

Trade and Environment

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The relationship of international trade policy and environmental protection exploded into the U.S. public debate in the early 1990s—first, because of Mexico's trade challenge to a U.S. law aimed at reducing the number of dolphins killed in tuna fishing nets and second, because of the acrimonious debate over the environmental implications of the North American Free Trade Agreement (NAFTA). A cultural chasm soon divided trade policymakers and much of the environmental community. Trade policy is made behind closed doors with little public input, while environmentalists, in contrast, expect access to information and broad participation in decisionmaking. In addition to culture, substantive differences divide the trade and environmental communities. Many environmentalists and free trade advocates see the two fields as having mutually exclusive goals requiring a compromise either of environmental protection or of free trade.

To environmentalists, trade expansion can lead to rapid economic growth that can outpace the institutional structures and political will necessary to effectively address resulting environmental impacts. Trade expansion can also distort growth, particularly in developing countries,

moving them toward unsustainable production patterns—for example, by shifting locally supported and diverse agriculture to export-oriented monocultures or by stimulating rapid depletion of a country's "natural capital" of timber, minerals, and other resources. Trade-dependent economies also split the consumers of products geographically, culturally, and economically from those who bear the environmental and social costs of production, thus undermining the ability to build political will for curtailing unsound consumption. Finally, both domestic and international environmental-protection policies may be weakened if they are found to interfere with trade-expansion policies, particularly given the predominant position of trade-expansion policies in the international system.

Key Points

- Environmentalists expect access to information and broad participation in decisionmaking. In addition to culture, substantive differences divide the trade and environmental communities.
- Many environmentalists and free trade advocates see the two fields as having mutually exclusive goals.
- In practice the trade orientation of the WTO means that the trade rules are typically interpreted to trump environmental protection.

Free trade advocates, in contrast, stress either that trade-fueled economic growth is a worthwhile objective regardless of environmental issues or, alternatively, that such growth is a necessary prerequisite for developing countries to begin addressing environmental protection. Trade advocates also see little reason for integrating environmental protection into trade regimes. Moreover, many look at trade-related environmental measures with suspicion, believing them to be disguised protectionism. Perhaps most importantly, trade advocates argue that environmental restrictions could limit developing countries' access to global markets.

Global trade is primarily regulated through the World Trade Organization's (WTO) various agreements, including the General Agreement on Tariffs and Trade (GATT). Environmental programs are subject to GATT's general rules of nondiscrimination. Exceptions to these general rules allow GATT parties to impose environmental measures if they are: 1) "necessary to protect human, animal or plant life or health"; or 2) related to conserving exhaustible

natural resources when taken in conjunction with domestic restrictions on consumption or production, provided that such measures are not arbitrarily or unjustifiably discriminatory or disguised restrictions on international trade. Although this may sound balanced, in practice the trade orientation of the WTO means that the trade rules are typically interpreted to trump environmental protection. Although environment- and development-oriented institutions have attempted to address environmental and trade questions, none have the power of the WTO.

Environmental issues have also been important in negotiations of regional trade agreements. For example, environmental (as well as labor) issues were among the most contentious points in the debate regarding ratification of NAFTA. Ultimately the parties negotiated an environmental side agreement to NAFTA, which provided some protection against lax environmental enforcement and created the Commission on Environmental Cooperation (CEC). The CEC has limited powers and budget, but nonetheless provides a forum for continent-wide environmental cooperation.

❖ Problems With Current U.S. Policy

The U.S. government should renew its leadership position in strengthening and implementing the link between trade and the environment and generally in bringing into balance international treatment of trade and environment issues. Since adoption of the NAFTA environmental side agreement, U.S. foreign policy has not promoted environmental interests in trade-related issues. In contrast, the U.S. Trade Representative has actively campaigned to protect U.S. business interests against potential trade impediments posed by environmental policies. In fact, U.S. policy has become so one-sided that the only nongovernmental representatives to be invited on the U.S. delegation to the U.S.-European Union bilateral negotiations on ecolabeling are from the business sector.

The lack of environmental leadership from the U.S. has added to the imbalance in the international approach to global trade. The WTO dominates the trade and environment debate. Other institutions, such as the United Nations Environment Program (UNEP), the UN Conference on Sustainable Development (CSD), the UN Commission on Trade and Development (UNCTAD), the UN Development Program (UNDP), and the institutions created under multilateral environmental agreements could all play greater roles in trade and environment issues if they were given appropriate mandates, resources, and support.

The WTO and the Environment

A strong U.S. voice for environmental protection is particularly critical at the WTO. Among the environmentally important issues now facing the WTO are the review of trade-related environmental measures in multilateral environmental agreements, the treatment of ecolabeling programs under trade rules, and the need to increase public participation and access to information at the WTO. To provide a forum to discuss these and other issues, the WTO established a Committee on Trade and Environment (CTE). After two years of effort, however, the CTE has made little progress on these or any other trade and environment issue.

The U.S. must also mount a more vigorous defense of its environmental laws and policies in the face of trade challenges. In recent years, several GATT (or WTO) panels have heard disputes challenging U.S. environmental provisions. Two disputes involved challenges to a U.S. law designed to reduce the number of dolphins killed in tuna fishing nets, a third challenged U.S. automobile fuel-efficiency standards, and a fourth challenged U.S. standards on

Key Problems

- The U.S. Trade Representative has actively campaigned to protect U.S. business interests against potential trade impediments posed by environmental policies.
- The U.S. government has recently abdicated much of its leadership role in promoting environmental-protection issues as part of its hemispheric-integration agenda.
- It is not too late for the U.S. to work with other nations to replace the current blueprint for integration with one that places environmental protection and worker rights at its core.

reformulated gasoline and oil aimed at reducing air pollution. These disputes are heard at the WTO by trade experts, applying trade principles, with almost no input from environmental experts or the public. In each case, significant provisions of the challenged environmental laws were found to be inconsistent with GATT, possibly requiring subsequent revisions to the laws.

