ENVIRONMENT AND THE TRADING SYSTEM

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Two important policy trends in the emerging world order, increased protection of the global environment and continuing efforts to lower world trade barriers, are perceived to be on a collision course in the 1990s. As broad-based environmental agreements evolve each year in parallel with negotiations over the rules governing the trading system, the possibilities for conflicting arrangements increase. The Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Convention on International Trade in Endangered Species (CITES) are but a few examples of recent international environmental agreements that have incorporated provisions with significant implications for international trade.

At the same time, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and the proposed North American Free Trade Agreement (NAFTA) have both come under recent political pressure regarding their impact on the environment. Ambassador Carla Hills, the US Trade Representative, summed up the situation: "I do think that these [environmental] issues are going to intersect more and more with trade during this decade, and that we're going to have to analyze them and come up with a multilateral way of dealing with them."[1]

The Role of the Environment in Current Trade Negotiations

Our examination of the relationships between trade and environment begins with a discussion of environmental issues that have been raised in connection with current trade negotiations. The post-World War II international economic

1. "Trade Official Assails Europe Over Ecology," *The New York Times*, 31 October 1991, D2.

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system has its philosophical underpinnings in the concept of liberal trade. Minimization of government interference in international trade flows has been one of the system's primary goals.[2] Recently, however, there have been questions about the environmental impact of two trade agreements currently under negotiation: the NAFTA, and the Uruguay Round of the GATT.

Environmental concerns specifically related to the NAFTA grow mainly from the perception that weak or under-enforced Mexican pollution-control regulations will attract industries that wish to avoid US environmental laws. The net result, it is feared, will be a surge of industrial pollution in Mexico. The National Wildlife Federation (NWF), the largest US environmental organization, argued that experience demonstrates the "unexpected, and sometimes substantial impacts which trade agreements of this scope can have on human health and natural resource protection."[3]

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NWF raised the following environmental concerns:[4] 1) environmental impacts resulting from the possible expansion of the *maquiladora* industries,[5] as well as unregulated expansion of other foreign investment industries; 2) possible degradation of shared water resources (such as industrial contamination of transboundary aquifers and surface water); 3) potential for increased extraction of natural resources in general, as a result of free cross-boundary commodity flow; 4) neglect of biological resource preservation in trade-related intellectual property (TRIPs) negotiations;[6] and 5) potential for further economic reliance on fossil fuels.[7]

The Bush administration, recognizing the increased congruity between environment and trade concerns, responded with an action plan on May 1, 1991.[8]

2. John H. Jackson, *The World Trading System* (Cambridge, MA: The MIT Press, 1989), 8.
3. National Wildlife Federation, "Environmental Concerns Related to a United States-Mexico-Canada Free Trade Agreement," 27 November 1990.
4. *Ibid.*
5. The *maquiladora* zones, located in northern Mexico, were established in 1965 to create jobs by attracting export-manufacturing plants to an area along the US-Mexico border. NWF claims that this activity results in reduced water quality and availability, polluted air, hazardous waste, and a high population concentration.
6. The TRIPs issue is explained later in this article.
7. This charge is based at least in part on the presumption that the United States will gain more access to Mexican oil resources.

As a result of the commitments laid out in that document, many environmental organizations that previously objected to according fast-track status to the NAFTA switched their position. The president of the NWF wrote in *The New York Times* that "President Bush's commitment linking the environment and free trade has made it possible for environmentalists to support putting the negotiations on the US-Mexico pact on the 'fast track'."[9]

In terms of health and environmental provisions, the Bush administration's action plan promised the Congress that: 1) a comprehensive review of Mexican and US environmental laws would be undertaken to determine where improvements are needed, emphasizing that US laws would not be weakened in the process; 2) Mexican products which do not meet US health or safety requirements would be prevented from entering the United States; 3) an integrated environmental plan for the border between the United States and Mexico would be put in place; and 4) representatives of environmental organizations would be appointed to official trade advisory bodies.[10]

The environmental community generally argues that the Uruguay Round of the GATT neglects consideration of the effects of the trade agreement on the environment. Specifically, environmentalists focus on agriculture, natural resource-based products, and trade-related intellectual property rights when analyzing GATT negotiations and the potential impact on the environment.

