

Environmental Issues in the New World Trading System

PETER UIMONEN and
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Environmental Issues in the New World Trading System

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Introduction

During the latter stages of the Uruguay Round of multilateral trade negotiations, an unexpected surge of concern over environmental issues and how changes in trade policies would affect global resources emerged. The resulting public debate was, at times, polarized with one side arguing that trade liberalization resulted in unsustainable environmental practices while the other countered that the growth engendered by trade barrier reduction would bring with it the resources that are the prerequisite for a cleaner environment.

A catalytic event in this debate was a 1991 General Agreement on Tariffs and Trade (GATT) dispute settlement panel that ruled against a US law imposing import prohibitions on tuna caught using methods lethal to certain species of dolphin. This ruling led to protestations from many environmental and conservation groups. It also led to concerns that trade-related enforcement mechanisms in some international environmental agreements and in other national laws could be challenged in the future. Numerous proposals for the reform of the trading system were also put forward.

Emerging rather late in the process, these developments caught Uruguay Round negotiators by surprise. As a result, with the exception of agreements on domestic standards, the Uruguay Round Final Act did not include environmental matters in any central way, although the provisions of some of the agreements may very well have environmental policy implications. This has left the accumulation of a rather large agenda of unanswered questions and issues for the new World Trade Organization (WTO). As an initial response, a WTO Committee on Trade and the Environment was established with the signing of the Uruguay Round agreement in 1994, which has since been examining a variety of issues.

Further fuelling the controversy was a debate of the proper place of environmental issues in the negotiation of the North American Free Trade Agreement (NAFTA). Concerns ranged from cross-border pollution between the US and Mexico and what effects the agreement would have on it, to the implications of differing national health, safety and environmental standards, and the lack of environmental law enforcement in Mexico. Some modest efforts were made in the final agreement, and even more through parallel negotiation of an environmental side agreement and a border clean-up plan to accommodate such concerns. As a result, some

have contrasted the NAFTA with the relative lack of response during the Uruguay Round negotiations.

FACTORS FUELLING THE TRADE AND ENVIRONMENT CONTROVERSY

The emergence of the often emotionally charged trade and environment debate was something of a sleeper as far as public policy questions go. As environmental issues have moved ever more to centre stage since the 1960s, the linkage between environment and trade has not figured as a prominent theme. Acid rain, species loss, toxic wastes, nuclear contamination, pesticide use were all on the list, but their relationship to international trade seemed to play no significant role.

The recent change in profile reflects some changing and important factors in addition to those of the GATT tuna-dolphin dispute and the NAFTA. The trade issue was either misperceived for 20 years by the environmental community, has been blown out of proportion more recently or the world has changed abruptly in ways that are not immediately obvious. What is clear is that no single factor has propelled the current trade and environment debate. Instead a number of key developments and factors have to be taken into account.

Globalization of Environmental Concerns

One of the most powerful forces raising the profile of the trade and environment issue has been the globalization of environmental concerns. For two decades environmental issues were largely considered to occur within localized areas, with their effects operating either within national borders or, if not within national borders, across pairs or groups of countries – in the case of acid rain, between Canada and the United States, between Germany, Poland and Sweden, or elsewhere between pairs of European countries. By and large, environmental problems were not seen as embedded in a global ecosystem interacting with a global economy.

This all changed in the late 1980s with such issues as global warming, ozone depletion and other global environmental phenomena. In the global warming debate, a link was made between the activity of the global economy through its extraction, refinement and use of carbon-based energy products, and the long-term and potentially cataclysmic threat posed by major increases in earth temperatures due to carbon dioxide emissions. Other global environmental issues such as stratospheric ozone depletion caused

by chlorofluorocarbons and halons were also linked with industrial activity. Other global environmental issues, such as deforestation and its impact on global warming and biodiversity, emerged. Deforestation, in turn, was thought to be linked, in part, to the export of tropical timber by developing to developed countries, and hence environmental concerns were explicitly linked to trade.

Global environmental issues seemingly call for global management, which, in turn, naturally implies some form of regulation or intervention in the global economy and, inevitably, some degree of management of global trade.

