

TRADE AND THE ENVIRONMENT: NEXT STEPS*

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Table A-1

Shellfish (SITC 03)

Total 1991
(millions)

Percent Increase
1986-1991

5951	20.6
2148	-5.3
3803	42.7
36	-51.3
1582	5.7
397	6.4
4	-71.4
2084	97.5
36	125.0

Series C, Vol. 3, 1991. (Paris, 1992)

Table A-2

and Fruits (SITC 05)

Percent Increase

1986-1991

86

30.5	4784
18.9	949
33.4	3835
3.4	59
36.9	2976
73.2	871
-24.2	62
23.2	695
103.2	31

It is obvious to many, but always worth noting, that international trade liberalization is a remarkably good idea. It is good for countries, and firms, trying to expand their markets because it allows them to take advantage of economies of scale. It is good, too, for the liberalizer -by encouraging producers to improve their products and by enabling consumers to afford a higher standard of living than they would in the absence of imports.

Environmental protection is also a very good idea. Because environmental resources are not accurately priced, there is a tendency to overuse them in a beggar-thy-future manner.¹ Thus, there is an intrinsic role for governments in overseeing environmental activity with taxes and regulations.

Trade liberalization and environmental protection are generally fully consistent with each other. Trade liberalization prevents the waste of resources through inefficiency. By enhancing competition among potential users of the same resource, trade liberalization can help get the prices right. Proper environmental protection can enhance the competitiveness of a country in trade by reducing the cost of inputs and by maintaining a more healthy population.

The positive relationship of trade and the environment is evident in the thesis of sustainable development put forward by the Brundtland Commission and in the declarations achieved last year at the U.N. Conference on Environment and Development. Government adherence to these precepts would be a very positive step. But in assessing our collective progress, we should be careful not to justify slow implementation with the argument that such novel concepts must be

* Paper presented at the Regional Seminar on Environmental Policy and Market Access, Latin American Economic System, Bogotá, 19-20 October 1993.

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¹ For a good discussion of the marked and government failures relating to the environment, see Candice Stevens, "The Environmental Effects of Trade," *The World Economy*, Vol. 16, No. 4, July 1993, p. 439.

approached gingerly. There is nothing new about the thesis of sustainable development, especially not in Latin America.

The issues of regional trade and natural resource conservation were considered extensively by the Pan American Union in the early 20th century. Consider the study presented by Professor Ralph Henry Hess to the Second Pan American Scientific Congress of 1915-16 entitled "Conservation in its Relation to Industrial Evolution."² Hess explained that

The aim of development, except when very scarce and non-restorable resources are involved, is to create a *permanently efficient* industrial organization of natural resources, labor, and capital.³

This one sentence captures a lot of what we characterize today as cutting-edge thinking. There is a recognition of the need for dynamic, sustainable efficiency. There is a recognition that scarce resources require special treatment. There is a recognition of the essential role of labor.

Hess makes two very interesting policy recommendations: First, "Education of the public as to economic needs of the future and probable social value of resources now subject to destruction and neglect because of their negligible present value." Second, "the establishing of the principles of *beneficial use* and *resource* validation and taxation as sanctions of private property in natural resources."⁴ These are good ideas for our time, and are therefore notable in being written in 1915. But then the pre-War period was very progressive on social matters.

The 1915 Conference discussed another aspect of the trade and environment debate, the issue of sanitary and phytosanitary standards. The Conference recommended the "Golden Rule" -viz., that "a country should be fully as solicitous in preventing the exportation of animal diseases as it is in forbidding their importation."⁵ This would be a constructive proposal, one that could usefully be incorporated in the Uruguayan Round Sanitary and Phytosanitary agreement.⁶

² *Id.* at 34 (emphasis added).

³ *Id.* at 34 (emphasis added).

⁴ *Id.*

⁵ Second Pan American Scientific Congress, FINAL ACT (Washington: Government Printing Office, 1916), p. 74-76.

⁶ The Sanitary and Phytosanitary decision is part of the draft Uruguayan Round agreement (known as the "Dunkel Text"). See GATT Doc. MTN:TNC/W/FA, 20 December 1991. There Uruguay Round draft contains no directive to parties not to export unsafe food.

