INTERNATIONAL INSTITUTIONS

Module

Many of the cases in the preceding modules of the book are about international business. The materials in this module, by contrast, treat some systemic problems in the international arena and examine the institutions that are designed to solve those problems.

The module includes a note about the environment and the international trade regime, a case on forest policy in Malaysia, a note on global climate change, and a case on economic growth, energy development, and environmental problems in China. Each relates traditional aspirations of economic growth to emerging global environmental problems: the accumulation of carbon dioxide and other heat-trapping gases in the atmosphere, deforestation, and loss of biological diversity. All of these problems are interrelated. All of them affect, and are affected by, the flow of goods and capital between the developed nations and the developing world.

The first note, on environment and international trade, describes some of the primary institutions that affect the flows of products among nations, and the tension in those organizations that concern about the environment has produced. The belief is widespread that global environmental protection is incompatible with free trade. American environmental groups were prominent opponents of the North American Free Trade Agreement (NAFTA), and many environmentalists in North America and elsewhere view the General Agreement on Tariffs and Trade (GATT) with trepidation. Others respond that the prosperity promised by a free trade regime is the fastest and surest way to increase demand for environmental amenities and so bring about greater protection for the environment. The note sketches the arguments on both sides of this debate and explores the political and economic context in which the issues are discussed.

Following this overview is a case on forest policy in Malaysia. The case differs from most of the others in the book in that its focus is on government officials and not on business executives. In 1991, Mahathir Mohamad, Malaysia's Prime Minister, is in New York to speak with potential investors in his booming economy and to address the United Nations. Malaysia is under attack by western environmental groups, who think the country is cutting the rain forest on government-owned lands at a far too rapid rate. Mahathir needs to decide how, if at all, to respond to these attacks. By framing the controversy over Malaysia's forest policy in the context of the country's overall political and economic strategy, the case forces readers to confront the trade-offs that Mahathir faces. Questions of public goods and social costs, introduced in the first module of this book, appear again in a new, larger context.

Because the Malaysia case is about a national government rather than a firm, not all of the exhibits will be familiar. In particular, exhibits showing the national income accounts, the balance of payments data, and the government financial numbers have no analogues in the company cases. They are critically important, though, to an understanding of the case.

Next is a note on global climate change. Most atmospheric scientists agree that higher levels of carbon dioxide in the earth's atmosphere are associated with higher temperatures, and that atmospheric carbon dioxide levels have been recently increasing as a result of fossil fuel combustion. There is widespread controversy, on the other hand, about the likely effects of these increases. And there is even more controversy about the costs and benefits of various schemes for mitigating global climate change: some argue that relatively rapid action is essential, while others assert that any cure would be more harmful than the alleged disease.

The note discusses the science—and the scientific uncertainties—at some length. It could serve as the basis for an interesting discussion by itself. We have found, however, that it is even more educational when used in conjunction with seven supplemental notes which the instructor can provide. These seven supplements examine the global climate change issues from the vantages of governments in seven important countries: Brazil, China, Germany, India, Japan, the Netherlands, and the United States. The economics and politics of global climate change in each country depend on the nation's state of development, level of energy intensity, and other factors. We ask our students to take the role of one of the seven countries and, in groups of seven to fifteen, to try to negotiate framework treaties for addressing the issue of climate change. While we cannot hope to replicate the complexity of the actual negotiations, which involved well over a hundred nations, a simulated negotiation gives a very clear sense of the difficulties inherent in reaching any sort of consensus about the management of a global public good.

The final case of this module returns to the country level. The context is the Chinese economy, already one of the largest in the world, and certainly one of the fastest growing. China's leaders have publicly expressed concern about environmental problems, including global climate change. In practice, however, they have found it difficult to reconcile their concern with the imperatives of rapid development. The numbers of people to be supplied with energy, and the amount of coal, other fuels, and capital equipment required for this purpose, are staggering. The Chinese case throws the dilemmas of environment and development into the sharpest possible relief: the problems are inescapable and all but overwhelming. The case contains information about the Chinese economy, the government's development strategy, and the regulatory apparatus for energy and pollution control. Like the Malaysian case, it contains several exhibits not seen in company cases which are of critical importance to understanding the situation.

Rich as they are, the four notes and cases do not convey the full complexity of environmental problems in the developing world nor the range of institutions constructed to mitigate them. More information about both sets of issues is found in the last case in the next module of this book, on the Brazilian Foundation for Sustainable Development.