The Changing Focus of Trade Negotiations

The Kennedy and Tokyo Rounds of GATT negotiations concluded in the 1960s and 1970s were successful in achieving low developed country tariff levels and disciplines on the use of some quantitative restraints. This led trade negotiators increasingly to focus on non-traditional barriers to trade, some of which are not border measures. Most of these barriers – such as voluntary export restraints and orderly marketing arrangements – do not explicitly involve environmental issues, but there has been increased attention paid to the use of product and process standards as forms of protection, and environmental concerns have risen accordingly.

The Tokyo and Uruguay Rounds clearly demonstrate the trend toward negotiating trade agreements in non-traditional areas such as standards. These agreements involve what are, on the surface, national policy prerogatives, establishing disciplines affecting the determination of national technical, sanitary and phytosanitary standards so as to minimize the extent to which they may be used as non-tariff barriers to trade. These efforts have centred around establishing international norms or guidelines for the establishment of national regulations, with deviations from international standards where they exist being permitted as long as parties are notified of such measures and as long as they can be justified on the basis of scientific methods of analysis of health, safety and environmental effects.

Thus, trade negotiations seem to be evolving toward greater scrutiny of national policies ostensibly taken for health, safety and environmental reasons. An unintentional consequence of this has been concern over the potential for international trade rules to limit sensible national environmental policies through efforts to harmonize standards, perhaps to a 'lowest common denominator'. These developments have further spurred concerns in environmental circles over the transparency of the ways in

which trade negotiations are conducted and disputes settled, as well as which groups are permitted to participate.

Clashes Between Established Trade Policies and New Environmental Policies

Existing trade rules are often both limited in coverage and ambiguous as to their interpretation in the environmental area, despite the rapid escalation of the trade and environment debate and certain recent clarifications of trade rules. These limitations and ambiguities have further elevated the trade and environment issue because the outcome of each has been seen as crucial to the wider outcome of the debate.

There has been conflict over the interpretation of the environmental content of GATT articles, as in the tuna-dolphin dispute between Mexico and the United States. In Europe, there has been disagreement as to whether or not the unified market provisions of the Treaty of Rome restrict domestic environmental policies, as in the Danish reusable containers case. In North America there is ongoing debate over whether or not the Canada-US Free Trade Agreement has resulted (or will result) in lowered environmental standards in such areas as pesticide use and asbestos standards. Attempts to obtain clarifications, interpretations and proposals for new trade rules and arrangements have proliferated. All of this has led to a heightened sense of clash between trade and environment policies.

Environmental Management as a New Threat to Open Trade

The separation between trade arrangements and other policy subsystems has been a hallmark of the postwar years; trade policy advocates have consistently argued that this has been necessary so as to maintain an open trade regime, and hence should be continued even with environmental issues at their present profile. In contrast, trade policies are seen by some environmental advocates as part and parcel of global environmental management. The severity of potential global environmental damage is such that, to them, new approaches are required. Restrictions on trade to achieve environmental ends are but one approach justified by the gravity of environmental issues.

But to free-traders, the trading system of today is a painstaking creation of 40 or so years of multilateral negotiations and associated changes to domestic trade law. Their objective has been to achieve as open a trading system as possible through negotiated reductions in trade barriers and consistent application of trade disciplines. To a community that has spent

40 years and large amounts of intellectual, personal and professional capital in establishing this system, the notion of managing trade in the name of meeting a set of environmental goals is difficult to accept. Environmental management is viewed by them as based on vague concepts and objectives which are difficult to quantify, and scientific evidence of varying degrees of uncertainty. The global economic gains from relatively open trade are therefore seen as imperiled by efforts to manage global environmental issues in these ways.

As if this were not enough, trade analysts fear that new protection may be pursued in the future in the name of environmental concerns. Worse still, it may not be applied in ways which necessarily benefit the environment. Their fear is that as various groups exert their influence to achieve various kinds of trade-restricting measures, the resulting policies may simply benefit the narrow ends of trade protectionists rather than advance the wider social interest.¹ In this sense, therefore, environmental management becomes an even more menacing threat to the openness of trade.

