

**ECONOMIC DEVELOPMENT,
ACCELERATED TARIFF LIBERALIZATION
&
THE ENVIRONMENT**

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EXECUTIVE SUMMARY

ECONOMIC DEVELOPMENT, TRADE & THE ENVIRONMENT

Despite claims to the contrary, evidence points to the fact that economic development is ultimately beneficial to the environment. The issues were first officially linked in the public's mind with the publication of *Our Common Future* (the Brundtland Report) in 1987, which provided much of the intellectual framework for the United Nations Conference on Environment and Development's 1992 "Earth Summit" in Rio De Janeiro. In the five years since the publication of the Brundtland Report, economists have consistently found that:

- At the national level, rising incomes lead to improved access to basic sanitation, easing environmental pressures;
- Evidence indicates that as per-capita real GDP increases, there is a decline in the emission of certain harmful pollutants, a relationship known as the Environmental Kuznets Curve;
- Countries with higher GDP levels tend to have more sophisticated environmental policies and invest more in pollution abatement equipment.

As a force of economic development, international trade can contribute to these environmental benefits. The fear that less-developed countries will systematically lower their environmental policies to attract polluting industries from countries with more stringent environmental policies has not been borne out by the evidence.

THE WORLD TRADE ORGANIZATION & THE ENVIRONMENT

The World Trade Organization (WTO) is primarily intended as an international trade body with a mandate to enforce international trade rules and facilitate negotiations, and as such should not be expected to enhance environmental protection in and of itself.

However, it should not unnecessarily compromise national and international environmental policies.

In recent years, the WTO has been accused of falling short of its obligations to the environment in a number of areas, including:

- Dispute settlement procedures that lack transparency and work against measures protecting the environment;
- Its inconsistent handling of cases involving process standards in environmental policies;
- The uncertain standing of Multilateral Environmental Agreements (MEAs) in WTO disputes.

The WTO has tackled a number of disputes involving national environmental policies and has established a committee on the linkages between trade and the environment.

Nevertheless, there are several concrete reforms that could be undertaken to address some of the environmental concerns highlighted in recent disputes:

1. Increase the transparency of the dispute settlement process.

2. Expand exceptions to the WTO Agreements to allow for legitimate national policies that help protect the environment, effectively adjusting the balance between trade and environmental/human safety concerns based upon sound science and within the existent framework of the WTO.
3. Establish a process for balancing the standards established in MEAs with the trade concerns governed by the WTO.

These recommendations would not require a wholesale rewrite or scrapping of the WTO, but rather should be implemented within the existing framework of the Agreements.

ACCELERATED TARIFF LIBERALIZATION ON FOREST PRODUCTS

In recent months, the broader discussion of environmental issues has focused more narrowly on the Accelerated Tariff Liberalization (ATL) initiative on forest products. As its name implies, the ATL would speed up the elimination of tariffs in the forest products sector.

Some environmental groups have branded the ATL a "global free logging agreement." However, a recent economic estimate by the Clinton administration found that the agreement would:

- Increase trade in forest products 2 percent above baseline levels by 2010;
- Result in increases of worldwide timber harvests ranging from 2 to 11 percent above baseline levels;
- Lead to no net change in the United States' timber harvest.

These minor changes in the worldwide timber harvest under accelerated tariff liberalization are not surprising. Countries typically use tariffs to protect the forest product manufacturing industries, not to preserve timber harvest. Therefore, they represent an example of protectionism, not environmental protection.

As a force for economic development, there is every reason to believe that the ATL will ultimately benefit the environment as well. In countries with low incomes, for example, the capacity for protecting forests and species is predictably low. By lowering tariffs as a trade barrier, the ATL promises to help shift production to more efficient producers of forestry products, such as the United States, Canada and the Nordic countries, who tend to pursue sustainable practices as a means of maintaining the long-term health of their industry.

Fully integrating environmental standards into the world trading system will probably be a long-term process. Rejecting a trade initiative that has the potential to create new jobs and new exports for the United States based upon an outmoded view of the environmental impact of trade and the forest products industry is not a good step toward that integration.

SECTION 1: ECONOMIC DEVELOPMENT, TRADE & THE ENVIRONMENT

The link between environmental concerns and economic development has become an international issue over the past decade, as globalization and market liberalization have reshaped the global marketplace. Many in the environmental policy community have argued that the desire to expand economic activity has come at the expense of distorting natural constraints and depleting resources.¹ Conversely, a number of globalization's defenders have dismissed these concerns, emphasizing instead the welfare benefits to the individual stemming from increased economic development. However, the idea that societies must choose between environmental concerns and increased growth is patently false. There is, in fact, substantial evidence that increased economic growth leads to improved environmental conditions.