In the field of agriculture, some environmental organizations oppose the Uruguay Round's proposed harmonization of health, safety, and environmental standards, fearing that it would allow inferior international standards to take precedence over the stricter national standards of some countries. Indeed, one environmentalist has written that "there are several reasons to suspect that the agenda of 'free trade' is to lower environmental standards, while placing the standard setting processes in the hands of institutions that are less accountable to the community and more amenable to corporate influence and control."[11]

In the area of natural resource-based products, environmentalists argue that the Uruguay Round agreements would reverse the export restrictions that national or sub-national governments have imposed for environmental purposes. One issue of particular concern to US environmental organizations is a Japanese proposal for the elimination of timber export restrictions. The Japanese argue that export bans on raw timber imposed by countries, such as the United States and Brazil, amount to protectionism. Such a move would increase worldwide deforestation by encouraging more logging,[12] according to some environmental organizations.

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8. "Free Trade with Mexico: Environmental Matters," from the White House action plan for the NAFTA.
9. Jay D. Hair, "Nature Can Live with Free Trade," *The New York Times*, 19 May 1991.
10. "Bush Offers Deal on Pact with Mexico," *The New York Times*, 30 April 1991; "Bush Trade Concessions Pick Up Some Support," *The New York Times*, 1 May 1991.
11. Steven Shrybman, "International Trade and the Environment: An Environmental Assessment of the GATT," *The Ecologist*, Vol. 20 No. 1 (January/February 1990): 33.
12. National Wildlife Federation, *National Wildlife Federation News*, 28 September 1990, Washington, D.C.

Environmental concern over trade-related intellectual property rights (TRIPs) in the Uruguay Round arise in relation to the pharmaceutical and agricultural products industries, who rely on genetic or biological material obtained in biologically diverse countries for the development of new products. Presently, US intellectual property law does not include mechanisms for recognizing the value of these materials to the country of origin.[13] Some environmental organizations argue that the emerging Uruguay Round agreement continues to work to the detriment of biodiversity, by assuring the continuation of the present system. Discoveries of new commercial product uses derived from biota will continue to benefit large corporations in wealthy nations, removing whatever incentive poorer nations might have to conserve habitat where these biota are mainly found.[14]

A more recent issue before a GATT panel involved a protest by Mexico of a US law banning imports of yellowfin tuna from countries whose fishermen use harvesting techniques with a dolphin kill rate that is 25 percent higher than the kill rate of techniques used by US fishermen. In that case, the GATT dispute panel ruled in favor of Mexico. In an interesting turn of events, however, Mexico announced that although it had won its case before the panel, it would postpone the next step in the dispute process: the presentation of the ruling to the council of the GATT. Furthermore, the Mexican government announced that it would take immediate steps to comply with the terms of the US law. It is difficult to explain these actions without some reference to the politically sensitive role of the environment in the NAFTA negotiations, which were underway at the time of the GATT dispute panel decision.

Environmental agreements may have important trade implications as nations attempt to address the "free rider" problem.

In general, countries do not infringe on the rules of the GATT as long as standards apply equally to all producers. However, when the rules favor domestic over foreign producers, or industrialized over less developed nations, discriminatory trade practices may result. The potential for environmental regulations to create such discriminatory effects will continue to pose an obstacle to reconciling environmental concerns in bilateral and multilateral agreements over the rules of trade. When the GATT's northern European members recently attempted to revive a special committee to discuss environment-related trade issues, their efforts were "opposed by some third-world countries, which

13. National Wildlife Federation, "Environmental Concerns," 11.
14. Personal communication with Mr. Leon Fuerth, Office of US Senator Al Gore, Washington, D.C., October, 1990.

rightly fear the industrial countries will sometimes use the environment as one more excuse to exclude their products."[15]

Trade Implications of Environmental Treaties and Standards

Institutions and agreements that comprise the current trade landscape, most notably the GATT, now stand alongside a younger body of institutions, agreements, and concepts concerned with international environmental protection.[16] Since its inception in 1972, the United Nations Environment Programme (UNEP) has negotiated and obtained adoption of nearly thirty binding multilateral instruments, and ten sets of non-binding environmental law guidelines and principles.[17]

The question of the adequacy of current international institutional arrangements for addressing environmental problems was a central focus of the World Commission on Environment and Development (the Brundtland Commission),[18] empaneled by the UN General Assembly in 1983. The Brundtland Commission called for the mandates of the GATT and the UN Conference on Trade and Development to include sustainable development, stating that their "activities should reflect concern with the impacts of trading patterns on the environment and the need for more effective instruments to integrate environment and development concerns into international trading agreements."[19]

Environmental agreements may have important trade implications as nations attempt to address the "free rider" problem,[20] to regulate international market access to polluting products, or to deny market access to products from endangered species or ecosystems. Recent examples include the Montreal Protocol, the Basel Convention, and the CITES.