Closedness of the Trade Policy Process as a Threat to the Environment

As the profile of the trade and environment issue has grown, the perceived closedness of the trade policy-making process has also become a factor fuelling controversy. As the environmental movement grew through the 1970s and 1980s, it evolved a style of dialogue and interaction which stressed open deliberations, attempts to find consensual positions, accumulation of data and factual information, a grassroots approach that did not assume existing government policies to be efficient and as much assessment of policy impact as possible. Environmental impact statements have become a central component of environmental policy. As they have become more involved in trade matters in recent years the environmental community has also discovered what seems to them a secretive trade policy process.² Their reaction has been to seek ways to open the process and make available information and data.

This has raised fear in the trade policy community that opening the process in some of the ways advocated could overly politicize a process which has quite consciously been depoliticized as much as possible so as to allow negotiations to result in consensus. International trade negotiations are undertaken between national governments; disagreement within countries as to what national positions to take in negotiations and dispute settlement are therefore seen as matters to be ironed out within each country. Furthermore, much of the data and other documentation which the

environmental community seeks regarding trade analyses underlies the formation of negotiating positions. The argument is, therefore, that the business of international diplomacy and trade negotiation is intended to be partially shielded from constituent pressures of the type that are generated by an open process that the environmental community seeks.

The result of all these developments has been that the interaction of trade and environmental policies has become a major policy issue. Environmental issues already have a high profile, and their global dimensions have drawn in trade issues. As a result, there have been calls for more accommodation of environmental concerns in trade rules, fuelling concerns in reaction that existing rules are insufficient to rein in a new form of protectionism.

PLAN OF THE STUDY

The establishment of the WTO and the conclusion of the NAFTA provide an opportune time to assess the status of the debate over the proper relationship between trade and environmental policies. This book takes as its starting point the trade and environment issue since the establishment of the WTO, asking where we stand, where we are headed and what should be done.

We begin in Chapter 1 by reviewing the economic analysis of the trade and environment relationship, noting that while there are instances in which trade measures may be necessary to deal directly with environmental externalities associated with the products traded, in many cases, particularly when environmental problems stem from production processes, trade restrictions are a second-best policy response, that is there is a more efficient and direct domestic policy to rectify the problem. Nevertheless, such second-best instruments may yield net benefits for the economy imposing them. They may also be perceived as necessary when international cooperation to protect global environmental resources is difficult to attain. This theoretical discussion serves to set the parameters of the debate concerning international trade rules. On the one hand, trade purists argue for disciplines on virtually all trade measures that are not first-best. On the other hand, there are those that would argue that there should be nothing to limit trade restrictions for environmental purposes regardless of how ineffective they might be.

There have been numerous instances of the use of trade restrictions for environmental purposes at the national level, particularly in the US, and several international environmental agreements contain such enforcement

mechanisms. These measures have raised numerous issues ranging from the appropriateness of unilateral trade actions to protect environmental resources to the proper treatment of non-signatories to international agreements, which are discussed in Chapter 2. There are further political economic issues having to do with 'competitiveness'. These differ from the relative efficiency of trade interventions to deal with environmental externalities. For example, it has often been claimed that low environmental standards create 'unfair' trade advantages and 'pollution havens' that attract investment in certain manufacturing industries. On the other hand, it has also been claimed that differential national standards and regulations result in a plethora of unnecessary trade barriers that hinder international trade flows. As will be seen, while there is some anecdotal evidence in support of these propositions, they are not generally supported by empirical evidence. Further, the proposed remedies for 'unfair' trade purported to result from 'lax standard subsidies', such as countervailing duties, are unlikely to be efficiently implemented.

Chapter 3 provides a more detailed consideration of some of the empirical evidence on the relationship between environmental policies and trade flows, as well as the extent to which free trade and environmental protection are in conflict. A review of the literature and some modelling efforts on these questions yield several conclusions. First, contrary to the claims of numerous protagonists in the debate, there is no unambiguous relationship between changes in trade policies and environmental quality. This depends on the effects of changes in trade policy on output and trade composition and its relationship to environmental variables. It has also been maintained that trade affects the environment through its effects on economic growth. One argument is that the growth stimulated by trade results in resource depletion. A converse argument is that the growth stimulated by trade increases per capita incomes and results in increased demand for environmental protection. These propositions, however, are not well formulated, resting on questionable analysis and empirical relationships.