LINKING DEVELOPMENT AND THE ENVIRONMENT

Over the past fifteen years, and particularly within the last five, there has been extensive work done by both environmental and economic analysts regarding the relationship between development and the environment. The first official recognition of the link between the two came in 1987 with the publication of a report by the World Commission on Environment and Development entitled *Our Common Future* (commonly

¹For one variation of this argument, see Robert Costanza, John Cumberland, Herman Daly, Robert Goodland and Richard Norgaard, *An Introduction to Ecological Economics* (Boca Raton, FL: St. Lucie Press, 1997) pp. 173-175.

referred to as the Brundtland Report).² In the twelve years since its publication, the report's findings have proven to be highly influential and provided much of the intellectual framework for the United Nations Conference on Environment and Development's 1992 "Earth Summit" in Rio De Janeiro.³ The Brundtland Report acknowledged that economic growth and development inherently influenced "the physical ecosystem."⁴ However, it was also explicit in its call for using economic growth as a means of eliminating poverty, since, "Poverty reduces people's capacity to use resources in a sustainable manner; it intensifies pressure on the environment."⁵ The report, therefore, established the important point that the rising incomes fueled by growth are essential for reducing the pressure on the global commons and establishing environmentally sound development.

To reduce environmental pressures and ease poverty, the Brundtland Report called for the implementation of a system of sustainable development, which it defined as "...[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs."⁶ It is important to note that this was not a call for "zero growth", but rather for development that recognized the ability of rising incomes to contribute to overall environmental sustainability:

² Annie Taylor, "The Trade and Environment Debate," in *Global Trade and Social Issues*, Ed. Annie Taylor and Caroline Thomas (New York, Routledge, 1999), pp. 72.

³ *Ibid.*, pp. 73.

⁴ World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987), pp. 45.

⁵ *Ibid.*, pp. 49.

⁶ *Ibid.*, pp. 43.

Meeting essential needs depends in part on achieving full growth potential, and sustainable development clearly requires economic growth in places where such needs are not being met. Elsewhere, it can be consistent with economic growth, provided the growth reflects the broad principles of sustainability...⁷

While the Brundtland Report makes it clear that economic development must be yoked to sound environmental policies, it also makes it clear that growth ultimately can contribute to the establishment of these policies. A good deal of economic research over the past decade has borne this point out.

At the national level, there is strong evidence that increasing incomes, particularly in the least-developed countries, improves access to basic sanitation.⁸ This issue is often overlooked in the larger debate over greenhouse-gas emissions and international pollution, but access to safe drinking water and basic irrigation is not only essential to the health and welfare of a nation's citizens but also helps to prevent the environmental degradation associated with extreme poverty. As the Brundtland Report explained, "...the reduction of poverty itself is a precondition for environmentally sound development."⁹

In a number of agricultural communities, insufficient irrigation has led to the runoff of harmful pesticides into local water supplies. In other sections of the world, waste disposal is almost non-existent and contributes to overall pollution, as well as posing a

⁷ Ibid., pp. 44.

⁸ Wilfred Beckerman, "Economic Growth and the Environment: Whose Growth? Whose Environment?" *World Development*, Vol. 20 No. 4, 1992, pp. 284.

⁹ World Commission on Environment and Development, *op.cit.*, pp. 69.

serious health threat. As incomes rise, however, access to sanitation rises with it. Even a small increase in national incomes can get this process underway. In looking at the years 1980 to 1985, the economist Wilfred Beckerman found that an increase in average income of \$25 annually improved the access to sanitation by 18 percent in urban areas of least-developed countries.¹⁰ This improvement not only benefits citizens directly but also means decreased pressure on the environment, an essential first step in establishing a system of sustainable development. This evidence leads Beckerman to remark that, "As far as these components of the environment are concerned (e.g. sanitation, air pollution, access to clean water) it is fairly clear that the best way to improve the environment of the vast mass of the world's population is to enable them to maintain economic growth."¹¹

A number of economists have also cited the existence of what has come to be known as the Environmental Kuznets Curve (EKC) as evidence of the link between development and the environment.¹² The EKC establishes that as per-capita real GDP increases, there is an initial rise in the release of pollution emissions followed by a sharp decline, creating an inverted U-shaped relationship. The reasoning behind the curve posits that low-income countries' industrialization is initially fueled by the burning of fossil fuels, precipitating a rise in the release of pollutants. As GDP increases due to development, however, these countries are able to invest in cleaner technologies that

¹⁰ Beckerman, *op.cit.*, pp. 284.

¹¹ *Ibid.*, pp. 285.

¹² Named for the Nobel Prize-winning economist Simon Kuznets. For a brief history of the development of the Environmental Kuznets Curve, see Hakan Nordstrom and Scott Vaughan, *Trade and Environment* (Geneva: World Trade Organization, 1999), pp. 47.

reduce pollution-levels.¹³ The reduction of these levels benefits the entire global commons.

The validity of the EKC has been borne out in case studies of the history of the United States and the countries of Western Europe, which have followed this pattern of development. However, there are a substantial number of countries that are currently on the left-hand side of the curve and are exhibiting rising pollution patterns due to increased development. Following through on the rationale of the EKC, it is clearly in the best interest of the world as a whole to push for increasing development as a means of raising GDP and decreasing emissions.

Evidence also suggests that higher GDP countries tend to establish more sophisticated environmental policies. For example, a 1993 World Bank Report indicates that high-GDP countries tend to have fossil fuel taxes, which discourages their use; conversely, low-GDP countries tend to subsidize such energy use.¹⁴ However, as incomes rise, these subsidies are removed at a relatively comparable rate. Indeed, the faster the rate of economic growth, the more effective anti-pollution policies in general will be at shifting production away from high-energy and polluting production.¹⁵ This is due in part to the fact that higher incomes allow for greater investment in non-polluting

¹³ Steven C. Hackett, *Environmental and Natural Resources Economics* (Armonk, NY: M.E. Sharpe, 1998), pp. 217-218.

