitration*—The dispute settlement systems in trade agreements such as NAFTA are one-dimensional: They consider only commercial implications, not environmental ones. Thus, in the tuna-dolphin controversy, there was no forum in which the United States could seek more salutary Mexican fishing practices. Because environmental and resource-related trade disputes are inevitable, new regional trade agreements should provide explicit arbitration procedures. The APEC declaration states that countries will look into a "voluntary consultative dispute mediation service."<sup>53</sup> Such a service should be set up now at the beginning of the negotiating process.

*Exceptions*—Almost all trade agreements grant an exception for trade

measures used for specified policy purposes. For example, as noted above, NAFTA permits "measures necessary to protect human, animal or plant life or health." Identical language in GATT has been interpreted to include only measures that a GATT review panel thinks are "necessary." But trade agreements can be written to give more deference to national decisionmaking. For example, the general exception in ASEAN's Economic Cooperation Agreement of 1992 extends to measures that each party considers necessary to protect life and health.<sup>54</sup>

*Environmental reviews*—The need for environmental reviews of trade agreements is well recognized, but many governments have been reluctant to undertake them. If this resistance can be overcome, the APEC and FTAA frameworks might call for envi-

**E**ssential to environmental and economic collections, this is the only complete source for United Nations materials pertaining to the 1992 Rio de Janeiro Earth Summit. This full-text database can be searched in English, French, or Spanish with one of the finest multilingual interfaces now available, vastly increasing this database's worldwide appeal.

The Earth Summit, the largest environmental conference ever held, sponsored by the United Nations Conference on Environment and Development (UNCED), is documented by preparatory conference papers, full and excerpted national and regional environmental reports, research papers, lists of participants and non-governmental organizations (NGO's), and Earth Summit Official Statements. An interpretive book titled *The Global Partnership* and, most importantly, *Agenda 21* — the action plan for the

environment for the 21st century adopted by nations of the world is also included.



The Earth Summit CD-ROM is the only complete collection of all this material, most of which has never been published before and is not planned for publication elsewhere.

### Who will use the Earth Summit CD-ROM?

Researchers, consultants, scientists and specialists in environmental issues and economic development working in government agencies; NGOs (e.g. donor agencies); multinational corporations; law firms; economic, political, and environmental policy institutes and foundations; as well as university researchers, professors, and students.

The EARTH SUMMIT CD-ROM is designed for Microsoft Windows 3.0 or higher and Microsoft CD-ROM Extensions version 2.0 or higher.

*The EARTH SUMMIT CD-ROM is available at \$495.00.*

#### To order or for information contact:

United Nations Publications, Room DC2-0853  
Dept. 136A New York, N.Y. 10017,  
Tel. (800) 253-9646, (212) 963-8302,  
Fax (212) 963-3489. Visa, MasterCard and American Express accepted. Please add 5% to the gross amount for shipping & handling.

**United Nations Publications**



ronmental reviews during the negotiations. The North American Agreement on Environmental Cooperation, for instance, calls for an ongoing consideration of the environmental effects of NAFTA.<sup>55</sup> The Organisation for Economic Cooperation and Development (OECD) recently issued an excellent report suggesting methodologies for such reviews.<sup>56</sup>

*Consultation*—U.S. trade negotiators typically consult environmental and business groups, but negotiators from other countries may not. Because a broad range of input is important for all agreements, the APEC and FTAA frameworks should encourage governments to solicit the views of the private sector, including environmental groups. Closer coordination is also needed within governments: In most countries, environmental ministries play no role in trade negotiations.

### Trade Negotiating Authority

At this time, both the APEC and FTAA negotiations are moving very slowly. One reason is that with the conclusion of the NAFTA negotiations, the Clinton administration has no authority to negotiate any new trade agreements. (The administration had hoped Congress would renew its negotiating authority as part of the Uruguay Round legislation, but Congress refused.) A federal law enacted in 1992 states that “[i]t is the sense of the Congress that the President, in carrying out multilateral, bilateral, and regional trade negotiations, should seek to . . . address environmental issues related to the negotiations.”<sup>57</sup> As a result of the 1994 elections, however, congressional support for this directive is in doubt. Representative Bill Archer (R.-Tex.), the chairman of the House Ways and Means Committee, is giving low priority to a renewal of trade negotiating authority for the Clinton administration. Moreover, Archer declared that “there will be no

inclusion of authority *to monkey around with* labor standards and environmental standards around the world [emphasis added].”<sup>58</sup>

Most members of the U.S. Advisory Committee on Trade Policy and Negotiations (which advises the president and Congress) favor requiring countries wishing to join NAFTA to accept environmental obligations commensu-

interdependently or separately. The incipient Asia-Pacific and Latin American free trade agreements offer new opportunities for fruitful links.