Need for Cooperation

The countries of North and South America face common problems of high unemployment, unsatisfactory growth rates, and environment damage. Some solutions to these problems can be effectuated by actions taken by each country at home, unilaterally. Other solutions will require multilateral, bilateral, or regional cooperation.

One topic receiving great attention is whether regional cooperation on trade and regional cooperation on the environment need to be fully integrated with each other. There are many interesting ideas on this approach. For example, Janet Welsh Brown and Lee Kimball have proposed an "Americas Council on Trade: an Environment."⁷ The Council would identify national and international measures to protect the environment and to help move the hemisphere toward sustainable development. This could include trade sanctions to prevent certain practices.

While it is important for trade and environment policies to be considered in relation to each other, one should be careful not to insist upon a linkage so tight and so complex that it slows down progress on both fronts. In my view, much the cooperation the region needs on trade and much of the cooperation the Latin American region needs on the environment can be accomplished independently of each other.

There are a class of issues, however, in which decisions about international trade and about the environment should be made in harmony. For example, wise rules on sanitary import restrictions require that trade and health officials from different countries work cooperatively with each other. Generally, all issues of trade involving animals and plants need joint consideration. When environmental treaties draw upon trade measures, as several treaties do, their design and implementation also calls for dual consideration by trade and environmental officials.

When Trade and the Environment Clash

Trade policies are quite different from environment policies. Enlightened governments could deal with all trade issues definitively by

⁷ See Janet Welsh Brown and Lee Kimball, "Needed: New Rules and Mechanisms for Dealing with Trade and Environment Issues in the Western Hemisphere," in Heraldo Muñoz and Robin Rosenburg (eds.), *Difficult Liaison Trade and the Environment in the Americas*. (New Brunswick: Transaction, 1993), pp. 205-21.

eliminating any special rules at the border. In such an ideal world, there would be no need for trade ministries, or for the GATT. By contrast, the environmental challenge is a far more difficult one. Agreements between countries to take positive actions will be required.⁸ Unlike trade "problems," environmental problems can probably never be fully solved. Even enlightened governments will lack all the information they need to be certain that their environmental policies are sufficient.

The management of trade and environment policies is complicated by the fact that governments often do not pursue pro-liberalization trade policies. When governments aim to "protect" domestic industries from foreign competition, they are on rhetorically weak ground in preaching to environmentalists not to use trade policy to "protect" the environment. The existence of commercial protection also makes things more difficult for environmentalists. Pro-environment measures are often assumed to be intentional trade barriers when they are not.

It is sometimes said that each country should be free to determine its own pollution and resource use policy in terms of its "absorptive capacity." While this was the method followed for many centuries, many scientists now believe that the ecosystem can no longer support such a "polluter knows best" approach. Thus, for many issues, nations cannot successfully pursue environmental policies in isolation.

There are three reasons why one country might care about the environmental standards followed by one of its trading partners. First, there can be spillovers (figuratively and literally) between the two countries. In other words, production in Country B might worsen the environment in Country A. For example, forest destruction in B might change the climate in A. In cases such as these, Country A can properly use trade restrictions (and perhaps even trade sanctions) with respect to B.

Second, Country A might have moral concerns about activities in Country B. For example, Country A might want to safeguard an endangered species living in B. Or Country A might not want to export a toxic pesticide to B knowing that B will use it too freely. Some commentators object to the legitimacy of such moral concerns about another country. They apparently side with the Brezhnev Doctrine which stated that:

⁸ By contrast, the GATT is an agreement not to take actions.

It is only the people of each given state, and no one else, that has the sovereign right to resolve its internal affairs and establish its internal laws.⁹

Yet as we learn more about the environment, and as the world comes closer together, the number of adherents to the Brezhnev Doctrine seems likely to diminish.