¹⁴ David W. Pearce and Jeremy J. Warford, *World Without End: Economics, Environment and Sustainable Development* (Washington, DC: World Bank, 1993) pp. 271. See also Hackett, *op.cit.*, pp. 225-226.

¹⁵ Wilfred Beckerman, "Economic Development and the Environment: A False Dilemma," in *Growth, the Environment and the Distribution of Incomes: Essays by a Sceptical Optimist* (Brookfield, VT: Edward Elgar Publishing, 1995) pp. 197.

technologies and abatement equipment. Developing nations struggling to lift their population out of poverty rarely have the luxury of this type of investment.

There is a great deal of evidence, therefore, that economic growth and environmental policies can be harmonized for the greater good of both individuals and the global commons. While environmental abuses certainly do occur, these are generally best addressed by sound environmental policies that focus on specific problems, rather than by limiting growth or rolling back economic development.¹⁶ Economic growth should occur with sustainability in mind, but it is equally important that environmental policies are harmonized with the goals of development.

TRADE, DEVELOPMENT & THE ENVIRONMENT

The establishment of the WTO in 1995 has led to increased market liberalization and a sharp increase in world trade. As already noted, it also made environmental and developmental concerns international issues. Despite evidence to the contrary, critics of the world trading system have claimed that an increase in trade will inevitably lead to a decline in environmental integrity. In particular, an oft cited fear is that least developed countries will systematically loosen their environmental policies and engage in a "race to the bottom" as a means of attracting new industry. The perceived result of this race is that developed countries will in turn view these nations as "pollution havens" and export

¹⁶ Alistair Ulph, "Environmental Policy and International Trade," in *New Directions in the Economic Theory of the Environment*, Ed. by Carlo Carraro and Domenico Siniscalco (Cambridge: Cambridge University Press, 1997), pp. 149.

polluting industries to them. These concerns, however, ignore the positive role that trade can play in supporting the global commons.

Increased trade, particularly if it integrates least developed countries, holds the promise of improving overall environmental standards throughout the world. International trade is a form of economic development that raises national income and increases overall welfare. As such, it offers countries the opportunity to afford cleaner energies and reap the benefits of development already discussed.¹⁷ Rising incomes and expanding GDP are among the most important factors in creating more extensive environmental policies within developing countries. By facilitating this process, trade can play an important role in overall environmental policy. As such, arguments for expanded trade can be seen as an extension of the overarching belief (discussed above) that development can have beneficial impacts upon natural resources and environmental policy.

Concerns regarding a race to the bottom among developing countries' environmental standards have been raised to counter this argument. This entails developing countries systematically lowering their environmental standards to attract polluting industry from highly regulated societies, which are seeking to escape this regulation. Least-developed countries, therefore, would establish a comparative advantage in industry by driving down or removing standards altogether. An extension

¹⁷ Hackett, *op.cit.*, pp. 225-226.

of this argument maintains that developed countries could begin to face pressure to roll back their own environmental polices as a means of maintaining their competitiveness.¹⁸

In 1999, a study released by the World Trade Organization helped dispute the logic underlying these fears:

The assumption that comparative advantages are driven solely by differences in environmental standards must be questioned. Even in the world's richest country, the United States, abatement costs are only a tiny fraction of production costs, or 1 percent on average for the US industry, rising to roughly 5 percent for the most polluting industries.¹⁹

Countries that drop environmental standards in the hope of attracting industry are likely, therefore, to be disappointed in the results.

Another iteration of this same argument places the onus for declining environmental standards on the attitudes of developed countries towards developing countries. The supposed comparative advantage benefits of lax environmental policies will lead developed countries to look at their less-developed neighbors as pollution havens, places where they can safely dump industry that is beginning to threaten their national environmental commons. Rather than improving overall conditions, such

¹⁸ Gareth Porter, "Trade Competition and Pollution Standards: 'Race to the Bottom' or 'Stuck at the Bottom?'" *Journal of Environment and Development*, Vol. 8 No. 2, June 1999.

¹⁹ Nordstom and Vaughan, *op.cit.*, pp. 30. There is considerable variation among industries in the amount spent on pollution abatement, with the petroleum and coal, chemical, primary metal and paper industries

movement would merely displace the source of pollution without addressing the overall impact. This theory, however, has also been widely disputed in the economic literature. For example, in a study published in the *Journal of Environment & Development*, Mani Muthukumara and David Wheeler maintain that, "Tendencies toward formation of pollution havens have been self-limiting because economic growth has generated countervailing effects through increases in regulation, technical expertise, and investment in cleaner production."²⁰ Again, in the situation discussed by the authors, growth plays an important element in preventing environmental degradation.

It is important to note that sound environmental policies are essential to maintaining the commons and supporting sustainable development. But as discussed, economic development is often an engine for creating these policies. As such, those who call for the institution of a "zero-growth" policy are removing one of the tools that environmentalists can use to implement more effective policies. Indeed, the idea that environmental improvements can be implemented without consideration of economic development flies in the face of the very real links between these two issues.

investing the most in abatement and the industrial machinery, printing and tobacco industries investing the least.