Trade agreements have always called for negative harmonization. But the new agreements may also seek positive harmonization on domestic issues like antitrust policy. If so, environmental issues should be included,

---

---

## At this time, the APEC and FTAA negotiations are moving very slowly.

---

---

rate with those in the side agreement.<sup>59</sup> The first test may come with Chile, which is eager to join NAFTA. Although Chile seems willing to adopt the side agreements on the environment and labor, many congressional Republicans and business groups are loathe to see that happen because they want these issues kept separate from trade policymaking. Because Chile is involved in both FTAA and APEC, whatever is decided will establish an important precedent.

Chile's acceptance of these side agreements is not critical, however. Given its North American focus, the NAFTA agreement on the environment might lose coherence if Chile joined. But it would be useful for Chile to engage in trade-related environmental talks with North American countries. One possibility would be to devise a new side agreement for future members of NAFTA.

### Conclusion

Trade and the environment are already tangibly linked. The real question is whether trade policy and environmental policy should be carried out

too. It may well be easier to address such issues in regional agreements than in a global context.<sup>60</sup>

Assuring that trade agreements do not undermine the environment is important in garnering public support, at least in industrial countries. With growing democratization, however, the same concerns could arise in developing countries as well within a decade or two.

Key issues such as investment, product and process standards, energy, forests, agriculture, waste, endangered species, fisheries, treaty conflicts, arbitration, environmental reviews, and transparency are bound to arise during the course of the negotiations. They can be incorporated into trade agreements or included in parallel agreements. Failure to address them may undermine environmental quality and lead to contentious trade disputes.

Free trade in Latin America and in the Asia-Pacific region would be a significant achievement that would generate economic dividends every year. Although free trade is politically difficult, it is conceptually easy because it starts with undoing ill-conceived government policies. Other social prob-



lems, like environmental protection, are conceptually harder because they require the formulation of government policy in the face of scientific unknowns. At the very least, the trading regime should not worsen these problems.

