

The World Trade Organization and the Environment

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I. INTRODUCTION

In celebrating the fiftieth anniversary of the General Agreement on Tariffs and Trade (GATT), we should be proud of the accomplishments of the individuals of past generations who established the world trading system.¹ Although the history of the GATT has played out more circuitously than was intended when it came into effect in 1948, the GATT eventually has achieved much of what its founders envisioned. The waste from protectionism has been diminished. Trade has become an engine of economic growth. National trade policy is governed by a web of international legal obligations. In addition, a respected international organization for trade oversees the process from Geneva.

1. The Challenge of Sustainability

The World Trade Organization (WTO), however, must not rest on its laurels. Unlike some scourges, such as smallpox, which can be eradicated, protectionism will be with us as long as there are nation states. So the WTO must maintain the fight against protectionism, but even this is not sufficient. The WTO needs to help governments deal with the side effects of trade, such as its impact on people and nature. There is an obvious political rationale for this: the trading system depends upon continued public support. However, there is an equally important economic rationale. Without the correct government policies on the environment, free trade may not produce an optimal outcome.² Indeed, it may not even produce a positive outcome.

What is the impact of trade on the environment? The extreme critics of the WTO suggest that international trade itself is unsustainable.³ Other

This article is based on a chapter written in *FRA GATT TIL WTO*, a volume published by the Norwegian Institute of International Affairs in honour of the fiftieth anniversary of the GATT.

¹ General Agreement on Tariffs and Trade, 30 Oct. 1947, 55 U.N.T.S. 194 [hereinafter GATT]; the current version is available in GATT, *THE TEXT OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE* (1986).

² FORD RUNGE, *FREER TRADE, PROTECTED ENVIRONMENT* 23 (1994).

³ Herman E. Daly, *Against Free Trade: Neoclassical and Steady-State Perspectives* (Publication of the Pacific Basin Research Center, Harvard University) 32–52 (1994).

individuals in the ecological economics school ponder whether certain trade flows are predicated on unsustainable production or consumption.⁴ Even mainstream economists admit that market prices may undervalue the environment and fail to reflect significant spillovers.⁵ Although this critique has implications for domestic commerce as well as for international trade, there is reason to believe that transborder trade and investment may be particularly oblivious to environmental implications. For instance, hazardous waste trade might be profitable only because exporters do not take into account the burdens on importing communities.

Sustainability is being promoted by a new set of global actors making demands that were not heard five decades ago. Environment, development, grass-roots, and human rights non-governmental organizations (NGOs) want to have input into the economic decisions being made at the WTO, the World Bank, and the OECD. This development has been a particularly difficult challenge for the GATT/WTO, which has had a tradition of parochialism and secrecy.⁶ The WTO, however, has begun to crack open its doors to NGOs.

2. Visions of the Future

It is difficult to predict the future, but analysts can lay out scenarios of the way events may unfold.⁷ These scenarios can help the public choose policies (and politicians) that are more likely to lead to the most desirable future. Broadly speaking, there are two possible scenarios for how the WTO can address the environment. Let us call one the segregative approach and the other the integrative approach.

The segregative approach would continue the mindset that has characterized the trading system during most of the past fifty years. In this framework, the agreements of the GATT and WTO are viewed solely as contracts among parties that should be interpreted narrowly in order to guarantee predictable commercial relations.⁸ The WTO persists in maintaining its exclusive

⁴ See generally CARL FOLKE, ed., *INTERNATIONAL TRADE AND THE ENVIRONMENT*, SPECIAL EDITION OF *ECOLOGICAL ECONOMICS*, 9 *ECOLOGICAL ECON.* no. 1 (1994).

⁵ *Trade, the Environment and Public Policy*, in *THE GREENING OF WORLD TRADE ISSUES* 19 (Kym Anderson & Richard Blackhurst, eds., 1992); see also RUNGE *supra* note 2, at 24–8.

⁶ Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, 17 *U. PA. J. INT'L ECON. L.* 331 (1997).

⁷ See HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY* 973–86 (1992).

⁸ For example, in April 1998, the WTO panel adjudicating the shrimp-turtle dispute held:

In our view, if an interpretation of the chapeau of Article XX were to be followed which would allow a Member to adopt measures conditioning access to its market for a given product upon the adoption by the exporting Members of certain policies, including conservation policies, [then] GATT 1994 and the WTO Agreement could no longer serve as a multilateral framework for trade among Members, as security and predictability of trade relations under those agreements would be threatened.

United States—Import Prohibition of Certain Shrimp and Shrimp Products, 6 Apr. 1998, WTO Doc. WT/DS58/R, para. 7.45.

membership policy. Applicants such as China or Russia—no matter how many people they represent—are kept out of the club.⁹ In addition, the WTO remains separate from the UN and, indeed, considers this separation a virtue. Similarly, the WTO perceives no obligation to coordinate policies with UN agencies such as UNEP.

By contrast, the integrative scenario anticipates major change. The WTO would seek to harmonize international trade law with international law generally and would take seriously the goal in the WTO preamble that allows “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 . . .”¹⁰ The WTO would not forget its core mission to prevent protectionism, but it would pursue this mission with an eye towards the imperative of sustainable development. To that end, the WTO would become a more open institution and would welcome input by civil society.

Which of these scenarios will characterize the WTO in the twenty-first century? It probably will be the integrative approach—although that outcome is by no means certain. Advocates of a more outward-looking trading system need to continue pushing the WTO to change.

This article consists of three parts. First, it looks back at the creation of the GATT and at the discussions of trade and the environment that took place in the early 1970s. Second, the article provides a retrospective analysis of the “trade and environment” debate during the 1990s. Third, it looks ahead to what the trade regime should do now to improve its interaction with the environment regime.

II. THE EARLY YEARS OF GATT AND THE ENVIRONMENT

It has often been said that the GATT was written at a time before policy-makers thought about the environment.¹¹ This was a convenient story for trade officials who were trying to explain why various (usually hypothetical) environmental laws would violate trade rules. It was also a convenient story for reform-minded NGOs seeking to “green” the GATT by adding new provisions. The story, however, is untrue.

The GATT was written at a time of revived interest in international environmental challenges. This is reflected most clearly in the environmental

⁹ See, e.g., Barshefsky, *Chinese Ambassador Offers Different Views of WTO Entry*, INSIDE U.S. TRADE, 8 May 1998, at 9.