²⁰ Mani Muthukumara and David Wheeler, "In Search of Pollution Havens? Dirty Industry in the World Economy, 1960 to 1995," *Journal of Environment and Development*, Vol. 7 No. 3, September 1998.

SECTION 2: THE WORLD TRADE ORGANIZATION & THE ENVIRONMENT

The WTO is primarily intended as an international trade organization with a mandate to enforce international trade rules and facilitate negotiations to lower trade barriers. There is a working group on environmental problems under the auspices of the WTO and there are a number of positive references to environmental objectives in the language of the WTO, but promoting environmental protection cannot properly be seen as the WTO's focus. Rather, with regard to the environment, the WTO should not be expected to in and of itself enhance environmental protection – that is a task properly left to other forums.

It is appropriate, however, to expect the WTO not to unnecessarily compromise national environmental protection efforts or block international environmental protection regimes. Unfortunately, the WTO has been accused of doing both in its early years of operation.

WTO DISPUTE SETTLEMENT PROCEDURES

The objections that environmental advocates most frequently raise to the WTO are focused on specific dispute settlement proceedings in which the WTO is seen as siding against measures proclaimed as being aimed at protecting the environment. On issues such as this, it is first important to recognize that legitimate environmental protection goals and legitimate trade liberalization goals do have some potential for conflict. One reality of globalization is that, in order to be effective, environmental measures must increasingly be international in scope.

On the one hand, it is of only limited effect to ban use of a dangerous chemical in agricultural production if the same chemical is used overseas and dangerous residues are present in imported products. In such a case, it is certainly understandable if national authorities choose to apply the same ban equally to imported and domestic production.

On the other hand, various national authorities have used environmental measures as a thinly disguised excuse for protection. For example, a number of countries have used various onerous inspection and health and safety requirements to exclude imports of meat and produce without applying the same scrutiny to domestic production. More generally, the unverifiable claim that domestic products are somehow “purer” or “cleaner” is often used to exclude or limit imports.

Obviously, if countries are simply granted a flat waiver to impose any restriction on imported products that they choose in the name of protecting the environment or public safety, the potential for abuse is almost unlimited. The potential for proliferating trade restrictions is great and the credibility of legitimate environmental protection measures would likely be compromised.

The approach that the WTO has taken to addressing this issue has basically been to apply two primary tests to the proposed import limitations: 1) is there a scientific basis for the proposed restriction, and 2) is the measure applied equally to domestic production

and imported products.²¹ This is a clear and rational standard that has gained wide support. Unfortunately, it does not always yield clear unambiguous results, primarily because there is often not unanimous scientific opinion on some points.

PROCESS STANDARDS

Unfortunately, in the real world, the cases brought before the WTO often raise other complexities. Often cases involve standards or limits on imports that are not based on the actual content of the imports, but the process by which the products were produced. In a well-known and controversial example, the United States has imposed limits on tuna imports from some countries because the tuna fishing fleets of these countries often kill dolphins.²² The specific standards and measurements used in U.S. law are also at issue, but there is no dispute that the tuna from these countries and dolphin-safe tuna (a relative term) are the same. The debate is over the unintended side effects of the process used to catch tuna. This controversy is further complicated because there is no internationally accepted rationale for providing unique protection to dolphins, since most species of dolphins are not endangered species. The drafters of the protection, however, argue that dolphins are a unique life form deserving of special protection regardless of their endangered status.

The issues raised by process standards are difficult. By its very nature, imposing process standards involves a national government enforcing a standard that is effectively

²¹ Although this approach is the accumulated result of a number of Dispute Settlement Panel decisions and their reading of the WTO Agreements, it is clearly iterated in World Trade Organization, *United States - Standards for Reformulated and Conventional Gasoline*, April 29, 1996, Document WT/DS2/AB/R.

imposed on actors outside the boundaries of that country and under the sovereign control of another country. The imported products involved do not directly raise environmental or safety issues in the importing country, but the process by which they were produced in other countries is deemed objectionable. Given the threat to sovereignty, the potential for abuse, and the concerns over unilateral dictates by one government without any basis to judge the appropriateness of the environmental objectives involved, process standards are generally rejected by the WTO.

On the other hand, many environmental problems are international in nature. It does little good for one country to restrict emissions of greenhouse gases if other countries simultaneously raise their emissions. Similarly, it is difficult or impossible for one country to protect fisheries, oceans and trans-national species, protect rain forests, or address other environmental issues that are not confined within the borders of a single country without a multilateral effort. An argument could be made that process restrictions on imports could facilitate these goals. In extreme cases, such as restrictions on trade in products made from endangered species, national restrictions on trade have coexisted with the international trading system unchallenged.

This endangered species example can be distinguished from unilateral instances of process restrictions because there is an international compact prohibiting or greatly limiting trade in endangered species.²³ More broadly, many would suggest that

²² These limits were codified as part of the Marine Mammal Protection Act. See 16 USC §1371 (a)(2)(A) and 16 USC §1371 (a)(2)(B).

²³ The Convention on International Trade in Endangered Species (CITES) is discussed in more detail in the next section.

restrictions on an environmentally dangerous process that involves a number of countries is best addressed with a multilateral agreement on the topic; there are several multilateral environmental agreements, such as the Convention on International Trade in Endangered Species and the Basel Convention on the Control of Transboundary Movements of Hazardous Waste. These multilateral environmental agreements raise several issues in connection with the WTO, which are discussed in detail in the next section.