## NOTES

1. "APEC Economic Leaders' Declaration of Common Resolve, Bogor, Indonesia," in *Weekly Compilation of Presidential Documents* 30, no. 46 (1994); and "Miami Summit Declaration of Principles and Plan of Action," reprinted in U.S. Department of State, *Dispatch*, supp. 2, vol. 6 (Washington, D.C., May 1995).
2. See D. Magraw, "NAFTA's Repercussions: Is Green Trade Possible?" *Environment*, March 1994, 14.
3. S. A. Douglas, *An American Continental Commercial Union or Alliance* (Washington, D.C.: Cutts, 1889), 13-24. For a contrary view, see R. Costanza et al., "Sustainable Trade: A New Paradigm for World Welfare," *Environment*, June 1995, 16.
4. International Labor Organization, *Social Aspects of European Economic Co-operation* [the Ohlin Commission report] (Geneva, 1956), 61-62.
5. S. Postel, "Carrying Capacity: Earth's Bottom Line," in L. Brown et al., *State of the World 1994* (New York: W. W. Norton, 1994), 18.
6. T. Lang and C. Hines, *The New Protectionism* (New York: New Press, 1993), 64.
7. M. Wolf, "Trade Talks: A Misguided U.S. Agenda," *The American Enterprise*, November/December 1994, 86-87.
8. See J. G. Block and A. R. Herrup, "The Environmental Aspects of NAFTA and Their Relevance to Possible Free Trade Agreements Between the United States and Caribbean Nations," *Virginia Environmental Law Journal* 14, no. 1 (1994): 1.
9. "Convention Establishing the European Free Trade Association," Stockholm, 1960, in *United Nations Treaty Series* 370 (1960): art. 27.
10. General Agreement on Tariffs and Trade, *Basic Instruments and Selected Documents* (Geneva): supp. vol. 12 (1964), 152, 162 and supp. vol. 29 (1983), 17, 20.
11. Agenda 21, para. 2.20, reprinted in *Earth Summit Agenda 21* (New York: United Nations, 1993).
12. "General Agreement on Tariffs and Trade," in General Agreement on Tariffs and Trade, *Basic Instrumental and Selected Documents* (Geneva, 1969): vol. IV, art. XVIII(11).
13. "Convention Establishing the Latin American Economic System," Panama City, 1975, in *International Legal Materials* 15 (1976): art. 5(k).
14. For instance, although the first multilateral trade treaty (adopted in 1927) prohibited most trade bans, it permitted them to protect endangered species. See "International Convention for the Abolition of Import and Export Prohibitions and Restrictions," Geneva, 1927, in *League of Nations Treaty Series* 97 (1927): art. 4.
15. The argument that innovation engenders collective economic benefit is strongest for patents and weakest for trademarks.
16. See S. Charnovitz, "NAFTA's Social Dimension: Lessons from the Past and Framework for the Future," *The International Trade Journal* 8, no. 1 (1994): 39, 50-55.
17. See D. Lascelles, "Business Chafes at Impact of 'Green' Laws," *Financial Times*, 3 November 1994, 9; and R. Repetto, *Jobs, Competitiveness, and Environmental Regulation: What Are the Real Issues?* (Washington, D.C.: World Resources Institute, March 1995).
18. Repetto, note 17 above, page 8.
19. See "Remarks and a Question-and-Answer Session on the North American Free Trade Agreement in New Orleans, Louisiana," *Weekly Compilation of Presidential Documents* 29, no. 38 (1993): 1766.
20. "Convention for the Establishment of an International Central American Bureau," Washington, 1907, in *Consolidated Treaty Series* 206 (1907): art. 1:3, 1:5.
21. *U.S. Statutes at Large* 100 (1986): pt. 1, art. VI and pt. 2, art. IV.
22. For further discussion, see S. Charnovitz, "The NAFTA Environmental Side Agreement: Implications for Environmental Cooperation, Trade Policy, and American Treaty-making," *Temple International and Comparative Law Review* 8, no. 2 (1994): 257-314; and K. Raustiala, "The Political Implications of the Enforcement Provisions of the NAFTA Environmental Side Agreement: The CEC [Commission for Environmental Cooperation] As a Model For Future Accords," *Environmental Law* 25, no. 1 (1995): 31-56.
23. The plan of action adopted at the Summit of the Americas in Miami in December 1994, of which FTAA is a part, specifically lists technical barriers to trade and sanitary and phytosanitary (crop disease) standards as topics for future agreements. See paragraph 9.3 of the plan of action in the "Miami Summit Declaration of Principles and Plan of Action," note 1 above, 13.
24. *The NAFTA* (Washington, D.C.: U.S. Government Printing Office, 1993), vol. 1.
25. *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Text* (Geneva: General Agreement on Tariffs and Trade, 1994).
26. See Association of Southeast Asian Nations, *ASEAN Strategic Plan of Action on the Environment, 1994-1998* (Jakarta, 1994).
27. European Commission, "An Industrial Competitiveness Policy for the European Union," *Bulletin of the European Union*, supp. 3/94 (1994), 32-33.
28. "APEC Economic Leaders' Declaration of Common Resolve, Bogor, Indonesia," note 1 above, 2400, para. 8. This paragraph also cites the objective of developing the human and natural resources of the region more effectively to attain sustainable growth.