Case

ENVIRONMENT AND INTERNATIONAL TRADE

During the 1980s, trade and trade issues were a low priority for environmental activists in the United States or Europe. The General Agreement on Tariffs and Trade (GATT), the framework that guided international trade, remained the obscure province of specialists. Yet in 1990, a commentator in a British environmentalist magazine wrote:

> If we allow the new GATT proposals to be adopted, then the entire world will effectively be transformed into a vast "Free Trade Zone," within which human, social, and environmental imperatives will be ruthlessly and systematically subordinated to the purely selfish, short-term financial interests of a few transnational corporations.[1]

Some months later, an anonymously produced poster depicting "GATTzilla," a monster devouring the earth, dolphins, and democratic institutions, circulated in Washington, D.C., and other world capitals (see **Exhibit 1**). A spate of like-minded articles and books followed.

The link between trade and environmental issues was not entirely new. International environmental agreements dating back to 1933 used trade measures to effect their ends. Since 1948, two clauses of GATT itself provided signatory nations with the ability to restrict trade on grounds of conservation of natural resources or human, animal, or plant health. But several factors seemed to contribute to a renewed sensitivity to the relationship in the 1990s: a growing number of transboundary environmental problems, such as depletion of stratospheric ozone, global warming, and waste disposal; the maturation of the environmental movement; and a series of high-profile political events.

Despite the prominence of the debate, its substance was murky. "With such looming problems as global warming, deforestation or biodiversity loss, at least the issues are clearly defined. Trade, on the other hand, cuts across all those problems. . ." wrote one analyst.[2] Just how it cut across them was unclear. For example, critics of the international trade regime blamed it for accelerating deforestation, on the ground that it encouraged export of logs and clearance of forest for farming. But supporters pointed to trade as the only means for developing countries to move beyond dependence on extractive industries such as logging.

Neither was the outcome of the debate clear. The North American Free Trade Agreement (NAFTA), drafted in 1992, had been hailed by a few environmental groups as an exemplar of future trade accords for its inclusion of explicit environmental safeguards. The Sierra Club and other environmental advocacy groups had opposed NAFTA, however, arguing that it would lead to

Senior Research Associate Edward Prewitt prepared this case, and Research Associate Patricia Markovich updated it, under the supervision of Professor Forest L. Reinhardt as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

1 Edward Goldsmith, "The Uruguay Round: Gunboat Diplomacy by Another Name," *Ecologist*, November/December 1990, p. 202.
2 Hilary F. French, *Costly Tradeoffs: Reconciling Trade and the Environment* (Washington, D.C.: Worldwatch Institute, 1993), p. 5

environmental degradation in the United States and Mexico. Environmentalists were unanimous in their acrimony for a 1992 GATT judgment on an American dolphin protection law. A GATT arbitration panel found that the law, which limited sales in the United States of tuna that was caught with a method harmful to dolphins, violated GATT rules. The resulting outcry drew a promise from GATT's director-general to devote the next negotiating round of the agreement to consideration of the confluence of trade and environmental issues.

CONFLICTS BETWEEN ENVIRONMENTAL AND TRADE VALUES

NAFTA

In late 1990, the presidents of Mexico and the United States began official negotiations on a free trade agreement among those two nations and Canada. A free trade agreement between the United States and Canada had taken effect in 1989. Environmental concerns were scarcely mentioned during the drafting of that agreement.[3] Within a few months of the start of NAFTA negotiations, though, environmentalists in all three countries—and especially in the United States—voiced objections.

They focused largely on the U.S.-Mexico border area, which was blighted with air and water pollution generated by maquiladora factories.[4] Maquiladoras were foreign-owned plants operating within a special economic zone in Mexico, mostly in a narrow strip alongside the international border. When Mexico's federal government created the zone in the mid-1960s, it attracted mostly clothing assembly plants, which generated little hazardous waste. But the number of maquiladoras mushroomed during the late 1980s, and increasingly included factories that generated hazardous wastes.[5] More than 2,000 plants had been built by the early 1990s.

Mexican law stipulated that hazardous waste generated by a maquiladora must be shipped to the nation in which the factory owner was headquartered. But little waste made its way from the maquiladoras into the United States, which accounted for the largest number of owners. Records of the U.S. Environmental Protection Agency (EPA) showed that only 63 maquiladoras (of nearly 1,000 factories in neighboring Mexican states) had shipped waste to Arizona and California.[6] Mexican treatment and disposal capacity was almost nil. The obvious conclusion—that much of the hazardous waste was being improperly discarded—was supported by water samples. Hazardous substances were found polluting groundwater on the Mexican side and rivers on both sides, including the Rio Grande.[7] The Sierra Club named the New River, which originated in the maquiladora zone and emptied into the Salton Sea National Wildlife Refuge in California, the most polluted waterway in North America.[8]