Additional disputes can also be expected. For example, formal WTO consultations have recently been requested to review trade measures taken under the Endangered Species Act to protect turtles from shrimp-fishing practices. This conflict is likely to develop into a full trade dispute.

NAFTA and Regional Integration

The U.S. government has also recently abdicated much of its leadership role in promoting environmental-protection issues as part of its hemispheric-integration agenda. Corporations and Republican leaders in Congress have attacked the notion of addressing environmental-protection issues in the context of trade expansion since the NAFTA environmental side agreement was approved. We now run the risk of having NAFTA be a very low "high-water mark" for trade and the environment in this hemisphere.

Yet, barely had the ink dried on NAFTA when talk began of expanding the agreement throughout Latin America, beginning with Chile. Canada and Chile have carried out bilateral negotiations on an agreement to serve as a bridge for Chile's entry into NAFTA. Significantly, the countries of the Western Hemisphere agreed at the 1994 Miami Summit on the goal of achieving hemispheric trade integration by the year 2005.

Regardless of whether that integration comes from accession to a NAFTA-based Free Trade Area of the Americas (FTAA) or through some other process, the trend toward integration is strong. It is not too late for the U.S. to work with other nations to replace the current blueprint for integration with one that places environmental protection and worker rights at its core. At a minimum, the U.S. should condition its support of an FTAA agreement on countries' strengthening their commitment to environmental protection and labor rights.

Countries should be required to meet an explicit set of "readiness criteria" as a condition for participating in the FTAA. Such an approach could be tiered to allow countries time to establish their own environmental regulatory systems, without unnecessarily delaying trade expansion. Oversight of the tiered approach could be conducted by a multilateral environmental commission formed as part of the FTAA or, alternatively, by a group of FTAA party representatives.

Other Regional Trade Organizations

To the extent the U.S. participates, it should promote environmental protection in regional trade-integration efforts extending outside the hemisphere—for example, the Asia Pacific Economic Cooperation (APEC) group.

❖ Toward A New Foreign Policy

To press solutions to trade and environment problems, the U.S., with full participation of all relevant agencies and the public, must develop clear positions that adequately protect the environment. The Clinton administration should lead in greening the international trade system. Since the NAFTA debate, the U.S. has abdicated its leadership role in promoting environmental protection as a component of trade liberalization. The U.S. should re-establish a global commitment to linking trade and environmental protection, both conceptually and in practice.

The U.S. should seek a balanced institutional approach to environment and global trade and should promote stronger roles for UN institutions, such as UNEP, UNDP, UNCTAD, and the CSD, to address trade and environment issues. The WTO's Committee on Trade and Environment has failed and should be abandoned.

Existing trade-related measures in multilateral environmental agreements should be protected and be available to support the goals of these agreements. U.S. officials should have the authority to promote trade measures, when appropriate, both in negotiating and implementing multilateral agreements. Trade-related disputes should be resolved through the dispute-settlement mechanisms, and the institutions created by a multilateral environmental agreement should have the sole authority to interpret the agreement. Trade measures taken "pursuant to, but not specifically authorized by a Multilateral Environmental Agreement" should also be supported where they clearly contribute to meeting global environmental-protection goals.

European governments have led attempts to expand the WTO's powers through the proposed Multilateral Agreement on Investment. Governments of some Southern countries and fair-trade activists have raised significant concerns about further extending WTO power before assessing the impact of the still newly formed WTO. At a minimum, the U.S. should ensure that any Multilateral Agreement on Investment includes strong, substantive provisions ensuring environmental protection. Before negotiations continue, the U.S. should ensure that a full environmental-impact assessment is conducted under the authority of the OECD or unilaterally by the United States.

The U.S. should oppose any trade agreement that hinders development of private, voluntary ecolabeling systems and promote a citizen's right to know through objective, transparent, and scientifically defensible ecolabeling systems. The U.S. should ensure open and broad access to knowledge and technologies that could help developing countries, in particular, to meet the demands of sustainable development.

The U.S. should also promote mechanisms for facilitating international regulation and acceptance of certain unilateral trade-related environmental measures. Rules governing the use of unilateral measures can ensure against protectionist abuse, while still allowing such measures in responding to serious environmental issues. The U.S. should champion broader participation, transparency, and accountability in trade policymaking.

The WTO needs a policy that enables meaningful public participation in WTO policy making. U.S. delegations to WTO meetings should include environmental NGO representatives. U.S. trade policymakers should improve domestic procedures for informing and consulting the public, and for interagency consultation, before adopting policies that affect the environment.

NAFTA's failures are significant enough that all three countries should review its main elements and begin discussions on renegotiating the framework of integration so that environment is at the core. At the least, the U.S. should condition further hemispheric integration on acceptance of the NAFTA environmental side agreement. The U.S. should support the Commission on Environmental Cooperation's efforts to increase cooperation in transboundary environmental protection.

The U.S. should endorse a set of "readiness criteria" for determining whether a country has sufficient environmental policies to be eligible for a much-improved FTAA. A tiered approach would allow trade liberalization to continue while building the capacity and political will to address environmental issues. The U.S. needs to assist other countries to integrate environmental protection and trade. A priority of U.S. bilateral assistance should be to help developing countries in protecting their environment in trade agreements and in participating fully in discussions related to trade and the environment. Programs to build capacity and protect the environment should be negotiated as core elements of trade agreements.

Key Recommendations

- The Clinton administration should lead in greening the international trade system.
- The U.S. should champion broader participation, transparency, and accountability in trade policymaking.
- The U.S. needs to assist other countries to integrate environmental protection and trade.