
Greening World Trade

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At the meeting of trade ministers in Marrakesh in 1994 that formally concluded the Uruguay Round negotiations, the signatories to the agreement that created the World Trade Organization (WTO) declared: "There should not be, nor need be, any policy contradiction between upholding and safeguarding an open, nondiscriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment and promotion of sustainable development on the other." Recognizing the importance of the trade and environmental policy linkage, the General Council of the WTO at its first meeting decided to establish a Committee on Trade and Environment, or CTE (WTO 1994). But precious little progress has been made on the environmental front since the launching of that committee in January 1995. Ensuring that the international trading system reflects sufficient sensitivity to environmental matters and that environmental regulation does not become an obstacle to trade remains important challenges for the WTO.

In this chapter, I review the key environmental issues that the WTO should address in the context of the "trade and environment" debate. I discuss both substantive concerns about how to reconcile environment and trade goals and procedural issues related to how the trade and environmental communities can peacefully coexist. I also set out an action agenda for the WTO ministerial meeting in Singapore in December 1996.

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Clash of Cultures

One of the reasons that so little has been done to integrate trade liberalization and environmental protection is that a cultural gap separates the trade and environmental communities. To environmentalists, for example, “protection”—of the land, water, and air—is the ultimate good. To free traders, “protection”—discriminatory barriers to trade—is the consummate evil. This divergence in vocabulary is emblematic of a range of differences in both substance and style.

These differences contributed to the rocky start of the WTO’s trade and environment program. From an environmental perspective, the WTO’s efforts seem geared solely to the “negative” side of the trade-environment linkage. Environmentalists find the focus skewed toward potentially injurious environmental impacts on trade to the exclusion of trade effects on the environment. In fact, the CTE’s terms of reference call for “surveillance of trade measures used for environmental purposes” and the “effective implementation of multilateral disciplines governing those measures.” There is no parallel effort within the WTO—or elsewhere—to assess the environmental implications of trade liberalization or to ensure that market-access commitments and other free trade principles do not override legitimate environmental protection programs. The lack of a “positive” agenda, aimed at enhancing environmental quality, leaves those concerned with the advancement of environmental protection suspicious of the WTO as a forum for sorting out trade-environment disputes.

Of course, what environmentalists see as a positive agenda may be perceived by the trade community as negative and vice versa. Getting the WTO to accept the use of trade restrictions as a tool for enforcing multilateral environmental agreements, for example, stands as an important aim of environmental advocates. But free traders view such initiatives as detrimental to their efforts to reduce trade barriers and to discourage the use of trade measures to advance nontrade policy goals.

Similarly, while advocates for liberalized trade seek disciplines on national environmental policies so that they cannot be used to obstruct trade, environmentalists see the same agenda as an infringement on sovereignty in the regulatory domain. Why, they ask, should WTO bureaucrats be allowed to override national environmental policy decisions? More generally, where environmentalists think the emphasis should be put on ensuring that trade liberalization does not cause environmental degradation, free traders believe that policy attention should focus on the risk that environmental regulation will serve as a guise for protectionism and that the hard-won efforts to open world markets will be undermined. As a result, even if environmentalists and traders can agree on the need for action, they will often disagree about the direction reform should go.

North-South rifts exacerbate the environment-free-trade divide. Developing countries have been and continue to be especially suspicious of

attempts to link environmental performance to trade rights and obligations. They fear that their lower environmental standards and their lack of financial and technical capacity to control pollution will be used as an excuse to block their access to industrialized-country markets.