¹⁰ Marrakech Agreement Establishing the World Trade Organization, 15 Apr. 1994, Preamble, 33 I.L.M. 15 (1994) [hereinafter WTO Agreement].

¹¹ Steven Shyrbman, *International Trade and the Environment: An Environmental Assessment of the General Agreement on Tariffs and Trade*, 20 THE ECOLOGIST 30, 33 (1990); William Prince and David Nelson, *Developing an Environmental Model: Piecing Together the Growing Diversity of International Environmental Standards and Agendas Affecting Mining Companies*, 7 COLO. J. INT’L ENVTL. L. & POL’Y 247, 256 (1996).

treaties of that era. In 1946, several governments finalized a Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish.¹² Later that year, the International Convention for the Regulation of Whaling was approved.¹³ The parties noted that “it is essential to protect all species of whales from further overfishing.”¹⁴ In 1949, two important fisheries agreements were consummated: the International Convention for the Northwest Atlantic Fisheries and the Convention for the Establishment of an Inter-American Tropical Tuna Commission.¹⁵ In 1950, the International Convention for the Protection of Birds was approved to replace the International Convention for the Protection of Birds Useful to Agriculture, which had been written five decades earlier.¹⁶

There were several international conferences that laid the groundwork for a post-war conservation policy. In 1947-8, a group of governments and NGOs established the International Union for the Conservation of Nature and Natural Resources, which is now known as the World Conservation Union (IUCN).¹⁷ In 1948, there was an Inter-American Conference on Conservation of Renewable Natural Resources.¹⁸ One of the conference papers pointed out the potential for using traditional commodity agreements to promote the conservation of “fugitive” renewable resources, such as fisheries and migratory birds.¹⁹ In 1949, UNESCO held an International Technical Conference on the Protection of Nature.²⁰ Also in that year, the UN held a Scientific Conference on the Conservation and Utilization of Resources.²¹

From the documentary history of the UN Conference on Trade and Employment, we know that the drafters of the Havana Charter for an International Trade Organization (ITO) (ITO Charter) were aware of the

¹² Apr. 1946, 231 U.N.T.S. 200. There is a trade provision in art. 9.

¹³ International Convention for the Regulation of Whaling with Schedule of Whaling Regulations, 2 Dec. 1946, 161 U.N.T.S. 72.

¹⁴ *Id.* Preamble.

¹⁵ Fisheries, 8 Feb. 1949, 1 U.S.T. 477; Tuna, 31 May 1949, 80 U.N.T.S. 3.

¹⁶ 18 Oct. 1950, 638 U.N.T.S. 185. There are trade provisions in arts. 3-4.

¹⁷ LYNTON KEITH CALDWELL, INTERNATIONAL ENVIRONMENTAL POLICY 50, 144 (1996); Leif E. Christoffersen, *IUCN: A Bridge-Builder for Nature Conservation*, in GREEN GLOBE Y.B. 59 (1997).

¹⁸ PROCEEDINGS OF THE INTER-AMERICAN CONFERENCE ON CONSERVATION OF RENEWABLE NATURAL RESOURCES (U.S. Dep't of State, 1948).

¹⁹ S.V. Ciriacy-Wantrup, *Conservation of Renewable Natural Resources in Relation to Economic Instability*, in *id.*, 222, 228-9. He notes two instruments that can be used: regulation of capture and establishment of a limited geographic monopoly.

²⁰ INTERNATIONAL TECHNICAL CONFERENCE ON THE PROTECTION OF NATURE: PROCEEDINGS AND PAPERS (1950).

²¹ PROCEEDINGS OF THE UNITED NATIONS SCIENTIFIC CONFERENCE ON THE CONSERVATION AND UTILIZATION OF RESOURCES (1949), UN Doc. E/Conf. 7/7 Vol. 1. It is interesting to note that several environmental NGOs attended this conference, such as the Wild Life Protection Society of South Africa, the American Fisheries Society, the (US) National Wildlife Federation, and the Society of American Foresters. *Id.* at lii-liv.

exigencies of nature protection. Although the ITO Charter did not enter into force, there is a vital connection between it and the GATT.²² First, the GATT was drafted by the same delegates working on the ITO Charter. Second, the commercial chapter of the draft ITO Charter was used as the template for the GATT. Third, the ITO interim commission evolved into the GATT Secretariat.

In late 1946, the drafters discussed the way in which the new commodities disciplines would interact with “conservation agreements, such as international fisheries conventions” which would “have to regulate production or trade in order to achieve their object.”²³ At the formal session a few months later, the drafting committee added an exception to the commodities chapter for “international fisheries or wildlife conservation agreements with the sole objective of conserving and developing these resources.”²⁴ During subsequent drafting sessions, however, this provision was watered down.

In December 1947, at the UN Conference on Trade and Employment in Havana, Cuba, the delegate from Norway sought to reinvigorate the exception. He noted that fishery and wildlife agreements were entered into by nations “on the basis of biological and oceanographical evidence that the resources were declining.”²⁵ Norway’s proposal was supported by the delegate from France, who recalled that numerous international conferences had attempted to craft measures for the protection of fisheries, including whales.²⁶ Eventually, it was agreed to include a broader conservation exception in the commodities chapter. The delegates also decided to copy this same exception into the commercial chapter to cover trade measures “taken in pursuance of any inter-governmental agreement which relates solely to the conservation of fisheries resources, migratory birds or wild animals . . .”²⁷

While the GATT’s drafters did not pursue positive linkages regarding the environment, they were not pro-segregation.²⁸ The documentary history shows that some environmental issues were considered, and the exceptions in

²² WORLD TRADE ORGANIZATION, *GUIDE TO GATT LAW AND PRACTICE* 3–7 (1995).

²³ Memorandum from R.B. Schwenger to John Leddy, 16 Jan. 1947, US National Archives, Box 122.

²⁴ *Report of the Drafting Committee of the Preparatory Committee of the UN Conference on Trade and Employment*, 5 Mar. 1947, UN Doc. E/PC/T/34, at 43–4.

²⁶ *Id.* at 3.

²⁵ UN Doc. E/Conf.2/C.5/SR.7, 12 Dec. 1947, at 2–3.

²⁷ Havana Charter for an International Trade Organization, 24 Mar. 1948, art. 45(1)(a)(x) (not in force), Can. T.S.1948:32 [hereinafter ITO Charter].