Clearly, these multilateral agreements represent an attractive approach from a number of perspectives, but they are unlikely to fully satisfy those set upon causes like dolphin protection. After all, international consensus may not be achievable in certain areas. Further, in other areas, such as protection of intellectual property, the WTO does go beyond focusing on the particular good to a focus on the process by which it was produced. But this was a hard fought advance for the developed world, won only after years of negotiations and, as advocates of process standards are sure to point out, unilateral restrictions on imports that violate intellectual property protection.

WTO CASES

There have been four disputes brought before the world trading system that have caused significant domestic furor in the United States. The first of these was a case involving the process by which refineries were certified as in compliance with the Clean Air Act. The so-called reformulated gasoline case was brought by Venezuela against the

United States. The WTO ruled in favor of Venezuela, finding that the United States applied a more severe standard to Venezuelan refineries than it did to U.S. refineries.²⁴

Although this case touched upon one of the cornerstones of U.S. environmental policy – the Clean Air Act – it sparked relatively little controversy because the standards applied to Venezuelan refineries were undeniably different than those applied to U.S. refineries. The drafters of the rules took the position that this was because there was less reliable data on the past performance of Venezuelan refineries, but it was also certainly possible to take a more even-handed approach to drafting the rules. In addition, the rule in question was nearing its expiration date by the time the WTO decision was made public.²⁵

The United States was involved as the initiator in another case that raised a significant environmental health-related furor in Europe, though not in the United States. This case involves the European Union's ban on imports of meat from animals given growth hormones or chemicals to spur hormone production while they were fed for slaughter.²⁶ Animals receiving hormone treatments gain weight significantly faster than those that are not and hormone treatment is halted before slaughter so that the meat does not normally include traces of the chemicals used in the treatments.

²⁴ World Trade Organization, *United States - Standards for Reformulated and Conventional Gasoline*, April 29, 1996, Document WT/DS2/AB/R.

²⁵ The rule in question was set to expire January 1, 1998 - see 40 CFR 80. The final report of the Dispute Settlement Body was published April 29, 1996.

²⁶ European Council Directive 96/22/EC of April 29, 1996.

In the United States, these treatments have been a normal part of the feeding cycle for decades and a regime regulating their use has also been in place for decades with little or no consumer concern. In Europe, however, the use of growth hormones has long been viewed with concern and there are widespread fears of human health risks. As a result, Europe banned imports of meat from animals treated with growth hormones in the 1980s. Arguing that there was no scientific basis for this concern and that there is a scientific consensus that there was no human health risk, the United States won several dispute settlement decisions on this topic and imposed trade sanctions in retaliation for the ban.²⁷

The European Union, however, steadfastly refuses to negotiate on the ban. Recent intra-European disputes on similar restrictions surrounding fears of Britain's mad-cow disease demonstrate that the issue may not prove easy to resolve.²⁸

In addition to having an impact on transatlantic trade and the livestock industry, this case is closely watched by environmentalists and consumer rights groups around the world. The case demonstrates that a trade limitation even if it is honestly intentioned and applied evenly to domestic production and imports cannot survive unless it has a clear scientific basis. Although no other specific national laws or policies seem immediately endangered, the case demonstrates that environmental health and safety restrictions must have a scientific basis to pass WTO scrutiny.

²⁷ For a summary, see World Trade Organization, *EC - Measures Concerning Meat & Meat Products (Hormones)*, January 16, 1998, Document WT/DS26/AB/R.

²⁸ For example see "Still Mad About Cows," *The Economist*, October 30, 1999.

The world trading system has also considered several important cases on the issue of production process standards applied to imports. In the two best known cases, involving dolphin-safe tuna netting procedures²⁹ and sea turtle excluders on shrimp traps,³⁰ the United States has maintained the trade restriction at issue. The two disputes have many similarities. In both cases, the United States imposed import limits on seafood – tuna and shrimp – not out of fear that the food was somehow directly tainted or threatened the environment, but because the process used to catch the seafood threatened another species. Also in both cases, the domestic industry was forced to meet a similar standard. The restrictions on tuna imports are set by U.S. law; the restrictions on shrimp harvesting practices are part of a species recovery plan under the Endangered Species Act.³¹

The tuna-dolphin issue was already discussed above, but one significant difference is that the species involved in the turtle excluder case -- sea turtles -- are recognized as endangered species (at least, many species are endangered). In the sea turtle case, the WTO review panel, which issued the final decision in the case, argued that the United States was obligated to pursue other less trade restrictive means to achieve the same objective, such as negotiating a multilateral agreement on sea turtle protection.

²⁹ General Agreement on Tariffs and Trade, *United States - Restrictions on Imports of Tuna*, June 16, 1994, Document DS29/R (Unadopted).

³⁰ World Trade Organization, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, October 12, 1998, Document WT/DS58/AB/R.

MULTILATERAL ENVIRONMENTAL AGREEMENTS

There are a number of multilateral agreements on environmental topics, such as the Convention on International Trade in Endangered Species of Wildlife Flora and Fauna, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, that have trade implications. Several similar agreements are possible in the future.³² Each of the present agreements has provisions that can result in the imposition of trade restrictions or sanctions to either enforce the agreement or achieve some other environmental objective.