Chapter 3 also presents some preliminary quantitative analyses of the effects of differential environmental regulations on international trade flows. Most of the previous analyses indicate that such effects are quite limited. However, the consequences on trade flows of a possible future carbon tax as a response to the phenomenon of global warming could be considerably more substantial given the contemplated scale of the intervention.

Trade issues also emerged during the negotiation of a variety of agreements under the auspices of and parallel with the United Nations Conference on Environment and Development (UNCED) in 1992. Chapter 4

turns to a discussion of the treatment of trade policy matters in these agreements to motivate an analysis of the concerns of developing country negotiators not only in the UNCED but in other fora as well. Efforts were made to ensure that developing country access to industrial country markets were not jeopardized by new environmental conditions. The Rio Declaration and Agenda 21 reflect some of these developing country concerns and provide some indications of how negotiations in other fora might proceed in the future.

While the UNCED agreements provide some guidelines on the use of trade policy, the rules of the WTO will be central in the future evolution of the trade-environment policy nexus. Therefore Chapters 5 and 6 consider the current status of those rules and some proposals that have been made to change them. As will be seen, there are a number of areas of ambiguity in the current rules, including the general exceptions to basic trade disciplines, which can affect numerous types of environmental policies. In assessing the current rules and reform proposals, we find that while unilateral trade actions and actions against non-signatories to environmental agreements should not necessarily be categorically prohibited, it will be necessary to find some way to guard against their abuse. Some guidelines are considered for doing so. In this respect, prospects for utilizing some form of cost-benefit approach to such measures are also discussed. We further believe that there are equity considerations with respect to developing country market access in favour of some disciplines on these measures, particularly when the prospects for their efficacy are dim.

Not only do we find limited evidence to support 'competitiveness' claims with respect to differing environmental standards, the current multilateral trading rules would not permit countervailing charges on such 'lax standard subsidies'. The rationale for this discipline is examined and the difficulties involved in its relaxation discussed. These involve both the potential for inefficient environmental policy-making and protectionist abuse.

The Uruguay Round agreement on technical barriers and the sanitary and phytosanitary agreement seek to discipline national health, safety and environmental policies for protectionist abuse. The implications of these agreements are currently unclear and some clarification with respect to the scientific requirements for maintenance of relatively high standards and national autonomy in the choice of risk levels would be helpful. Given that these agreements extend the scope of international trade rules to non-border and ostensibly domestic measures, concerns over the lack of openness in dispute settlement and negotiating procedures have also been raised.

Chapter 7 then examines the ways in which environmental concerns were handled in the negotiation of the NAFTA. While the extent to which

environmental concerns were accommodated in the agreement itself was limited, the negotiation of a side agreement on the environment and co-operation between the US and Mexico on a border clean-up plan could provide some lessons for future regional negotiations and longer-term institutional structures.

We conclude with some longer-term considerations with respect to the principles and possible institutional structures that could emerge as mechanisms to mediate the linkages between international trade and environmental policies. The principles will likely be drawn to some extent from the experiences of national and regional governments and include some notion of proportionality in the trade-off of the benefits of free trade and the benefits of national and regional measures to protect the environment when the two objectives are in conflict. With the increasing involvement of developing countries in international negotiating fora, their interests and concerns will be paramount in designing international structures that serve the goals of environmental protection and development in the context of an open world trading system.

The conclusion of the Uruguay Round of multilateral trade negotiations included the creation of a Committee on Trade and Environment. The Committee began what promises to be an extended consideration of a variety of issues of environmental relevance in 1995. It is scheduled to report on its deliberations at the Singapore Ministerial Conference of the WTO at the end of 1996. The report will be a first step toward establishing an approach to environmentally-related matters in the context of the world trading system. As will be seen in what follows, there are numerous challenges facing the trading system and certain trade-offs in devising a set of rules that foster environmental protection, sustainable development, and an open world economy. It is hoped that the subsequent discussion will provide a road map of the variety of issues and proposals that have arisen, and will continue to arise, in quest of these objectives.