²⁸ By contrast, the urge for integration is clearer in the way that the ITO Charter dealt with the problem of unemployment. For example, art. 2 states that “[t]he Members recognize that the avoidance of unemployment . . . is not of domestic concern alone, but is also a necessary condition for the achievement of the general purpose . . . [of the ITO].” Art. 5(2) states that the ITO “shall, if it considers that the urgency of the situation so requires, initiate consultations among Members with a view to their taking appropriate measures against the international spread of a decline in employment, production or demand.” Art. 7(3) states that “in all matters relating to labour standards . . . [the ITO] shall consult and cooperate with the International Labour Organization.” *Id.*

GATT were designed to cover them.²⁹ Due to the fact that the drafters viewed environmental regulation through the paradigm of conservation, accommodating such regulation would have seemed perfectly consistent with the GATT's overall purpose of boosting economic efficiency. Indeed, GATT itself points to the "desirability of assuring an economic employment of productive resources."³⁰

Over twenty years passed before the GATT began to consider explicitly environmental issues. In 1971, the GATT Council established a Group on Environmental Measures and International Trade to examine upon request "any specific matters relevant to the trade policy aspects of measures to control pollution and protect human environment . . ." ³¹ Unfortunately, it took another twenty years for the group to hold its first meeting.³² Yet the GATT did make one significant contribution to understanding "trade and the environment." In 1971, Jan Tumlrir of the GATT Secretariat prepared a report for submission to the UN (Stockholm) Conference on the Human Environment.³³ Tumlrir's study was more thoroughly reasoned than the more publicized Secretariat study of 1992.³⁴ His study was particularly perceptive in pointing out how trade measures might be useful in addressing transborder environmental problems.³⁵

At around the same time, the IUCN was drafting what became the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).³⁶ Since import restrictions on foreign wildlife were contemplated, the IUCN sought the advice of the GATT Secretariat in regard to any conflict with GATT rules.³⁷ Gardner Patterson, who was then GATT's

²⁹ Steve Charnovitz, *Exploring the Environmental Exceptions in GATT Article XX*, 25 J. WORLD TRADE 37 (October 1991).

³⁰ GATT, *supra* note 1, at art. XVIII:11.

³¹ GUIDE TO GATT LAW AND PRACTICE, *supra* note 22 at 1114.

³² It is interesting to recall that in 1987, the GATT panel examining the complaint against the U.S. Superfund law suggested that the European Commission (the plaintiff) might take its concern about the Polluter Pays Principle to the GATT Group. The commission had argued that the U.S. import tax violated trade rules and was inconsistent with the Polluter Pays Principle. See *Taxes on Petroleum and Certain Imported Substances*, GATT, B.I.S.D. (34th Supp.) at 136, 162, para. 5.2.6. The commission did not follow this suggestion.

³³ INDUSTRIAL POLLUTION CONTROL AND INTERNATIONAL TRADE (GATT Studies in International Trade, No. 1) (1971).

³⁴ Cf. *Trade and the Environment*, in 1 INTERNATIONAL TRADE 90-1 (GATT, ed., 1992), at 19. For an analysis of the 1992 study, see Steve Charnovitz, *GATT and the Environment: Examining the Issues*, 4 INT'L ENVTL. AFF. 203 (1992).

³⁵ INDUSTRIAL POLLUTION CONTROL AND INTERNATIONAL TRADE, *supra* note 33, at 16. The Secretariat's 1992 report makes no mention of Tumlrir's 1971 study.

³⁶ 3 Mar. 1973, 993 U.N.T.S. 243. See *Experience with the Use of Trade Measures in the Convention on International Trade in Endangered Species (CITES)*, OECD Working Papers, No. 47, (1997).

³⁷ The records do not show any correspondence from the GATT to the IUCN asking whether the contemplated Tokyo Round trade agreements would conflict with environmental treaties.

assistant director-general, replied that the draft treaty seemed consistent with GATT Article XX.³⁸

In summary, contrary to the way some commentators portray it, the GATT was born during a period of growing interest in international environmental policy. The GATT's drafters were aware of these events and took steps to keep trade rules from interfering with them. At the advent of the UN Conference on the Human Environment, the GATT sought to make a substantive contribution. It was not until the late 1980s and early 1990s, however, that the GATT began to see a divergence between trade and environmental goals.

III. THE TRADE AND ENVIRONMENT DEBATE FROM 1990 TO 1998

The current trade and environment debate began at the GATT's Brussels Conference in December 1990 when countries of the European Free Trade Association (EFTA) proposed a ministerial statement on trade and the environment.³⁹ Following this unsuccessful conference, the EFTA countries sought to convene the GATT Group on Environmental Measures and International Trade.⁴⁰ Yet this request met opposition from several developing countries.⁴¹ It took almost the entire year to convene the first meeting.

Contemporaneously, environmental groups were beginning to look closely at the GATT. There was a growing recognition that trade and trade policy interacted with environmental policymaking. Rather than welcome their interest, however, the GATT projected hostility towards environmentalists and other public interest groups.⁴² At this time, many key GATT documents were deemed confidential and were not made available to the public. The GATT Secretariat did release dispute panel reports but not until after they were adopted by the GATT Council.⁴³ Thus, environmental groups, who wanted to be in a position to influence the GATT Council's review of a report, were being told that GATT rules prevented them from seeing a report in time to have any impact on its disposition. This denial of access was particularly grating because the GATT trumpeted "transparency" as a principle of trade policy. The long delay in setting up the Group on Environmental Measures and International Trade was taken as yet another sign of the GATT's antipathy for the environment.

³⁸ Letter from Gardner Patterson to F.G. Nicholls, IUCN, 24 Feb. 1991 (on file at IUCN).

³⁹ Minutes of the 46th Session of the GATT Contracting Parties, 12–13 Dec. 1990, GATT Doc. SR.46/2, at 5–9.

⁴⁰ JOHN CROOME, *RESHAPING THE WORLD TRADING SYSTEM: A HISTORY OF THE URUGUAY ROUND* 276–84 (1995).

⁴¹ See Minutes of Meeting of the GATT Council, 28 June 1991, GATT Doc. C/M/250, at 2–22.

⁴² See, e.g., Frances Williams, *GATT Shuts Door on Environmentalists*, *FIN. TIMES*, 21 July 1994, at 6.

⁴³ Patti A. Goldman, *Resolving the Trade and Environment Debate: In Search of a Neutral Forum and Neutral Principles*, 49 *WASH. & LEE L. REV.* 1279, 1285 (1992).