Starting Points

Responding to environmental concerns is a political necessity for the trade community. If the momentum for trade liberalization is to be maintained, the already-narrow coalition in favor of freer trade cannot risk being further diminished through systematic opposition from environmentalists.¹

Beyond this “political economy” argument for progress on trade-environment issues lies a deeper reason to reconcile trade liberalization and environmental protection: transboundary environmental spillovers create a risk of “market failure” that could undermine the international economic order and compromise the gains from an open world trading system (Bhagwati and Srinivasan 1996, 167). The need to regulate “externalities” and to protect pollution victims from infringements of their property rights is well understood in the national context (Baumol and Oates 1988). The need for similar collective action internationally is no less pressing. But the world lacks an established institutional structure for handling global environmental problems. Fundamentally, rules to control externalities are necessary for the efficient functioning of international markets—making the environment an inescapable dimension of trade policy.

This grounding in economic theory offers a principled starting point for efforts to make trade and environmental policy more mutually reinforcing. Such an approach offers a basis for moving beyond the current policy logjam in which environmentalists insist that any activity labeled “environmental” be accepted by the WTO as legitimate and equally absolutist free trade advocates rebel against any attempt to build environmental principles into the international trading system. Moreover, trade-environment bridges built on analytically rigorous underpinnings are likely to be more durable than those that rest on calculations of short-term political need.

Substantive Issues

The WTO faces a number of substantive policy challenges on the trade and environment front. While preliminary discussions have taken place

1. Some environmentalists, notably those who adhere to a “limits to growth” philosophy, will always oppose trade liberalization because they fear that economic growth, spurred by trade, will result in more pollution and unsustainable resource consumption. But those who accept the sustainable development paradigm can be convinced of the virtues of freer trade. For a discussion of how this intra-environmental community debate played out in the NAFTA context, see Esty (1994a).

on several of these topics, little has been done to resolve the tensions outlined below.

Multilateral Environmental Agreements

Perhaps the most visible issue facing the international trading system is how to ensure that conflicts do not arise between the obligations of nations under multilateral environmental agreements (MEAs) and the rules of the General Agreement on Tariffs and Trade (GATT) and other trade accords. Particular controversy has arisen over the use of trade measures as a mechanism for carrying out international environmental policy. Environmentalists would like to see a broad endorsement by the WTO of the trade measures invoked in all existing MEAs. On the other hand, free trade advocates want limitations on the use of environmental trade measures and agreement on guidelines to constrain trade-based enforcement actions under future MEAs.

Environmental policies should be pursued whenever possible without resort to trade pressure.² But where MEAs represent an attempt to internalize environmental harms, efficient operation of international markets demands reinforcement of these efforts. More importantly, in a world where the use of force is increasingly considered inappropriate and where other enforcement mechanisms are limited, trade measures sometimes will be the best available point of leverage. Thus, while some free traders balk at any use of trade measures to advance environmental goals, this position is untenable.

Sorting out the MEA-GATT relationship nevertheless raises a number of questions. What constitutes, for example, a multilateral environmental agreement? In particular, how many parties have to agree to establish an environmental norm? What trade sanctions or measures are appropriate to punish noncompliance with an environmental agreement? Who should decide whether a party is in noncompliance? Who should decide whether the measures being employed to enforce the environmental agreement are appropriate?

To assuage environmentalists' fears that the rules of international trade will be used to override important environmental programs, the WTO should immediately deem GATT-consistent those trade measures used to enforce significant existing MEAs such as the Montreal Protocol and the Convention on International Trade in Endangered Species (CITES). Simultaneously, the WTO might adopt rules to guide the future use of such trade measures.

The European Union has advanced a concrete proposal for GATT recognition of multilaterally established environmental standards. The Euro-

2. See Esty (1994a) for a sliding "scale" of possible measures to advance environmental goals.

pean Union's proposal argues that the WTO should accommodate application of environmental trade measures and, in exceptional cases, even accept unilateral trade actions against a state whose environmental misbehavior "breaches its obligation towards fundamental international environmental law and the health of the world ecosystem" (press release, "Commission Launches Guidelines to Promote World Rules on Trade and Environment," European Commission, 28 February 1996). These EU concepts deserve close attention and consideration. It is disappointing that the United States has not provided similar leadership on this central trade-environment issue.