The Montreal Protocol includes trade restrictions on ozone-depleting chemicals, as well as the technologies for manufacturing them. The Basel Convention provides a global framework for regulating the movement of hazardous wastes across international borders. A principal goal of the Basel Convention was to regulate (rather than ban) the previously unregulated flow of hazardous and toxic materials from industrialized nations to developing nations, where eco-

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15. "Free Trade's Green Hurdle," *The Economist* (15 June 1991): 61.
16. Modern international environmental awareness might be said to have its roots in the UN Conference on the Human Environment (the Stockholm Conference), which was held in Stockholm in June 1972 and reflected at the time the growing concern of governments over the impact of human activities on the environment. The United Nations Environment Programme (UNEP) was created out of that Conference.
17. Carol A. Petsonk, "The Role of the United Nations Environment Programme (UNEP) in the Development of International Environmental Law," *The American University Journal of International Law and Policy*, Vol. 5, No. 2 (Winter 1990): 352, 355.
18. Named after the Chairman, Prime Minister Grö Harlem Brundtland of Norway.
19. World Commission on Environment and Development, *Our Common Future*, 1987, 84.
20. The "free rider" problem arises because it is possible for a country that is not a party to an environmental protection treaty to share in the global environmental gain of other nations' compliance with the treaty, while that country does not share the burden of economic costs associated with compliance.

nomic hardship often overrides sound environmental management. The CITES bans international trade in products made from endangered species.

Trade negotiators have historically tended to view health and environmental standards more as potential non-tariff barriers (NTBs) rather than as instruments of health and environmental protection. Since these issues can easily be driven more by politics than by science, zero-sum situations may result when environment and trade interests conflict.

In 1989, for example, the European Community (EC) cited health concerns when banning US beef imports because of the presence of hormone residues. The hormones, used in the US to help cattle gain weight and produce leaner beef, had previously been banned in the EC because of health concerns voiced by European consumer groups. The United States, countering that the minuscule amount of hormone posed no health threat, viewed the ban as an NTB and retaliated with a 100 percent tariff on EC food exports. Scientific findings are absolutely critical to objective rulings in such matters, but in this case, the science had already been overruled. A panel of European experts had actually found three years earlier that hormone-enhanced beef posed no health threat, but their conclusions were dismissed by the EC executive commission. "Scientific advice is important, but it is not decisive...In public opinion, this is a very delicate issue that has to be dealt with in political terms," said an EC official.[21]

Regional Trade and Environment Coordination

As regional barriers to trade decline, coordination of national environmental policies is necessary to minimize tensions arising when one country's competitiveness is perceived to be compromised by the relaxed enforcement of environmental laws in another country or, conversely, when a country enacts an environmental regulation in which it has a "comparative advantage," for example. Indeed, one problem currently before the European Commission arose because of a new German law requiring standards for recycling of packaging materials that apparently favors German companies over foreign companies.[22]

Environmental standard incompatibility can be seen by examining regional transboundary air and water pollution. Nations with relatively stringent environmental regulations hope to encourage tougher pollution control in neighboring nations. For example, Austria, Hungary, and the former West Germany each have had bilateral environmental agreements with both Czechoslovakia and the former East Germany, two countries with major air pollution problems associated with burning of brown coal.[23] Free trade zones may provide yet

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21. "Beef Dispute: Stakes High in Trade War," *The New York Times*, 1 January 1989.
22. The dispute arises, among other reasons, because the new law insists "that companies collect their used packaging for recycling. The fact that this will be easier for local manufacturers may prejudice retailers in favor of domestically produced goods." (Source: "Free Trade," *The Economist*, 2.)
23. William Echikson, "Hostile Neighbors Find Common Ground in Fighting Pollution," *Christian Science Monitor*, 18 November 1987, 8.

further motivation for such agreements. As one scholar has pointed out, "The message from [the] twenty-year history of EC involvement with environmental affairs is clear: no free trade without an institutional capability to balance trade and environmental concerns; no effective environmental management without coordination with the principal trading partners."[24]

Regional coordination of environmental policies will also arise out of the concern by some that industries and investment will concentrate in a less-regulated nation within a free-trade area. As discussed earlier, this issue is a primary concern of environmentalists with regard to the NAFTA.