This climate of distrust was the backdrop for the first GATT Tuna-Dolphin decision in 1991.⁴⁴ The case involved a complaint by Mexico that the US government's tuna import ban violated GATT rules. Under US law, tuna is banned from any country whose fishing practices do not meet specified criteria for dolphin safety.⁴⁵ The panel found in favour of Mexico and declared the US law to be GATT-illegal.⁴⁶ This decision came as a shock to environmental groups around the world. The more radical environmental groups were able to capitalize on the decision by launching a vituperative anti-GATT campaign. Yet even the mainstream environmental groups were deeply troubled. It was not that the US law was GATT-consistent. Almost everyone conceded that the law was too arbitrary to meet GATT rules. The problem was that the panel issued a broad, rather careless, decision whose logic seemed to question the validity of scores of environmental laws and treaties.

Although there was clear evidence from the preparatory history of the GATT that its drafters realized the need for a GATT environmental exception, the panel took a very narrow view of the scope of GATT Article XX. According to the panel, GATT Article XX(b) applied only to import measures "to safeguard life or health of humans, animals or plants *within* the jurisdiction of the importing country [emphasis added]."⁴⁷ Similarly, Article XX(g) applied only to measures conserving natural resources that were "primarily aimed at rendering effective restrictions on production or consumption within their [the importing party's] jurisdiction."⁴⁸

This decision alarmed environmentalists because of its far-reaching implications.⁴⁹ Unlike trade policy, which is narrowly focused on a company or on an industry within a country, environmental policy typically has a wide scope. Ecosystems will often transcend political borders. Thus, in saying that environmental trade instruments had to be limited to a government's domestic territory, the panel seemed to be denying the basic principles of environmental policy. For example, throughout the twentieth century, governments have banned imports of endangered species as a means of thwarting this deleterious traffic.⁵⁰ The campaign against trade in bird plumage was one of the first

⁴⁴ See generally Steve Charnovitz, *The Environment vs. Trade Rules: Defogging the Debate*, 23 ENVTL. L. 475 (1993); Benedict Kingsbury, *The Tuna-Dolphin Controversy, the World Trade Organization, and the Liberal Project to Reconceptualize International Law*, 5 YBIEL 1 (1994).

⁴⁵ 16 U.S.C. para. 1371(a)(2).

⁴⁶ *United States Restrictions on Imports of Tuna*, GATT B.I.S.D. (39th Supp.) at 155. The original caption of the case (and its current designation as "Tuna I" by the trade community) reflects the view that the *real* issue is trade in tuna, not protection of dolphins.

⁴⁷ *Id.* at para. 5.26.

⁴⁸ *Id.* at para. 5.31.

⁴⁹ William J. Snape, III & Naomi B. Lefkowitz, *Searching for GATT's Environmental Miranda: Are Process Standards Getting "Due Process?"* 27 CORNELL INT'L L.J. 777, 785 (1994) (stating that at best the panel demonstrated the GATT's insensitivity toward hard-fought conservation victories and at worst revealed GATT's insidious desire to exempt international commerce from any legitimate or reasonable regulatory oversight).

⁵⁰ See Steve Charnovitz, *A Taxonomy of Environmental Trade Measures*, 6 GEO. INT'L ENVTL. L. REV. 1 (1993).

international conservation efforts. Was the panel implying that all such import bans were GATT-illegal? It was unclear.

What was even more troubling was that the panel made no distinction between areas of national jurisdiction and areas in the global commons. That is, the panel seemed to be saying that no state could use trade measures to protect ocean resources or the atmosphere since those resources lay outside the jurisdiction of all states. The panel's hard line against the legal protection for dolphins seemed hypocritical to environmentalists as they learned more about how the GATT tolerated economic protection for automobiles, textiles, agriculture, and tuna.

Environmentalists were still reeling from the Tuna-Dolphin decision when the GATT struck again six months later with the release of the new Secretariat report on trade and the environment. Given that the Tuna-Dolphin ruling was still pending before the GATT Council, it was inappropriate for the Secretariat to take a position on the legal issues involved. Nevertheless, the Secretariat declared that "it is not possible under GATT rules to make access to one's own market dependent on the domestic environmental policies or practices of the exporting country."⁵¹ The report also cast doubt on the GATT-legality of the trade measures used in the Montreal Protocol on Substances That Deplete the Ozone Layer.⁵²

The GATT Group on Environmental Measures and International Trade started meeting in late 1991, and many observers hoped that the group could bridge the gap between environmentalists and the GATT. Unfortunately, the group made no progress.⁵³ The simplest problems went unsolved. For example, environmentalists yearned for a clear statement that the GATT would not stand in the way of multilateral environmental agreements. Yet even that minimal objective was unattainable.

At the Ministerial Meeting, which was held in Marrakech in 1994, the GATT agreed to charter a new Committee on Trade and Environment (CTE). The CTE was asked to look at most of the key trade and environment issues, but no effort was made to broaden participation beyond that in the previous GATT Group.⁵⁴ For example, governments were not asked to send

⁵¹ *Trade and the Environment*, *supra* note 34, at 23.

⁵² *Id.* at 21, 25, 36. For a discussion of the trade measures in the Montreal Protocol, see OECD, *Experience with the Use of Trade Measures in the Montreal Protocol on Substances That Deplete the Ozone Layer*, OECD/GD(97)230 (1997). For text of the Montreal Protocol, see 26 I.L.M. 1550 (1987).

⁵³ See *Report by the Chairman of the Group on Environmental Measures and International Trade*, GATT B.I.S.D. (40th Supp.) at 75.

⁵⁴ The need for broadening was clear from some statements made in the GATT Council that seemed to reflect the position of trade bureaucrats rather than governments more generally. For example, in June 1991, the Swedish representative—speaking for all of the Nordic countries—declared that the manner in which products were produced abroad did not affect the domestic environment. Minutes of Meeting of the GATT Council, *supra* note 41, at 13. One wonders what the reaction would have been if this statement had been reported in the Swedish press.

environment ministry officials (although some countries did). Representatives from international organizations—such as UNEP—were allowed to attend CTE meetings, but they were not allowed to speak. The most serious deficiency, however, was the unwillingness of the WTO to allow input from NGOs. NGO participation might have helped to lubricate the North-South friction that paralyzed the CTE.