Balancing Trade and Environmental Rules and Goals

Can a WTO member that refuses to sign on to the Montreal Protocol's worldwide phase-out of ozone-layer-damaging chlorofluorocarbons (CFCs) bring a GATT claim if trade penalties are levied against it? If so, shouldn't the GATT be amended to sanction trade penalties against environmental free riders?

Again, the WTO needs to act not just to assuage environmentalists' demands but, more importantly, to ensure that the rules of international trade appropriately address externalities that might otherwise lead to market failures. Indeed, while simplicity may seem like a virtue—and might argue for trade rules that address "trade" issues—transboundary environmental spillovers *are* a trade issue. The legitimacy of the international trading system depends on developing a structure of GATT precepts that reinforce environmental norms.

Several issues have recently underscored the difficulty of balancing competing trade and environmental principles. First, diverse business interests have started to complain that ecolabels—product markings designed to denote environmental qualities—are being used to favor domestic producers. Ecolabeling can be a valuable market-based policy tool that informs consumers and shapes demand for environmentally preferable products. The "dolphin-safe" label on cans of tuna fish, for instance, drove 98 percent of the dolphin-unsafe tuna out of the US market before the United States imposed its notorious ban on Mexican tuna imports.³ Ecolabels can be abused, however, especially if the label criteria do not reflect sound environmental policy considerations. Should lawn-mowers whose only ecological virtue is low noise get to sport Germany's "Blue Angel" environmental blessing?

The question of what disciplines should apply to ecolabels—and to environmental policies more broadly—remains clouded. In WTO circles,

3. The GATT panel in the "tuna-dolphin" case concluded, moreover, that the US labeling program was GATT-legal (GATT Doc. 21/R, 3 September 1991).

a further debate rages over whether the environmental exceptions of GATT Article XX apply under the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) agreements.⁴ Absent the modest flexibility provided by Article XX, environmentalists see ongoing risks that legitimate environmental policies will be deemed GATT-illegal barriers to trade. Indeed, environmentalists would like to see the Article XX environmental exceptions expanded.

In many respects, the issue of balancing trade and environmental principles boils down to the degree to which WTO oversight of national environmental policies should be permitted. Specifically, if country A brings a GATT challenge against environmental regulations in country B, arguing that B's chosen policy mechanisms discriminate unfairly against A's goods, should the WTO dispute panel be allowed to substitute its judgment about the most appropriate means for pursuing a particular goal for that of B's environmental policymakers? Environmentalists fear that such second-guessing—by trade experts with trade principles in mind—will broadly undermine environmental regulation around the world. Free traders, concomitantly, worry that absent some international oversight, environmental standards will be deviously constructed to advance domestic special interests.

To help reconcile these tensions, the WTO should make clear that the Article XX environmental exceptions apply to the TBT and SPS agreements. Any other interpretation fails to take environmental policy seriously. It would also be useful for the WTO to direct panels reviewing challenges to environmental standards not to lightly substitute their judgment for that of national regulatory authorities. Instead, the WTO dispute panel should focus on its central mission—to enforce the rules of the trading system—and adopt a more deferential approach to national environmental requirements. In particular, adopting a principle similar to the “arbitrary and capricious” standard applied under US administrative law and aimed only at “intentionally or egregiously discriminatory” regulations might be useful (Croley and Jackson 1996). This standard of review would unveil misuses of environmental policy for protectionist purposes but allow legitimate environmental programs to stand.

Market Access

Several “win-win” issues, offering simultaneous trade and environmental benefits, await WTO action, most notably the opportunity to expand market access by attacking government policies that amount to both trade

4. Charnovitz (1994) argues that the strict terms of these agreements do not admit of Article XX-type exceptions. Many countries take this position as well. The US government view, however, is that the language of the TBT and SPS agreements implicitly contemplates Article XX exceptions.

barriers and obstacles to environmental improvement. Agricultural subsidies, for example, disrupt trade flows and often create incentives for excessively chemical-intensive agricultural practices.⁵ Eliminating such subsidies could improve both market access and environmental quality.⁶ Similarly, scaling back energy subsidies would help to level the playing field for international commerce and make environmental protection easier. Indeed, from a purely environmental point of view, there is no opportunity for more significant worldwide pollution reduction than by eliminating all subsidies in the energy realm.