Third, Country A might have a competitiveness concern about Country B. If Country A has high environmental standards and Country B has lower ones, A might perceive trade with B as disadvantageous. There are several variants of this complicated issue. One is a concern that the trade is unfair because B's social costs are too low. Country A then seeks a level playing field demanding either that B enact equivalent regulations or accept a social tariff levied by A. This point of view is barely indistinguishable from pure protectionism and is thus illegitimate. Attempting to raise another country's social costs through trade negotiations is self-defeating. One of the troubling aspects of the NAFTA environmental side agreement was the way in which President Bill Clinton characterized one advantage of the Agreement as being a reduction in the difference between the United States and Mexico in the cost of production due to environmental regulations.¹⁰

Another variant is that B's lower environmental standards are causing industries to migrate from A and, therefore A's government will be under political pressure to lower environmental standards. This is sometimes called "competitive deregulation."¹¹ It is a serious problem, conceptually, if not in practice.¹² The NAFTA starts down the road of addressing it with the commitment that parties "should not waive or otherwise derogate" from domestic health, safety, or environmental measures to encourage an investor.¹³

⁹ As quoted in Kevin Kloose, "Bearing Witness in a New Europe," *The Washington Post*, 25 November 1990, at C2.

¹⁰ See "Remarks and a Question-and-Answer Session on North American Free Trade Agreement in New Orleans, Louisiana," *Weekly Compilation of Presidential Documents*, 1993, at 1766.

¹¹ See SELA Permanent Secretariat, *The New Trade Issues: Competition Policy, Trade and Environment*, SP/RE/DI Nos. 1-2, 1992, p. 28.

¹² The evidence suggests that the cost of environmental regulation is a very small part of total producer costs. See U.S. Congress, Office of Technology Assessment, *Trade and Environment: Conflicts and Opportunities*, May 1992, Appendix E.

¹³ NAFTA Article 1114.2.

A third variant is that B's lower environmental standards are hurting B's economy and Country A will take that into account in determining whether to channel GSP concessions or foreign aid to B and whether to enter into a free trade agreement with B.

This variant seems legitimate and it seems likely that there will be increasing interest in conditioning GSP programs in the future. The U.S. GSP program expires at the end of September 1994.

NAFTA as a Precedent

The United States was engaged in a fascinating debate about whether the North American Free Trade Agreement (NAFTA) should be approved by the Congress. The domestic debate was a vitriolic one; indeed, a political debate like this on an economic issue had not arisen since the gold versus silver controversy of the 1890s.

Following the intense debate, NAFTA was approved on 17 November 1993. The next step for the United States will be to consider freeing up trade and investment with countries of South America, Central America, and the Caribbean. The idea of a hemispheric free trade agreement is a noble one. It was one of the aims of the original Pan Americans of the 19th century, but parochial and nationalistic considerations thwarted any progress. Unfortunately, President Clinton has no legislative authority from the Congress to negotiate new bilateral trade agreements with Latin American countries or to broaden the NAFTA.

The linkage of trade and environment in the NAFTA has led many Latin American countries to wonder whether environmental commitments will be a precondition for future trade agreements with the United States. I suspect that the answer is yes. Columbia University professor Jagdish Bhagwati captures the current mood well in advising that President Clinton should explain

that if we enter into a special, preferential, discriminatory Free Trade Area with, and for, another country, we will insist on requiring (and even assisting) it to adopt a minimum set of standards: on democratic politics, on environmental cleanups, on labor safety, etc. In short, we would not lie in a special bed with Mexico, or any other country, offering them special trading rights not extended to all others, unless this is done.¹⁴

¹⁴ Jagdish Bhagwati "Purely Opportunistic," *The New Republic*, 11 November 1993, p. 5. Bhagwati hopes to keep these issues out of the GATT.

If the environment and trade are to be linked, one might ask whether NAFTA will be the model for the future. There are three reasons why it seems unlikely that NAFTA will be the model. First, there are now two agreements in the NAFTA package: the NAFTA itself and the new North American Agreement on Environmental Cooperation (NAAEC). As indicated above, there is something to be said for keeping environmental cooperation and trade liberalization in separate agreements. But this parallel approach has proven quite messy in the NAFTA context. Given the strong views of U.S. environmentalists that the issues should be linked, I suspect that the United States will seek to bring them together in future agreements.