In each case, international subscription to the accord is widespread, but not universal. Similarly, the WTO has more than 130 members, but a number of major countries, such as China, Russia, and Saudi Arabia, are not WTO members at this time. The WTO does not explicitly recognize the propriety of trade sanctions under these agreements and these countries do not recognize the WTO.

This raises the prospect of potential conflict between these agreements. For example, if a Montreal Protocol member that was also a WTO member imposed trade limits under the Protocol on another country that was not a member of the Protocol, but was a WTO member, the second country could challenge the first country's sanctions as

³¹ See 16 USC §1371 (a)(2)(A) and 16 USC §1371 (a)(2)(B) - Tuna and 16 USC § 1537 - Shrimp.

³² For example, on November 16, 1999, President Clinton issued an Executive Order requiring environmental reviews of future trade agreements and requiring negotiators to, "factor environmental considerations into the development of [their] trade negotiating objectives."

violations of the WTO. Under a strict reading of the WTO, this challenge might well prevail.

To this point, these conflicts have been only hypothetical.³³ Trade sanctions have been imposed under MEAs only very judiciously and the issue has never been raised before the WTO. Neither MEAs nor the WTO seek conflict, but as these agreements proliferate and the possible number of environmentally based trade sanctions increase, this hypothetical conflict could easily become real. The WTO does include some narrowly worded exceptions for environmental measures and some recognition of the importance of environmental objectives, but it is not at all clear that a dispute settlement panel would see these as overriding the expressed provisions of the WTO.

A WTO AGENDA ON THE ENVIRONMENT

In addition to the broader issues raised by these cases and discussed above, there are several discrete changes that might be considered in the WTO to partially address some of the environmental concerns highlighted in recent disputes. These changes cannot clearly address some of the core issues, such as what is a sound scientific basis and what steps must be taken before environmentally inspired trade restriction is warranted, but they may nonetheless create a more environmentally friendly WTO without compromising core trade liberalization objectives.

³³ Steve Charnovitz, "Environment and Health Under WTO Dispute Settlement," *The International Lawyer*, Vol. 32 No. 901, Fall 1998.

1. Increased Transparency

The concern most frequently expressed by environmental groups regarding the WTO regards the lack of environmental expertise of the WTO on environmental issues and the lack of transparency of the WTO dispute settlement process. The WTO's Article 20 does include some narrow exceptions in paragraphs (b), (d) and (g), which make some allowances for environmental and human health concerns.³⁴ The text supporting the WTO also includes a number of references to the objectives of sustainable development and environmental protection.³⁵ It is uncertain, however, given the ad hoc nature of WTO dispute settlement panels, how much weight these references are to be given in specific disputes. Some WTO decisions, notably the initial panel in the shrimp-turtle case, give little comfort to those concerned about the WTO's attitude toward environmental protection.

In addition, environmental groups and many others, including the U.S. government,³⁶ have criticized the lack of transparency of the WTO process. Most of the panel deliberations are closed or open only to the governments involved in the dispute. There are very limited opportunities for outside groups with expertise in the question to

³⁴ "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions will prevail, or a disguised restriction on international trade, nothing in this agreement shall be construed to prevent adoption or enforcement by any contracting party of measures:

...(b) necessary to protect human, animal or plant life or health;

...(d) necessary to secure compliance with laws or regulations which are not consistent with the provisions of this Agreement;

...(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;..."

³⁵ For example, see World Trade Organization, *Marrakech Agreement Establishing the World Trade Organization*, April 15, 1994 (Preamble).

³⁶ Charlene Barshefsky, "American Goals in the Trading System," Testimony Before the Senate Committee on Finance, September 29, 1999.

have formal input into the process. At the end of the process, initial findings are issued to the governments involved in secret, although the secrecy often breaks down.

Simply increasing the transparency of the process may force an increased degree of environmental sensitivity on panelists. The U.S. government has already begun pressing for increased openness, but its initial efforts have met with resistance from a number of other countries less enamored with transparent governmental processes.³⁷ Creating increased *formal opportunities* for environmental organizations to have input into the U.S. government strategy in cases involving environmental matters and allowing for non-government organizations' input into panel deliberations could increase the quality of decision-making and inspire more confidence in the process. Similarly, the WTO could create an office to take input from environmental interests and provide expertise on environmental issues to dispute settlement panels on environmental matters and into ongoing talks under the auspices of the WTO. These suggested changes require no significant substantive changes in the WTO, but still may increase the environmental awareness of the WTO in important ways without compromising other interests.

Expanding Exceptions

As just mentioned, Article 20 includes some generally worded exceptions to provide some leeway for legitimate environmental and human safety initiatives. As the European hormone ban demonstrates, it is possible to have a heartfelt, if not scientifically based, standard that has an adverse trade effect. Thus, expansion of any of the Article 20

³⁷ Frances Williams, "Rich and Poor Clash Over Trade and Environment," *The Financial Times*, September 9, 1999, pp. 6.

exceptions does risk endorsing measures that have an adverse impact on trade. But, as the exceptions already recognize, these are issues that require some balancing between trade and environmental/human safety issues.