Ambassador Juan Carlos Sanchez Arnau, Argentina's WTO representative and CTE chair, has been pushing for a WTO subsidies initiative. The United States has backed his call and urged that other government policies such as state trading practices, tariff escalation, and price supports be added to the list of suspect activities where trade and environmental improvements might be achieved together.

TRIPs

Several issues within the context of the trade-environment debate could deliver both worse trade results and negative environmental consequences. India, for example, has argued that the relationship between the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the environment should be taken up. In particular, India complains that it has had trouble obtaining access to the technologies it needs to phase out the use of CFCs, as required by the Montreal Protocol, and to meet its obligations under the Biodiversity Treaty. Indian officials have also expressed fears that India's farmers will not be able to patent traditional agricultural innovations and will end up having to pay more for seeds that others develop and in which they claim property rights.

India's concerns are largely misplaced. Shortening patent terms and otherwise loosening commitments to intellectual property protection, as India proposes, could well dull research and development incentives, thereby reducing the availability of new environmental technologies. Access to environmental products and services represents a legitimate concern but should be addressed through the Global Environment Facility (which is the environmental "window" of the World Bank, the UN Environment Program, and the UN Development Program) and other mechanisms that provide funding to support developing countries' acquisition of such technology.

5. The OECD reports that "total state support to farmers in industrialized countries rose in 1995" and that overall farm payments climbed 2.2 percent in 1995 to \$182 billion (*The Economist*, "Financial Indicators," 1 June 1996, 101).

6. The cost of subsidies is made clear by Hufbauer and Elliott (1994). The environmental benefits of reduced subsidies are discussed in Esty (1994a, 54).

Domestically Prohibited Goods

Nigeria's push for WTO action on "domestically prohibited goods" also deserves to be turned aside. The fear that countries with insufficiently developed regulatory systems may be exposed to adverse environmental effects from products that are banned elsewhere reflects a real issue. But countries have varying environmental needs—particularly from North to South—which makes it unwise to implement a blanket prohibition on the sale of products internationally that are not permitted in the producing country. For instance, certain insecticides are banned in the United States because of the ecological harm they cause, the availability of substitutes, and the relatively low priority placed on killing mosquitoes. In a poor country facing numerous deaths from malaria, this trade-off might yield a different result. Under such circumstances, does a ban on the export of domestically prohibited goods really help the developing country?

A preferable approach would be a system of "prior informed consent" that ensures that importing countries are aware of the environmental issues that attach to particular products. In fact, negotiations are under way to conclude a formal Prior Informed Consent Treaty for chemicals and pesticides. This forum seems much more promising as an avenue for addressing the domestically prohibited goods issue.

Process Challenges

Some of the environmental issues the WTO must face are procedural rather than substantive matters. In particular, environmental advocates are bothered by the closed nature of the WTO. Beyond the cultural clash that this attitude reflects lies an important substantive point: given the technical complexity and pervasive uncertainties over the causation, scope, and best policy responses to environmental harms, environmental decision-making benefits from open processes that draw on the widest range of opinions and data. Competing ideas and systematic review and testing of the prevailing wisdom produce a creative tension that sharpens policy-making, just as competitive forces improve performance in product markets. Thus, to the extent that the WTO makes decisions with environmental dimensions, which it inevitably does, it would benefit from more inclusive procedures. In the negotiating process, where interests and issues are being traded off, some degree of secrecy may be required. But outside of the negotiating context, greater transparency in the WTO would improve the trade policymaking process as well as environmental judgments.