Trade and the Economics of Sustainability

In addition to trade, other components of the international economic system are simultaneously being scrutinized for overhauls that would better account for environmental impacts and resource depletion caused by economic activities. Environmentally inspired revisions to economic valuing systems are based on the idea that the current system often tends to work to the detriment of conservation and environmental protection. This is principally because the benefits of investments in, for example, pollution control, are spread among all individuals previously affected by the pollution, rather than accruing solely to those who make the investment. This phenomenon has been referred to as "the tragedy of the commons."[25] If market imperfections could be corrected, then market forces could be used to benefit environmental goals by "changing the incentive structure that people face, rather than trying to purify their motives."[26]

The national income accounts, key indicators of national economic progress, have also been targeted for revisions in the core accounts that would treat natural resources as depreciable assets similar to capital.[27] As one scholar notes, "a country could exhaust its mineral resources, cut down its forests, erode its soils, pollute its aquifers, and hunt its wildlife and fisheries to extinction, but measured income would not be affected as these assets disappeared."[28] A number of countries, including several developing countries with heavily

24. Konrad von Moltke, "International Trade and the Environment: Friends or Foes?," draft paper, 1991.
25. Garrett Hardin, "The Tragedy of the Commons," *Science* Vol. 162, No. 3859 (13 December 1968): 1243-1248. The paper describes an analogy between the difficulties in resolving modern environmental problems, and a scenario first sketched in 1833. In that scenario, 'rational' herdsmen—each seeking to maximize his own gain—continue to add cattle to a pasture ('commons') open to all, until the pasture is degraded from overuse to the point that it is of no use to anyone.
26. John Williamson, *International Environmental Affairs* Vol. 1, No. 3 (Summer 1989): 243-245.
27. See, for example, Robert Repetto et al., *Wasting Assets: Natural Resources in the National Income Accounts* (Washington, D.C.: World Resources Institute, June 1989); Herman E. Daly, "On Sustainable Development and National Accounts," in *Economics and Sustainable Environments: Essays in Honour of Richard Lecomber*, eds. D. Collard, D. Pearce, and D. Ulph (New York: Macmillan, 1986); and Henry M. Peskin, "A National Accounting Framework for Environmental Assets" *Journal of Environmental Economics and Management* Vol. 2 (1976): 255-262.
28. Robert Repetto et al., *Wasting Assets*, 2.

resource-dependent economies, have begun to compile more adequate accounts on natural resource stocks and stock changes.[29]

Trade agreements will naturally be concerned with, and affected by, the relative value that different countries place on resources and commodities. Revisions such as those just noted may provide an important catalyst for encouraging countries to adopt pricing systems that better reflect the value of depletable resources, as well as the impact of certain activities on the regional and global environment. On the other hand, a "least common denominator" solution could ultimately prevail, in which competitive pressures force countries to suspend attempts to reform prices if those reforms tend to raise prices of the country's products above competitive levels. The degree to which the rules of the trading system promote environmentally sustainable growth will play a major role in deciding which outcome prevails.

Conclusion

Much effort has been expended over the last decade incorporating criteria for environmentally sustainable growth into the world financial system, particularly through the World Bank, regional development banks, and development assistance agencies. As a result, there has been movement toward significant reform of the priority system through which loan requests for financing development projects are evaluated.[30]

Now, attention is turning to the world trading system, while at the same time international environmental treaties increasingly are having important trade implications. Indeed, as noted by US Deputy Assistant Secretary of State for Environment, Health, and Natural Resources Robert Reinstein,[31] environment is likely to be the number one trade issue of the 1990s.

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29. The countries include the United States, Canada, France, Netherlands, Australia, Norway, Indonesia, Costa Rica, People's Republic of China, Thailand, Ivory Coast, and Argentina (Source: Robert Repetto et al., *Wasting Assets, 9-10).*
30. For example, an environment division has been created within the World Bank in order to ensure that criteria for environmentally sustainable growth are routinely incorporated into project evaluations.
31. Robert A. Reinstein, *Trade and Environment,* draft paper, 26 July 1991.