If there is a consensus within the United States that this balance should be adjusted to, for example, recognize as legitimate the regulations written under the U.S. Clean Air Act or the Endangered Species Act and similar statutes in other countries, such a change is certainly possible without destroying the WTO. Certainly, any of the panel decisions mentioned above could be remedied with small, targeted changes in the balance struck between trade liberalization and other objectives. They certainly do not require a wholesale rewrite or scrapping of the WTO; given the positive environmental affects resulting from increased trade and increased growth, such a radical step would amount to “cutting off your nose to spite your face.”

The biggest challenge to these changes may very well prove to be developing a domestic consensus for such changes. If that is the case, the proper focus is developing a domestic consensus behind specific WTO changes. Once this consensus is developed, international acceptance is not a foregone conclusion, but - given the strength of the United States within the WTO – it could bring considerable influence to bear toward achieving those changes.

Multilateral Environmental Agreements

The potential conflict between the WTO and MEAs raises significant international legal issues.³⁸ Given the increasing possibilities for conflict between an MEA and the WTO, it is wise to take steps to address it. One possible approach is to explicitly exempt action taken under CITES, the Basel Convention, the Montreal Protocol, and similar MEAs from WTO scrutiny. Initial soundings on this concept by the U.S. government proved controversial with a number of developing country WTO members.³⁹ As the number of agreements proliferates, some will likely have a more limited international consensus; inevitably, disputes will arise about the proper coverage of a WTO exception.⁴⁰

Here again, however, the question is the proper balance between trade interests and environmental interests. Only the most extreme would argue that trade interests should always supercede. An exception for the three MEAs mentioned and a procedure for consideration of the addition of other MEAs in the future, is a reasoned first step toward striking a realistic balance. As noted, even this seemingly modest step will likely take considerable effort to negotiate, but taking action now could perhaps head off a serious future conflict that could ultimately be more damaging to the WTO.

As scientific understanding and political consensus evolves, other environmental/human health issues are certain to evolve. An international treaty on

³⁸ A good discussion of this can be found in an OECD document *Trade Measures in Multilateral Environmental Agreements: Synthesis Report of Three Case Studies* (Paris and New York: OECD, 1999).

³⁹ Frances Williams, *op.cit.*

greenhouse gases has already been concluded. As noted in the next section, work is already underway on developing an international private understanding on good forestry practices.⁴¹ Some of these agreements may ultimately be best enforced by a trade sanction scheme. Taking reasonable steps now is the most responsible step toward preparing for these future complexities. Both trade liberalization and environmental protection are important and laudable goals, the potential conflicts between them can be addressed without abandoning one for the other.

⁴⁰ Interestingly, the United States is not formally a signatory to the Basel Convention, although it adheres to its basic provisions.

⁴¹ *Sustainable Forest Management Vision, Principles & Elements*, Adopted by the 6th International Forest Industry Roundtable (IFIR6), Punkaharju, Finland, 1999.

SECTION 3: ACCELERATED TARIFF LIBERALIZATION ON FOREST PRODUCTS

The broader discussion of environmental issues has focused more narrowly on the Accelerated Tariff Liberalization (ATL) initiative on forest products. The ATL is a major topic at the upcoming WTO Ministerial in Seattle. The ATL initiative's aim is to eliminate or lower tariffs in eight industrial sectors of which the forest products sector is one.

The forest products initiative is the only one that environmental groups have focused attention upon, branding it the "global free logging agreement."⁴² Some environmental advocates argue that it will accelerate deforestation with attendant negative consequences for the environment.

In fact, this claim is largely based on the assumption, which is rebutted in the first section, that economic growth necessarily has a negative impact upon the environment. Presumably, this issue could be raised with regard to any trade initiative that caused economic growth, but the obvious linkage between forest products and forests apparently makes this argument easier to make.

ECONOMIC ESTIMATES

As the Clinton administration's estimate on this topic confirmed, the assumption that acceptance of the ATL would speed the process of deforestation is not supported by economic or scientific data. According to the estimates generated by the administration's

economic modeling exercise, the ATL is likely to have a quite marginal impact on timber harvest. The estimate is for the ATL to increase trade in forest products 2 percent above the projected baseline level by 2010. This would result in an increase of only 0.5 percent in the global timber harvest.⁴³

The impact upon specific countries varies based upon the efficiency of the indigenous forest products industry, the available timber resources, and other factors. The ATL would likely increase the timber harvest in countries such as Australia and Chile, and decrease it in Mexico and Russia. In each case, the projected changes in timber harvest over the baseline range from approximately 2 percent to 11 percent over the period. In the United States, the estimates project no net change in the timber harvest.⁴⁴

TARIFF ESCALATION

This result may seem unusual, but it is entirely predictable when the tariff staging of wood product tariffs is considered. Countries typically use tariffs to protect the forest product manufacturing industries, not to preserve timber harvest. Thus, tariffs tend to be very low on logs and unfinished products and high on manufactured products with a high value added. Thus, the primary impact of the tariffs is not to change the overall level of the timber harvest, but to change the composition of the trade in forest products.

⁴² Friends of the Earth, *Global Free Trade in Forest Products* (Washington, DC: FOE, April, 1999), p.1.