Committee on Trade and Environment's Activities

The WTO's environmental efforts, centered in the Committee on Trade and Environment, have yielded poor results for a number of reasons that

deserve scrutiny. First, as noted above, the committee's terms of reference are lopsided and do little to address issues related to trade impacts on the environment. Second, participation in the committee is almost entirely from the trade side of the debate. While a few countries send environmental officials to CTE meetings, the number of interventions over two years by "environmental" officials can be counted on two hands.⁷ Moreover, the vast majority of delegations have no environmental representation whatsoever. As a result of both its slanted agenda and composition, the CTE has not proved to be a balanced or creative forum in which to work through the difficult issues involved in making trade and environmental policy more mutually reinforcing. If the WTO is to play a constructive role in this integration, it will have to substantially refine its internal environmental program and procedures.

Environmental Assessments of Trade Agreements

One of the most important ways to ensure that environmental considerations are folded into the international trading system is through assessments of the environmental effects of trade liberalization. In the United States, an environmental review of the North American Free Trade Agreement (NAFTA) illuminated a set of issues that negotiators could then consider as they moved forward their trade policy agenda (Esty 1994b). Similar efforts to raise the consciousness of trade negotiators in the WTO context would likely prove equally useful.

The sort of environmental reviews that might be undertaken need not be full-blown environmental impact statements. Trying to forecast every imaginable environmental consequence of changes in tariff rates would not be productive. Nevertheless, developing a broad-brush understanding of the environmental issues that freer trade raises and possible alternative means of addressing them would help to ensure that trade and environmental policies advance together. For example, in the NAFTA context, the review revealed both challenges (e.g., how to avoid further pollution of the US-Mexico border area) and opportunities (e.g., the potential environmental and trade benefits of reducing border crossing traffic delays). The United States has pushed environmental assessments of trade agreements at the national level. Establishing the WTO as a clearinghouse for these national environmental review efforts would be valuable. Moving beyond the information exchange role to actually doing macro-level environmental analyses is something that the WTO should also consider, perhaps borrowing on the expertise of the World Bank and other bodies.

7. This limited environmental participation has been corroborated by numerous officials, representing various countries, who have participated in the WTO process (interviews by the author, May-June 1996).

Dispute Resolution

The Uruguay Round dispute resolution procedures allow WTO panels to consult environmental experts when a scientific perspective would be useful. But this consultation mechanism has yet to be invoked. This is not due to a dearth of cases requiring such technical expertise. In fact, one of the most important disputes that has arisen involved a Brazilian and Venezuelan challenge to certain data collection provisions of the US Clean Air Act.⁸

The dispute resolution procedures of the WTO would also benefit from improved transparency. Specifically, letting interested parties observe the process and provide written comments on issues at hand would illuminate an issue by presenting the panel deciding a case with varied perspectives. Procedures for ensuring that these contributions are helpful and do not unduly burden panelists could easily be designed. In addition, prompt publication of panel decisions would help develop better public understanding of WTO rules and the reasons disputes are settled in certain ways. As it is, the WTO is one of the few quasi-judicial international bodies that restricts access to its decisions even after they are handed down.

Transparency

The WTO would also gain credibility and legitimacy by making its general procedures more open and more understandable to member-country publics. Small steps in this direction have been taken in the last several years. The WTO now publishes several newsletters, has a home page on the Internet (its address is www.wto.org), and has released summaries of CTE meetings. As of today, however, there is no formal process by which nongovernmental organizations or individuals can observe the WTO in action. Nor is there any established mechanism for providing nongovernmental views on issues before the WTO. In a world where NGOs are playing an increasingly important role as part of civil society and the "competition" NGOs provide to established government thinking demonstrably improves policymaking, the WTO's closed procedures—outside of the negotiation context—are an anachronism.