The CTE met for over two years, but, in the end, it produced few results of any substance.⁵⁵ For example, one of the most important issues to be discussed by the CTE was the environmental benefit of removing trade restrictions and distortions. Many observers had marked this as one area in which the trade and environment regimes could be integrative. Economists talked about “win-win” scenarios where wider market access could make it possible for developing countries to increase economic growth through trade and then channel some of the higher national income into environmental investment. Another constructive proposal was the removal of subsidies that are bad for both the economy and the environment. Agricultural, fishery, energy, and mining subsidies are often pointed to as most in need of reform.⁵⁶

Several governments presented thoughtful papers (or “non-papers” as they were called) to the CTE on this issue. For instance, the government of Norway suggested that the CTE identify sectors where trade liberalization could be conducted in such a way as to generate both economic and environmental gains.⁵⁷ The energy sector was pinpointed as one example in which trade liberalization might result in such a “double dividend.” Norway’s paper also suggested that the trading system offer incentives for the use of environmentally friendly products.

Despite the constructive proposals on the table, the only policy conclusion that was reached by the CTE was that further work was needed. The CTE did not recommend specific actions by governments to open their markets nor did it recommend specific actions by the WTO to review harmful subsidies. The CTE’s analytical output was also weak. For example, the CTE offered no estimates of the environmental or economic benefits that would be achieved from reducing subsidies in particular sectors. Almost perversely, in view of its

⁵⁵ See Steve Charnovitz, *A Critical Guide to the WTO’s Report on Trade and Environment*, 14 ARIZ. J. INT’L & COMP. L. 341 (1997); Andrew Griffith, *Market Access and Environmental Protection: A Negotiator’s Point of View*, Canada Department of Foreign Affairs and International Trade (1997); Winfried Lang, *Trade and Environment: Progress in the World Trade Organization?* 27 ENVTL. POL. & L. 275 (1997); Michael Reiterer, *The WTO Ministerial Conference—The Committee on Trade and Environment: Highlights of the Report to Ministers and Outlook on Future Work*, 2 AUSTRIAN REV. INT’L & EUR. L. 107 (1997).

⁵⁶ See, e.g., the papers by Mark Ritchie, Christopher Stone, and Kazuhiro Ueta in *Final Report: Japan—United States Collaboration on Trade and Environment between the Global Environment and Trade Study and the Global Industrial and Social Progress Research Institute* (Feb. 1998); World Bank, *Subsidies and the Environment: A Televised Dialogue* (1997).

⁵⁷ WTO, *Report (1996) of the Committee on Trade and Environment*, WT/CTE/1 (7 Nov. 1996) para. 121.

failure, the CTE's main recommendation was that its charter be extended. The WTO members readily agreed to do so at the Ministerial Meeting held in Singapore in December 1996.⁵⁸

Once the WTO got started, the first dispute it considered was an environmental case.⁵⁹ The governments of Venezuela and Brazil complained that a US regulation pursuant to the Clean Air Act made it difficult for them to export reformulated gasoline to the United States. In its first decision, the WTO Appellate Body ruled that the US domestic environmental regulation violated GATT rules.⁶⁰ Although this decision was yet another example of how difficult it is for environmental measures to qualify under GATT Article XX, the decision was notable because it was the first time that an environmental measure had come close to fitting under one of the Article XX exceptions. But what the Appellate Body gave with one hand, it took away with the other. Although the US regulation met the Article XX(g) subsection, the regulation was still deemed a GATT-violation because it did not meet the terms of the Article XX headnote. According to the Appellate Body, the regulation was "unjustifiable discrimination" and a "disguised barrier to trade."⁶¹

The CTE met only three times in 1997 and failed to produce any substantive output.⁶² It will meet three times in 1998.⁶³ Although the CTE's performance has been disappointing, the WTO has taken other steps in a positive direction to improve its relationship with civil society. The most significant advance has been a new disclosure policy that releases many more documents to the public.⁶⁴ The WTO also set up a web site for easy access to documentation.⁶⁵ In order to improve the flow of information to, and from, NGOs, the WTO Secretariat started holding symposia on sustainable development. A two-day symposium in March 1998 provided opportunities for about 150 NGOs to discuss issues with experts, government delegates, and WTO staff.⁶⁶ This symposium was a cutting-edge civil society consultation that included

⁵⁸ *Ministers Adopt Trade/Environment Report, Renew Committee Created to Look at Issues*, 20 INT'L ENV'T REP. 3 (8 Jan. 1997).

⁵⁹ Steve Charnovitz, *New WTO Adjudication and its Implications for the Environment*, 19 INT'L ENV'T REP. 851 (1996).

⁶⁰ United States—Standards for Reformulated and Conventional Gasoline, *Report of the Appellate Body*, 35 I.L.M. 603 (1996).

⁶¹ *Report of the Appellate Body*, *id.*, at 632–3.

⁶² WTO, *Report (1997) of the Committee on Trade and Environment*, WTO Press Release (3 Dec. 1997) para. 3.

⁶³ *The WTO Committee on Trade and Environment Adopts its Work Programme and Schedule of Meetings for 1998*, WTO Press Release (20 Mar. 1998).

⁶⁴ JOHN BARLOW WEINER & BRENNAN VAN DYKE, A HANDBOOK FOR OBTAINING DOCUMENTS FROM THE WORLD TRADE ORGANIZATION (International Centre for Trade and Sustainable Development, 1997).

⁶⁵ <<http://www.wto.org>>.

⁶⁶ WTO, *Background Document for World Trade Organization Symposium of Non-Governmental Organizations on Trade, Environment and Sustainable Development* (March 1998). For information on the symposium, see <<http://www.iisd.ca/sd/wtosymp/sdvol12no1e.html>>.

individuals from NGOs, corporations, law firms, and universities. In addition, the WTO gave NGOs observer status at the Ministerial Conference in 1996 and 1998.

During the past few years, there have been several private initiatives to increase mutual understanding of the trade and environmental regimes. These international study groups comprised participants from around the world. The most notable of these initiatives were the Winnipeg Group (sponsored by the International Institute for Sustainable Development), the "Talloires Group," the Asser Instituut conferences, and the Expert Panel on Trade and Sustainable Development (sponsored by Worldwide Fund for Nature (WWF)).⁶⁷ In addition, several NGOs founded the International Centre for Trade and Sustainable Development, which is located in Geneva.⁶⁸ The centre, which receives financial support from governments, seeks to facilitate access to the WTO, promote understanding of current policy issues, and disseminate information in all directions.