29. See the statement by K. Fuller of the World Wildlife Federation and F. Krupp of the Environmental Defense Fund in the report of the Committee on Trade Policy and Negotiations, *Recommendations on APEC* (Washington, D.C.: Office of the U.S. Trade Representative, October 1994).
30. "Miami Summit Declaration of Principles and Plan of Action," note 1 above, paragraph 9.2.
31. *Ibid.*, paragraph 23.
32. See C. Thurston, "Latins Say Labor, Environment Not Trade Issues," *Journal of Commerce*, 8 December 1994, 9A; and "U.S., Central American Countries Sign Sustainable Development Pact," *BNA* [Bureau of National Affairs] *International Trade Reporter*, 14 December 1994, 1916.
33. NAFTA, note 24 above, article 1114.2.
34. "APEC Report on Investment," *Inside U.S. Trade*, 30 September 1994, 10.
35. "Treaty of Economic Association Between El Salvador, Honduras and Guatemala," Guatemala City, 1960, in *United Nations Treaty Series* 383 (1960): art. 7. This agreement is no longer in force.
36. "Treaty Establishing A Free-Trade Area and Instituting the Latin American Free-Trade Association," Montevideo, 1960, in V. Urquidí, *Free Trade and Economic Integration in Latin America* (Berkeley, Calif.: University of California, 1962): art. 16.
37. GATT, note 12 above, article XXXVIII(2)(c).
38. NAFTA, note 24 above, articles 905.1 and 906.1.
39. Asia-Pacific Economic Cooperation Forum, *Achieving the APEC Vision*, Second Report of the Eminent Persons Group (Singapore, August 1994), 20.
40. Australian Pacific Economic Cooperation Committee, *Trade and Environment Policy Issues: Implications for the Asia-Pacific Region* (Canberra, 1995), 26-27.
41. NAFTA, note 24 above, chapter 6.
42. J. Lee, "Process and Product: Making the Link between Trade and the Environment," *International Environmental Affairs* 6, no. 4 (1994): 320, 326.
43. For a good discussion of forestry problems in Southeast Asia, see "Chainsaw Massacres," *The Economist*, 25 June 1994, 39.
44. "Treaty of Free Trade and Economic Integration between the Republics of Guatemala and Honduras," Guatemala City, 1956, in *United Nations Treaty Series* 263 (1956): art. XIX.
45. "Treaty on the Protection of Movable Property of Historic Value," Washington, 1935, in M. Hudson, *International Legislation* 7 (Washington, D.C.: Carnegie Endowment, 1941): arts. 1(d), 3, 4.
46. "Convention on International Trade in Endangered Species of Wild Fauna and Flora," Washington, D.C. 1973, in *United Nations Treaty Series* 993 (1973): 243.
47. *U.S. Code*, vol. 16, sec. 1537 (1989).
48. "Agreement Regarding the Regulation of Plaice and Flounder Fishing in the Baltic Sea," Berlin, 1929, in *League of Nations Treaty Series* 115 (1929): art. 5.
49. "Convention for the Prohibition of Fishing With Long Driftnets in the South Pacific," Wellington, 1991, in *Marine Mammal Commission Compendium of Selected Treaties, International Agreements, and Other Relevant Documents on Marine Resources, Wildlife, and the Environment* 2 (1994): art. 3(1)(b)(iii).
50. NAFTA, note 24 above, article 104.
51. "Treaty of Peace with Germany," Versailles, 1919, in *Consolidated Treaty Series* 225 (1919): art. 295.
52. NAFTA, note 24 above, article 1701.
53. "APEC Economic Leaders' Declaration of Common Resolve, Bogor, Indonesia," note 28 above, paragraph 9.
54. "Framework Agreement on Enhancing ASEAN Economic Cooperation," Singapore, 1992, in *International Legal Materials* 31 (1992): art. 12.
55. "North American Agreement on Environmental Cooperation," in *International Legal Materials* 32 (1993), art. 10.6(d).
56. Organisation for Economic Cooperation and Development, *Methodologies for Environmental and Trade Reviews*, OECD/GD(94)103 (Paris, 1994).
57. *High Seas Driftnet Fisheries Enforcement Act*, Public Law 102-582, 102nd Cong., 2nd sess. (2 November 1992), sec. 203.
58. "Archer Sees No Deals With Administration, Democrats on Fast Track," *Inside U.S. Trade*, 17 February 1995, 4.
59. Advisory Committee on Trade Policy and Negotiations, *Report on Western Hemisphere Trade Strategy for the United States*, (Washington, D.C., December 1994), 4, 10.
60. Commission on Global Governance, *Our Global Neighborhood* (Oxford, U.K.: Oxford University Press, 1995), 151.



---

articles ■

6 ..... The Future of Populous Economies:  
China and India Shape Their Destinies

By Robert Livernash

Unparalleled economic and population growth in China and India pose serious environmental challenges for the region and the world.



12 ..... Biodiversity and Health: Prescription for Progress

By Walter V. Reid

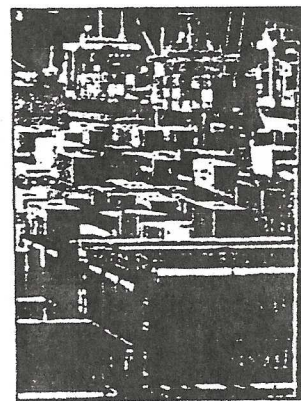
Collaboration between conservationists and medical researchers could help preserve biodiversity as well as aid in the search for new drugs.



16 ..... Regional Trade Agreements and the Environment

By Steve Charnovitz

Major regional trade negotiations now under way offer countries a good opportunity to protect the environment.



---

departments ■

Contributors ..... 2

Commentary ..... 7