NGOs should be credentialed as observers for all WTO debates. Presentations before dispute panels should be open to outside observers, and NGOs should be permitted to provide written position statements to the

8. The technical questions at issue included whether sale of Brazilian and Venezuelan gasoline, with its high olefin content, would deteriorate US air quality, whether the data from Venezuela and Brazil on the chemical make-up of their gasoline were verifiable, and whether false claims or reports by foreign companies would be punishable to the same extent as those made by domestic companies.

panelists. Panel decisions should be released as soon as the parties to the dispute receive them so as to better guide members' future actions.⁹

To ensure inclusion of the range of perspectives necessary to support good trade and environmental decision making, the WTO should appoint an Environmental Advisory Committee of nongovernment officials drawn from business, environmental groups, consumer organizations, and other interested entities. If the CTE were to meet regularly with such a group, it would have a far better understanding of the questions that need to be addressed and a better pool of ideas from which to draw answers.

Toward a Global Environmental Organization

Another reason the WTO has not been able to act more decisively on trade and environment problems is that it is a trade body, not an environmental one. The WTO, in brief, is not well-positioned to integrate trade and environmental goals. Indeed, the trade and environment efforts of the OECD, where officials from the two camps meet on equal footing, have been far more successful in advancing the trade-environment policy debate. Although the OECD addresses trade and environmental positions from an industrial-country viewpoint, its Trade and Environment Directorates working together have addressed important analytic issues in their reports and have developed guidelines to facilitate the process of making trade and environmental policies more compatible.

Perhaps the best solution to the WTO's awkward performance as an international environmental body would be to relieve it of environmental responsibilities and to identify an environmental entity to work on trade-environment issues in conjunction with the trade-oriented WTO. Unfortunately, no such counterpart appears to exist. There is growing recognition that the international environmental management structure is badly broken. The UN Environment Program suffers from its location in Nairobi, weak management, limited financial support, and even more limited political backing. Moreover, half a dozen other UN bodies compete for jurisdiction over international environmental problems, and each of the major environmental treaties that has been concluded in recent years has deployed its own secretariat. As a result, chaos reigns on the international environmental scene (Esty 1994a).

It has become increasingly clear, moreover, that many trade-environment tensions arise because environmental policy tools work against rather than with market forces. The lack of institutional structure to sup-

9. The WTO recently adopted transparency improvements to provide immediate public access to most WTO documents and quicker release of initially restricted materials (WTO 1996a and b). Although it is too early to say for sure, it appears that many WTO documents remain restricted, and thus the new commitment to transparency seems limited.

port collective action by nations in response to global environmental harms is a problem not only in the trade-environment context but more generally as well. The need for an overarching environmental authority to address transboundary spillovers that arise on the international scale is widely recognized. Absent effective intervention, pollution externalities threaten market failure, allocative inefficiency, and reduced social welfare as well as environmental degradation. The “first best” policy response would thus be a Global Environmental Organization (GEO) that would provide a counterpart and a counterweight to the WTO (Esty 1994c). Such a body would allow issues to be resolved by trade and environmental authorities working in tandem. A GEO would, furthermore, relieve the WTO of the burden of demands that it serve environmental purposes as well as coordinating the international trading system.

Despite the obvious inadequacies of the existing international environmental order, officials in many nations remain nervous about creating a new international body to address environmental issues. Not only is there hesitancy about establishing a new UN bureaucracy in the context of so many existing dysfunctional international organizations, but there remains particular nervousness about the loss of sovereignty that might be entailed in setting up a supranational environmental regulatory agency.

Neither of these concerns deals with ecological reality. First, if the existing international structure is not serving our needs, why preserve it? The answer to underperforming organizations is their elimination or consolidation, not their perpetuation. Second, fear that an international environmental organization would entail a loss of sovereignty fails to appreciate the significant degree to which sovereignty has already been lost because we live in a single biosphere where pollutants cross borders without constraint. Thus, far from requiring a surrender of sovereignty, a GEO would actually allow countries to regain control over their environment by giving them a mechanism by which to coordinate with other countries on measures aimed at transboundary pollution and other threats to the global commons.