While the trade and environment debate has not yet "greened" the WTO, the debate has had one very fortunate consequence of improving the coordination of national policymaking. Since governments have needed to attend CTE meetings (and also meetings held by the OECD), national trade ministries have begun talking regularly with national environment ministries. A lot of good may come from this.

Coordination of international policymaking has improved, but it has still not improved enough. Although the trade and environment issue has been considered at several meetings of the Commission on Sustainable Development, there is still no ongoing cooperation between the WTO and other international agencies with environmental mandates, such as UNEP, the Global Environment Facility, and the International Labour Organization. Recently, the CTE acted to grant observer status to the Secretariats of CITES and the Convention on Biological Diversity (CBD).⁶⁹ But there has been no effort to formulate common goals—for example, the suppression of illegal traffic—for joint implementation by the WTO and appropriate international environmental organizations. In summary, the WTO has begun to grow out of the segregative tendencies that it manifested during the early 1990s. The greatest progress has occurred on institutional

⁶⁷ See, e.g., INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, *TRADE AND SUSTAINABLE DEVELOPMENT PRINCIPLES* (1994); Abram Chayes, Jan Martinez, & Lawrence Susskind, *Parallel Informal Negotiation: A New Kind of International Dialogue*, 12 *NEGOTIATION J.* 19 (Jan. 1996); ASSER INSTITUUT, *THE RELATIONSHIP BETWEEN THE MULTILATERAL TRADING SYSTEM AND THE USE OF TRADE MEASURES IN MULTILATERAL ENVIRONMENTAL AGREEMENTS—SYNERGY OR FRICTION?* (1996); WWF, *Expert Panel on Trade and Sustainable Development, Report of the 3rd Meeting* (Nov. 1997).

⁶⁸ <<http://www.ictsd.org>>.

⁶⁹ *Report (1996) of the Committee on Trade and Environment*, *supra* note 57, para. 6. For text of the Convention on Biological Diversity see 31 I.L.M. 818 (1992).

issues, such as the release of documents. The least progress has occurred in dispute settlement.⁷⁰

IV. IMPROVING TRADE AND THE ENVIRONMENT

The trade and environment debate has been very useful in highlighting the limited perspectives of both sets of policymakers. Ideally, one could use the same framework for setting both economic and environmental policies. Elsewhere, I have suggested the need for a new paradigm of an “ecolonomy” that merges economic and ecological analysis.⁷¹ But at the present time, we do not have such a paradigm. Our best analytic approach, therefore, is probably to weigh trade values in making environmental policy and to weigh environmental values in making trade policy.

The trade regime has offered some well-reasoned advice to environmentalists,⁷² including the insights that increased trade can enable greater environmental protection and that trade measures are blunt environmental tools. The trade regime has also offered some advice that is not so well reasoned. The greatest error has been the failure to apply the political economy insights from trade theory to environmental theory. To start with the basics, why should states cooperate on trade policy? The standard answer is that governments systematically get trade policy wrong (that is, they are too protectionist) because they try to satisfy special interest groups.⁷³ Once governments recognize this weakness, they solve it through a “constitutional” mechanism, such as the GATT, to restrain themselves from adopting protectionist policies.⁷⁴ This theory is a coherent and sensible explanation of how the GATT operates. Governments agree to a set of trade rules and to the international enforcement of these rules in order to prevent non-cooperation. When a group of countries wants to liberalize faster than the GATT/WTO membership as a whole, they do so through preferential (often regional) trade agreements. Such agreements discriminate against non-members, but do so in order to thwart free riders who want to gain the benefits of liberalization elsewhere without agreeing to liberalization themselves.

⁷⁰ See Steve Charnovitz, *Environment and Health under WTO Dispute Settlement*, 32 INT'L LAW (forthcoming 1998).

⁷¹ Steve Charnovitz, *Improving Environmental and Trade Governance*, 7 INT'L ENVTL. AFF. 59, 60 (1995). See also JOZO TOMASEVICH, INTERNATIONAL AGREEMENTS ON CONSERVATION OF MARINE RESOURCES 42 (1943) (noting that the theory of conservation is closely related to the theory of international economic relations).

⁷² See, e.g., THE GREENING OF WORLD TRADE ISSUES, *supra* note 5.

⁷³ There are two variants of this. One is a pure government failure—that is, protectionism is wrong for the country doing it. The other is that protectionism is okay for the country doing it because it shifts costs to others, but fails as a strategy because other countries shift costs back.

⁷⁴ The most prolific spokesman for this view is E.U. Petersmann. See, e.g., E.U. PETERSMANN, CONSTITUTIONAL FUNCTIONS AND CONSTITUTIONAL PROBLEMS OF INTERNATIONAL ECONOMIC LAW (1991).

When trade theorists look at environmental policymaking, however, they apply an entirely different analysis. Instead of seeing government failure, they perceive government success. That is, trade analysts assume that the low environmental standard in country A is a rational for country A. Sometimes this rationality is said to be objectively based—for example, country A can assimilate a lot more pollution than country B. Alternatively, it is said that country A's citizens consciously choose low environmental standards. For example, the GATT Secretariat has opined that differences in environmental policies "are properly regarded as domestic choices reflecting, among other factors, the domestic trade-offs between income and environment" and that such differences "can well be an additional source of gainful trade among these nations . . ." ⁷⁵

In assuming that governments set their environmental policies correctly, the trade regime can logically claim that there is little need for a government to try to influence another country's domestic environmental policy. Thus, efforts to harmonize environmental standards are suspect. ⁷⁶ The fallacy of this assumption, however, is that we are talking about the same governments. Can it really be true that governments systematically get trade policy wrong—thus justifying trade rules—and yet systematically get environmental policy right—thus negating the case for harmonization? If anything, one would anticipate the opposite situation. That is, governments are much more likely to set improper environmental policy than to set improper trade policy. Trade policy is, after all, conceptually easy; the case against protectionism is overwhelming. ⁷⁷ By contrast, environmental policy is difficult. A society can suffer high costs by making regulations too tough as well as too lenient.

Thus, if trade analysts looked more realistically at environmental policy, they would see that many of the techniques that are used by the trade regime would also be useful for the environment regime. ⁷⁸ One technique is to maintain a set of rules in order to keep countries from trying to externalize burdens onto other countries. Another technique is to create a dispute settlement mechanism to enforce these rules. A third technique is to develop a method for dealing with free riders. Although the preferential trading arrangement would probably not be useful for environmental management, the technique itself—that is, discrimination against non-cooperators—is transferable to the environmental regime.