⁴³ Office of the United States Trade Representative and the White House Council on Environmental Quality, *Accelerated Tariff Liberalization in the Forest Products Sector: A Study of the Economic and Environmental Effects* (Washington, DC: USTR, November 1999), pp. 13

The trade in forest products between the United States and Japan is typical. The United States exports approximately 2.5 billion dollars worth of forest products each year, but the bulk of those exports are logs and unfinished products.⁴⁵ This is the result of the staging of the Japanese tariff system, with high tariffs on highly manufactured products, such as construction beams, and low or no tariffs on logs and minimally processed products. The result of the tariffs is to alter the mix of the trade with only marginal impact upon the timber harvest, but a major impact on the content of trade.⁴⁶

The tariffs protect the Japanese forest product manufacturing industry, not the forests. In the United States, they work to the detriment of U.S. mills and their workers without benefiting the forests. Japanese forest products tariffs are an example of pure protectionism, not environmental protection. If the tariffs were eliminated, American employment in the forest product industry would increase, with little impact upon the forest product harvest because the new workers are employed processing logs that would be cut anyway and shipped to Japan. This is why elimination of these tariffs has been an objective of U.S. trade policy for decades.⁴⁷

IMPACT UPON THE ENVIRONMENT

Although it is superficially easy to understand why some make the assumption that lowering forest product trade barriers might increase deforestation, there are many

⁴⁴ Ibid., pp. 13

⁴⁵ Office of the United States Trade Representative, *1999 National Trade Estimate*, (Washington, DC: USTR, 1999), pp. 224.

⁴⁶ Ibid., pp. 224-225.

⁴⁷ For example, in June of 1989, the United States brought action under Section 310 of the Trade Act of 1974 to address issues involving tariffs and market access in the Japanese forest products sector

practical reasons to believe the opposite is true. Of course, as noted in the first section of this paper, there is a virtual consensus among studies that have examined the issue that increasing economic growth and income actually increases environmental protection. If this initiative contributed positively to incomes in Malaysia or Chile, experience would indicate a positive impact on the environment.

Beyond that, there is good reason to expect the same would be true in this specific instance. First, in countries where incomes are low and survival a day-to-day struggle, the capacity for protecting forests and species is predictably low. If tariff escalation schemes in advanced countries deny these countries forest product-manufacturing jobs as they do in the United States, forests are not seen as a valuable resource for the native population. Understandably, there is little incentive to invest in resource management programs and there is often considerable incentive to clear forest for other uses, such as slash and burn agriculture – the leading cause of deforestation.⁴⁸

It is important to note that having a strong forest products industry does not mean that deforestation is the necessary result. In fact, three of the countries in the Pacific region with highly successful timber industries – the United States, Canada, and New Zealand – have actually increased forest coverage in recent years.⁴⁹ Efforts to pursue sustainable forest harvest are widespread and there is now a private sector understanding

(Investigation 301-76). The investigation was later suspended after an agreement was struck between the United States and Japan, but the issue of tariffs remains a problem.

⁴⁸ Arild Angelsen and David Kaimowitz, "Rethinking the Causes of Deforestation: Lessons from Economic Models," *The World Bank Research Observer*, Vol. 14 No. 1, February 1999, pp. 81.

⁴⁹ United Nations, Food and Agriculture Organization, *State of the World's Forests 1999* (New York: UN, 1999), pp. 131-145.

on sustainable forest practices.⁵⁰ The administration estimates note that, as a result of these changes in forestry practices, most of the forest harvest will come from plantations and secondary growth forests. Largely as a result, their review finds no net adverse environmental impacts from the ATL.⁵¹

In fact, to the extent that the ATL shifts timber production from inefficient producers to efficient producers, the ATL could well have a positive impact upon forestry practices. The major producers, like the United States, Canada, and the Nordic countries, have a much better record in responsible stewardship of the forests than do the more inefficient producers. If the recent environmental record of the forest products industry is considered, by increasing the economic value of forests and shifting towards producers that pursue sustainable practices, the total forested acreage could easily be increased under the ATL proposal.

Confronted with these arguments, many of the environmental critics retreat to restating arguments that essentially hold that growth necessarily harms the environment. This was dealt with extensively in the opening section, but there is another point that bears consideration. As economies grow, societies will build new homes and schools to accommodate their needs. If the total lifecycle impact of building with wood is compared to the impact of building with other materials – most of which are made through processes that spawn considerable pollution, wood building materials are more

⁵⁰ *Sustainable Forest Management Vision, Principles & Elements, op.cit.*

⁵¹ Office of the United States Trade Representative and the White House Council on Environmental Quality, *op.cit.*, pp. 13.

environmentally friendly than other building materials.⁵² Thus, to the extent that wood building products come into more common use, they will likely displace other building materials, which is a net win for the environment.

Probably owing to historical conflict between the forest products industry and environmental protection, it is easy to assume that anything that is good for the forest products industry is bad for the environment. If recent evidence on sustainable forestry practices and the reality of trade barriers on forest products are considered, a much different picture emerges. Undoubtedly, many years of careful work will be needed to fully integrate environmental concerns into the trading system. Rejecting a trade initiative that has the potential to create new exports and new jobs for the United States because of an outdated view of the impact of the forest products industry on the environment, however, is not a good step toward that integration.

⁵² See Canadian Wood Council, *Technical Bulletin 2: Environmental Effects of Building Materials*, 1996, available at www.cwc.ca for a summary of an analysis carried out by the Canadian Research Alliance that found wood to be among the most environmentally sound building materials.

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