A GEO might also limit the risk of a “race to the bottom” among countries whose industries compete for sales, investment, and jobs in the global marketplace. The foundation for fears that competitiveness pressures will lead governments to scale back their environmental programs to suboptimal levels is now well-established.¹⁰ While full-scale

10. Both Oates and Schwab (1988) and Wilson (1996) demonstrate that, if governments use—as they inevitably do—“inefficient tax instruments,” such as taxes on capital, and other “distortions” of the policy process arise, such as public choice defects or “conflicts of interest within a heterogeneous community,” then interjurisdictional competition in regulatory standard setting will yield suboptimal results. Klevorick (1996) observes that the risk of a race to the bottom is highly contextual and depends on whether governments act as though they are in perfect competition or behave strategically.

harmonization of standards would not be justified (Wilson 1996), some policy convergence would help to blunt the risk of welfare-reducing, beggar-thy-neighbor behavior in environmental regulation.

Even if it would not be politically feasible in the short run to establish a new global environmental body, it would make sense to charter a “wise persons” group to examine the existing institutional structure for global environmental management and to propose options for restructuring it. Drawing on well-respected experts from around the world whose backgrounds encompass business, government, and environmental protection, it may well be possible to build consensus for real institutional reform in the international environmental domain.

First Steps at Singapore

The WTO’s slow start in addressing trade-environment problems makes the December 1996 ministerial conference in Singapore a particular challenge. Given the high profile that environmental issues still enjoy in many countries, it would be very disappointing if the WTO were to report no substantive progress on trade and environmental concerns at the Singapore convocation. While the WTO Secretariat claims that the CTE report to be released in Singapore is meant to be “more a process-related exercise than a substance-related analysis” (*Trade and Environment News Bulletin*, December 1995, available from the WTO Web site), it appears that the report will do little more than recite the range of issues on which discussions have been held.

A CTE report that demonstrates no concrete progress on any issue over the past two years would open to question the capacity of the WTO to serve as a forum for addressing trade and environment issues. Indeed, given the relative difficulty that the WTO has had in moving forward on trade-environment matters and the perceived imbalance between trade and environment perspectives advanced at the CTE, serious questions have been raised about whether the CTE should have its mandate extended. It would not be unreasonable to conclude that the committee’s efforts have been so fruitless and the prospect for future progress so limited that the locus of the trade-environment debate should be shifted to another forum.

Alternatively, the terms of reference guiding the CTE could be recrafted and supplemented. The narrowly trade-oriented language should be stripped from the CTE’s work program. Instead, in broader and balanced terms, the committee should be asked to develop:

- analytic work assessing the origins, type, and magnitude of existing trade-environment conflicts (e.g., the “tuna-dolphin” case, the EU-US “beef hormones” dispute, the US-Venezuela reformulated gasoline controversy);

- concrete proposals on how to adapt WTO rules to better balance trade and environmental objectives within the world trading system (e.g., refinements to Article XX and the TBT and SPS agreements);
- appropriate guidelines for the use of environmental trade measures in MEAs;
- mechanisms for assessing the environmental effects of trade liberalization and developing policy responses;
- new language to guide dispute panels in their review of national environmental requirements—making clear that the WTO does not intend to substitute its judgment for that of national authorities;
- a plan for opening up WTO discussions and dispute panels to NGO observation and, where appropriate, participation, with the twin goals of promoting public understanding of the international trading system and laying a better foundation for environment-related WTO decisions.

But rechartering the CTE is not enough to make the Singapore meeting a success. The WTO must take specific environmental steps. It should clarify the relationship between GATT disciplines and MEAs and acknowledge the GATT consistency of ecolabels, within a context of principles to ensure that ecolabels do not become a protectionist's weapon.