⁷⁵ *Trade and the Environment*, *supra* note 34, at 29.

⁷⁶ Jagdish Bhagwati & T.N. Srinivasan, *Trade and the Environment: Does Environmental Diversity Detract from the Case for Free Trade?*, in 1 FAIR TRADE AND HARMONIZATION 159 (Jagdish Bhagwati & Robert E. Hudec eds., 1996) (arguing against harmonization).

⁷⁷ See, e.g., JAGDISH BHAGWATI, PROTECTIONISM (1988).

⁷⁸ See DANIEL C. ESTY, GREENING THE GATT 73–98 (1994); Steve Charnovitz, *Book Review*, 5 YBIEL 633 (1994) (reviewing Esty's book).

1. New Directions for the WTO

The GATT of 1947 was a deregulatory agreement designed to address government failure. The WTO of the future needs to be more prescriptive. US Trade Representative Charlene Barshefsky put it well when she said: "Sustainable development is not only beneficial to world trade, it has got to be a basic principle of world trade."⁷⁹

A focus on sustainability must examine both production and consumption.⁸⁰ Many trade policy analysts prefer trade rules that treat "like" products equivalently regardless of their method of production. For example, solar energy would be treated in the same way as coal-based energy; sustainably produced timber would be treated in the same way as unsustainably produced timber. The integrative scenario would require the WTO to rethink the line that exists between product and process.⁸¹

To promote sustainability, the WTO should become a world competition agency, regulating in some areas and deregulating in others. Already, we see the rudiments of this new approach. For example, the WTO Agreement on Technical Barriers to Trade (TBT Agreement) calls on governments to use international standards (except when such standards would be ineffective or inappropriate).⁸² This agreement does not reflect a hands-off attitude; it is proactive. The TBT Agreement promotes common standards as a way of preventing trade barriers that impede competition. Another example is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which incorporates the rules of intellectual property treaties.⁸³ TRIPS seeks to upgrade national laws in order to promote innovation and fair competition. Innovation policy is necessitated by market failure, not by government failure. Yet another example is the Agreement on Pre-shipment Inspection, which directs governments to regulate private inspection activities to assure that they are non-discriminatory and "objective."⁸⁴ Clearly, this agreement is not GATT-like because it calls for an interventionist government policy.

An institution that concerns itself with market failure, that seeks to harmonize standards, and that sets rules for private entities is an institution positioned to respond to the challenges of sustainable development. Whether the

⁷⁹ Remarks by U.S. Trade Representative Charlene Barshefsky at the Institute of International Economics, 15 Apr. 1998, available in LEXIS, News, Federal News Service.

⁸⁰ See, e.g., James Salzman, *Sustainable Consumption and the Law*, 27 ENVTL. L. 1243 (1997).

⁸¹ See Steve Charnovitz, *Green Roots, Bad Pruning: GATT Rules and their Application to Environmental Trade Measures*, 7 TUL. ENVTL. L. J. 299-30 (1994) (discussing the fuzzy line between product and process).

⁸² Agreement on Technical Barriers to Trade, Art. 2.4, 15 Apr. 1994 [hereinafter TBT Agreement], WTO Agreement, *supra* note 10, Annex 1A.

⁸³ Agreement on Trade-Related Aspects of Intellectual Property Rights, Art. 1.3, 15 Apr. 1994, WTO Agreement, *supra* note 10, Annex 1C.

⁸⁴ Agreement on Pre-shipment Inspection, Art. 2.1, 15 Apr. 1994, WTO Agreement, *supra* note 10, Annex 1A.

WTO will do so is up to the governments that comprise it. But those who doubt that the trading system is institutionally capable of promoting sustainable development have missed key facets of the transformation of the GATT into the WTO.

In the early 1990s, the director of the GATT, Arthur Dunkel, predicted that the next multilateral trade negotiation would be a "Green Round."⁸⁵ This does not seem likely to occur now. Even when Dunkel made this statement, many analysts doubted that the trade regime would ever negotiate environmental policy. But while the WTO of 1998 is not directly setting environmental policy, it does try to shape such policymaking indirectly by promoting conformity with WTO rules.

The debate over multilateral environmental agreements (MEAs) is one example of the way in which the WTO is silently influencing environmental policy.⁸⁶ Technically, nothing emerged from the consideration of MEAs in the CTE. Moreover, no government has lodged a WTO complaint against a MEA. More realistically, however, the emanations from the CTE's discussion of criteria for using trade measures in MEAs will surely make it more difficult for environmental negotiators to draw upon such trade measures. Several months ago, the WTO director-general said publicly that "a number of the most important Multilateral Environmental Agreements contain trade measures whose consistency with WTO rules might be open to question."⁸⁷ Such warnings can only be intended to signal environmental negotiators to cease using trade measures.

2. Specific Proposals

The simplest pro-environment action for the WTO would be to stop giving false prescriptions to the environment regime. However, there are also positive steps that the WTO can take to move towards the integrative scenario. Here are five suggestions:

1. Market-Based Environmentalism: The WTO should promote market based solutions to environmental problems.⁸⁸ One way to do this is to improve information that is communicated to consumers about the environmental footprints of particular products. Labels, product seals, and

⁸⁵ See Senator Bill Bradley, Floor Statement, 1 Dec. 1994, available in LEXIS, Federal Document Clearing House.

⁸⁶ For elaboration on the MEA issue, see Richard G. Tarasofsky, *Ensuring Compatibility between Multilateral Agreements and the GATT/WTO*, 7 YBIEL 52 (1996).

⁸⁷ "A Shared Responsibility: Global Policy Coherence for Our Global Age." Address by Renato Ruggiero to the Conference entitled "Globalization as a Challenge for German Business: Export Opportunities for Small and Medium-Sized Companies in the Environmental Field," 9 Dec. 1997, at 6.