Second, although the NAFTA is commonly characterized as a "green" trade agreement, the fact is that there is very little green in it. In pointing this out, I am not implying that NAFTA is a brown trade agreement. NAFTA's disciplines on environmental trade measures are only slightly stiffer than those in the GATT.

Nevertheless, the NAFTA does not address many of the concerns of environmentalists about trade agreements. For example, the NAFTA does not reverse the GATT's Dolphin I decision for North American trade.¹⁵ The NAFTA does not permit any pro-environmental subsidies disallowed by the GATT subsidies code. The NAFTA does not require parties to adhere to international environmental treaties in the same way that it requires them to adhere to treaties on intellectual property rights.¹⁶ The NAFTA does not prohibit any trade in environmental "bads."

Third, the NAAEC would also seem unsuitable for replication. While Mexico and Canada did agree to a trilateral commission that would examine the environmental enforcement of each country's own standards, it is difficult to imagine that countries not bordering the United States would see much purpose to this kibitzing approach.¹⁷ The true path to regional cooperation on the environment is to adopt re-

¹⁵ "United States - Restrictions on Imports of Tuna," 39S/_ (hereinafter Dolphin report). This report has not been adopted by the GATT Council. For a critique of this decision, see Eric Christensen and Samantha Geffin, "GATT Sets Its Net on Environmental Regulation: The GATT Panel Ruling on Mexican Yellowfin Tuna Imports and the Need for Reform of the International Trading System," *The University of Miami Inter-American Law Review*, Winter 1991-92, p. 569.

¹⁶ See NAFTA Articles 104 and 1701.

¹⁷ For further discussion, see Steve Charnovitz, "NAFTA's Link to Environmental Policies," *The Christian Science Monitor*, 21 April 1993, p. 19.

gional minimum standards, and then assure that each country is enforcing those agreed upon standards.

To understand the weakness of the NAFTA approach, consider a hypothetical NAAEC-type agreement between Colombia and Venezuela. Why should Colombia care whether Venezuela is enforcing its current environmental laws? Colombia would care if Venezuela's environmental laws failed to stop some damage to Colombia. But that is quite a separate matter from the comparatively trivial question of whether Venezuela enforces the laws that it now has.

The difference between the NAAEC approach, and the approach normally taken in international law, is a fundamental one. Consider the International Labour Organization, the only remaining institution from the original League of Nations. When the ILO gets a complaint about a labor situation in Country A, the ILO examines the adherence of Country A to the relevant ILO conventions. The ILO is not interested in whether Country A adheres to the letter of *its* law. The ILO wants to know whether Country A meets internationally recognized standards for worker rights.

The ILO example is also instructive for another reason in pointing to a potential mechanism for promoting higher environmental standards. Imagine that there was a Pan American Organization for the Environment, composed of a tripartite membership of government representatives, business leaders, and environmentalists from all of the countries. The Organization could provide technical assistance, develop proposals for regional environmental standards, and adjudicate environmental disputes between the countries. The involvement of business representatives is desirable to help assure that environmental regulations are practical and cost-effective.

Whatever institutions are used, it is important to promote greater environmental cooperation among governments, among business groups, and among environmental groups in the Western Hemisphere. We must also get these groups working with each other to create, in the words of Professor Hess, a permanently efficient industrial organization of natural resources, labor, and capital.

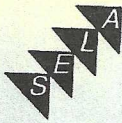
Conclusion

Policymakers should consider carefully the link between trade and environment policies. But this should not be cited as an excuse for delaying trade liberalization. Using the environment as an excuse for

protectionism is probably not a realistic threat in most Latin American countries. But it is a threat in the United States.

For any country, the most important issues are the national ones. What can be done to make production safer for the environment? How can environmental regulations be written to minimize their costs to commerce? Countries will want to weigh in on the international debate about environmental trade measures and the threats of so-called "environmental imperialism." But attention to these international issues should be kept in a proper proportion lest they become a distraction from the more important domestic steps that need to be taken.

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TRADE AND ENVIRONMENT

The International Debate