The WTO should also extend its efforts in those areas that support both trade liberalization and environmental protection. Specifically, it would be useful if the ministers at Singapore were to endorse negotiations aimed at reducing agricultural and energy subsidies with an eye toward opening markets, particularly to producers in developing countries, while simultaneously improving the capacity to protect the environment locally, regionally, and globally.

The WTO could also usefully identify other opportunities to enhance developing countries' access to industrial-country markets in return for commitments to meet basic environmental standards. For example, the WTO might work with the OECD countries to draft minimum environmental criteria that would become a prerequisite for participation in export finance programs, Generalized System of Preferences tariff treatment, and other national programs designed to support developing-country exports.¹¹ Of course, to make such talks attractive to the developing world, there would need to be some promise that these programs would be expanded.

11. Similar criteria, establishing baseline environmental standards for all private financial development projects with potential transboundary pollution effects, should be woven into the Multilateral Agreement on Investment now being negotiated at the OECD. The investment rules developed in the NAFTA might serve as a model in this regard.

Conclusion

The WTO's core environmental challenge is that of managing interdependence. To the extent that environmental harms spill over from one country to another, environmental issues are ineluctably linked with international trade. Transboundary externalities require international action to avoid market failure and reduced social welfare.

Where the spillovers are physical, the need for a global response is most evident. John Stuart Mill (1859) noted a century and a half ago that no function of government is less optional than the regulation of natural resources such as forests and waters. The need to regulate externalities and manage public goods so as to avoid tragedies of the commons is even more clear today. While the real answer to transboundary pollution harms and environmental problems lies in a better international environmental regime, absent a global environmental organization, the WTO must manage trade-related environmental externalities more systematically and thoughtfully.

Economic spillovers may also require global intervention. Notably, the prospect that countries might relax their environmental standards in a competitive effort to lure investment, factories, and jobs raises the specter of a worldwide race toward the bottom. While some variations in environmental policy will be justified by differences in national circumstances, natural endowments, and level of economic development, not all policy variance can be explained by such factors. Specifically, where harms are externalized, there can be no guarantee that nationally determined policies will be optimal from a global viewpoint. Moreover, the range of other distortions in the model of perfect competition that trade economists often advance further undermines the prospects that regulatory competition among countries will yield efficiency-enhancing results.

Finally, as the international flow of goods and services expands, moving us toward an open marketplace and loosening the defining role of *national* political authorities, we create—at least to some extent—a global community. In doing so, we open ourselves to what may be called “co-sovereignty” (Lawrence, Bressand, and Ito 1996). Ongoing cooperation in this interdependent world requires baseline rules to govern economic interactions, including minimum environmental standards. Absent such an ethical undergirding for trade, parties to the global free trade union may face domestic political pressures (i.e., outrage over providing market access to those whose actions appear morally subpar) that become difficult to square with the commitment to liberalized trade.

Much of the blame for the modesty of the progress made in the last several years on the trade-environment front can be laid at the doorstep of the United States. There has been very little US leadership on the integration of environmental sensitivities into the international trading system. Looking forward, advances without US leadership seem unlikely.

Even with a push from the United States, many countries would seriously question the underlying motives for any environmental initiatives at the WTO and thus create significant obstacles. Developing-nation fears that environmental requirements will be used to obstruct market access are not entirely misplaced. But neither are they fully justified. Carefully crafted environmental provisions of the kind outlined in this chapter would do much to increase the odds of welfare gains from international trade. The theoretical case for advancing environmental policies in parallel with freer trade and economic growth is impeccable. The practical effects of failing to do so are well-known—witness the sorry state of Eastern Europe’s environment and economies.

Policy progress in uncharted waters nevertheless requires leadership and a willingness to commit time and resources. The United States has demonstrated a capacity for this type of leadership on other issues. In fact, the success in getting the world community to adopt trade rules protecting intellectual property rights stands as a shining example of what can be accomplished by a determined United States and as a model for what might be done in the environmental domain. The environmental stakes—establishing a path for truly sustainable development—are no less significant and maybe much greater.

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