⁸⁸ Sanford E. Gaines, *Rethinking Environmental Protection, Competitiveness, and International Trade*, U. CHI. LEGAL F. 231 (1997); THAILAND ENVIRONMENT INSTITUTE, *THE COMPATIBILITY OF TRADE AND ENVIRONMENTAL REGULATION* 18-20 (1997).

producer certifications are examples of effective methods of providing such information. Despite the informational value of labels (or perhaps because of it), some groups want to use the WTO to suppress eco-labels on the grounds that they create unnecessary obstacles to international trade in violation of the TBT Agreement.⁸⁹ A lot of criticism has been aimed at labels specifying the production process, but even purely descriptive labels—for example, that timber is tropical—have been opposed. At the very least, the WTO should not let the TBT Agreement be used to thwart eco-labels. But the WTO can also take positive steps to promote eco-labeling by providing a clearinghouse for the best certification and inspection techniques. In addition, the WTO can promote the environmental efforts of the International Organization for Standardization (for example, ISO 14001) by encouraging the use of these standards.⁹⁰

2. Environmental Assessments: The WTO should carry out an environmental impact assessment of any new trade round.⁹¹ This action was not done during the Uruguay Round and, as a result, claims by government officials that the round would have benign environmental results were not credible. From its report, it appears that the CTE did not even discuss this option.⁹² There was a discussion of assessments done by national governments, but such assessments are likely to be too narrow and too politicized to be of use to the global community.
3. Developing Countries: The WTO should do more to provide economic opportunities for developing countries.⁹³ The political strength of Northern environmental NGOs needs to be harnessed in favour of greater trade liberalization so that developing countries can expand exports. One strategy is to push the WTO to use its anti-subsidy disciplines to attack subsidies that harm the environment.⁹⁴
4. Plurilateral Agreements: Although most of the WTO agreements are part of a unified set of obligations, the WTO provides for “plurilateral” agreements on an à-la-carte basis (for example, the Agreement on Government

⁸⁹ For a good discussion of the legal issues, see Halina Ward, *Trade and Environment Issues in Voluntary Eco-Labeling and Life Cycle Analysis*, 6 REV. EUR. COMM. & INT’L ENVTL. L. 139 (1997).

⁹⁰ TBT Agreement, Art. 2.4 provides that where relevant international standards exist, governments shall use them as a basis for their technical regulations, except when such standards would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, *supra* note 82.

⁹¹ Assessments might also be done of new free trade zones. See *Rise in Free-Trade Zones Posing Major Threat to Soil, Water, Air, Environment Group Warns*, 20 INT’L ENV’T REP. 1132 (10 Dec. 1997).

⁹² *Report (1996) of the Committee on Trade and Environment*, *supra* note 57, at paras. 47 and 181.

⁹³ See, e.g., J. Michael Finger & L. Alan Winters, *What Can the WTO Do for Developing Countries?*, in *THE WTO AS AN INTERNATIONAL INSTITUTION* 365 (Anne O. Krueger, ed., 1998).

⁹⁴ JOHN WHALLEY & PETER UIMONEN, *ENVIRONMENTAL ISSUES IN THE NEW WORLD TRADING SYSTEM* 126 (1997).

Procurement).⁹⁵ It is easy to imagine adding trade-related environmental agreements in order to improve their coordination with the WTO. One could start with the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal.⁹⁶

5. Cooperation: The WTO should improve its policy cooperation with allied organizations. The clear benefits of functional international organization in the post-war period have caused some analysts to forget that the fruits of functionalism depend upon cooperation among institutions. WTO Article V(1) authorizes cooperation with intergovernmental agencies, but the WTO has not yet responded favourably to overtures by UNEP. It is interesting to note that the UN Conference on Trade and Development (UNCTAD) and the CBD Secretariat recently signed a cooperative agreement.⁹⁷ WTO Article V(2) authorizes cooperation with NGOs, but the WTO has done so only with two NGOs.⁹⁸ It is time to do so with environmental NGOs, perhaps starting with the IUCN. Initiating formal cooperation with UNEP and the IUCN would send a signal around the world that the WTO takes sustainable development seriously.

V. CONCLUSION

The fiftieth anniversary of the GATT is a proper cause for satisfaction. Trade liberalization has contributed to peace and prosperity. Yet, in addition to celebrating the past, we must plan for the future. This article lays out two scenarios for the WTO. The integrative scenario is obviously the preferable one. It would make the WTO more responsive to world needs. It would broaden the WTO's goals to embrace sustainable development. Several of the agreements of the Uruguay Round point the way towards initiating these fundamental changes.

The first part of this article reviewed the founding of the post-war trading system. It showed that the authors of the GATT were aware of ecological challenges and that they sought to allow space within the GATT for multi-lateral environmental agreements. When trade and the environment first became an issue in the early 1970s, the GATT adopted a constructive approach. The second part of the article examined the trade and environment debate of the 1990s. It showed how the GATT became less tolerant of environmental values. A difficult case—the Tuna-Dolphin dispute—became the

⁹⁵ WTO Agreement, *supra* note 10, at art. X:9 and Annex 4. Agreement on Government Procurement, available in LEXIS, ITrade library, GATT file.

⁹⁶ For the text of the convention, see 28 I.L.M. 657 (1989).

⁹⁷ UNCTAD, *Biodiversity Treaty Sign Secretariat Accord*, 20 INT'L ENV'T REP. 1162 (1997).

⁹⁸ See Daniel C. Esty, *Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion*, 1 J. INT'L ECON. L. 123 (1998); Richard Blackhurst, *The Capacity of the WTO to Fulfill its Mandate*, in *THE WTO AS AN INTERNATIONAL INSTITUTION*, *supra* note 93 at 43–4.

vehicle for defining when individual governments could use (or rather not use) trade measures to protect marine life in the global commons. The GATT/WTO is still trying to (un)paint its way out of this corner. Finally, the third part looked at how we might improve the environmental dimension of the trade regime. It began by showing how trade analysts misunderstand environmental policymaking and consequently prescribe the wrong solutions. Next, it made five specific recommendations on the topics of: market-based environmentalism, environmental assessments, developing countries, new plurilateral agreements, and WTO cooperation.

Although few of the feared collisions between trade and environment have occurred, the tension between the two regimes has not subsided. The GATT/WTO legal regime is perhaps stronger than ever, but, eerily, public skepticism about economic globalization is also stronger than ever.⁹⁹ The WTO of the future must make sure that nature is not just another commodity. It is only by building environmental safeguards into the trading system that the public can gain the confidence that it needs to support free trade.

⁹⁹ Guy de Jonquières, *Network Guerrillas*, FINANCIAL TIMES, 30 April 1998, at 20; Bhushan Bahree, *As WTO Marks 50th Birthday, Event Attracts Opponents to Globalization*, WALL STREET JOURNAL, 18 May 1998, at B6B.