American corporations viewed maquiladoras as a method of lowering labor costs to match foreign competition. American labor unions saw them as competition for jobs. Environmentalists viewed them as "pollution havens": "the relaxed environmental controls on the maquiladoras ha[ve] lured U.S. companies to the borderland. . . . The relocation of 'dirty' industries to avoid strict environmental controls in the industrialized countries is a pattern followed by international capital. . . ."[9] But NAFTA supporters cited several studies showing that pollution control costs were a small fraction of total production costs and rarely drove plant location decisions.[10] The Conservation Foundation, for example, found that "differentials in environmental-control costs are generally outweighed by production and other capital costs."[11]

Environmentalists feared that economic growth spurred by NAFTA would induce even more pollution in the border region and in the rest of Mexico. They also worried that the draft agreement's advocacy of harmonization of environmental and health standards among

3 The agreement recognized that environment and health standards could result in unnecessary distortions to trade, and the two countries agreed to harmonize environmental standards when possible.

4 Patrick J. McDonnell, "Foreign-Owned Companies Add to Mexico's Pollution," *Los Angeles Times*, November 18, 1991, p. A-1.

5 Diane M. Perry et al., "Binational Management of Hazardous Waste: The Maquiladora Industry at the U.S.-Mexico Border," *Environmental Management* 14, no. 4 (July/August 1990): p. 441.

6 McDonnell.

7 Perry et al., p. 444; and Bernard Debusmann, "Ecological Fears Behind Mexican Border Boom," *Financial Times*, July 22, 1991, p. 2.

8 Carl Pope, "Borderline Issues," *Sierra*, September/October 1991, p. 22.

9 Robert Scott, "The Toxic Time Bomb in the Borderland. Can the 'Emergency Planning and Community Right to Know Act' Help?" *Natural Resources Journal* 30 (Fall 1990): 970-971.

10 Office of the United States Trade Representative, "Review of U.S.-Mexico Environmental Trade Issues," February 25, 1992, pp. 162-63.

11 Christopher Duerksen, *Environmental Regulation of Industrial Plant Siting: How to Make It Work Better* (Washington, D.C.: Conservation Foundation, 1983), p. xx.

the three countries would result in U.S. and Canadian standards being lowered to meet Mexican standards.[12] In the United States they soon formed an alliance with companies and trade unions concerned about jobs lost to lower Mexican wages and worker safety standards. Groups such as the Mobilization on Development, Trade, Labor and the Environment and Ralph Nader's Public Citizen pulled together a broad range of affiliates, most of which had never taken notice of trade and trade agreements before: the Sheet Metal Workers of America, the United Methodist Church, and the Sierra Club, for example. The president of the AFL-CIO[13] wrote in the *Wall Street Journal* that "trade is good for workers on both sides of the border only when it is carried out side by side with minimum standards on wages, benefits, safety and environment."[14]

The unexpectedly widespread support of the NAFTA opposition gave it considerable clout. The administration of President George Bush agreed to several unprecedented concessions, among them an informal assessment of environmental impacts, the establishment of an Integrated Border Environmental Plan to deal with environmental problems along the U.S.-Mexico border, and a promise to use EPA expertise to strengthen Mexico's environmental agency. The Bush administration invited an EPA official to sit on the White House committee that was drafting the agreement, and representatives of the National Wildlife Federation and the World Wildlife Fund to sit on an advisory committee. The administration promised that no American environmental standards would be lowered.

These actions did not wholly defuse environmentalists' opposition, however. In response to a lawsuit filed by Friends of the Earth, Public Citizen, and the Sierra Club, a federal district court judge shocked the Clinton administration in mid-1993 by ruling that NAFTA was subject to the National Environmental Policy Act (NEPA), meaning that an environmental impact statement (EIS) on the proposed agreement was required. EISs were complex documents used to explicate the environmental effects of proposals. However, in a victory for the Clinton administration, a federal appeals court overturned the ruling.[15]

While a candidate, Bill Clinton had expressed his support for NAFTA but pledged not to sign it until environmental and labor side agreements were successfully negotiated. Following long negotiations, the three parties agreed to the North American Agreement on Environmental Cooperation (NAAEC) in August 1993. It called for the creation of a tri-national Commission for Environmental Cooperation to monitor and report on the environmental effects of NAFTA—to handle public inquiries, consider sanctions, and oversee conservation efforts. And in October 1993, Mexico and the United States reached the Border Environment Cooperation Agreement, which created two new institutions—the Border Environment Cooperation Commission and the North American Development Bank—to oversee and finance environmental infrastructure projects at the border.[16]

After months of presidential calls to Congressional members and key lawmakers, as well as other lobbying efforts by the administration to promote the passage of NAFTA, Congress approved the agreement in November 1993. While many hailed NAFTA as the first substantial trade agreement to seriously address the connection between the environment and development, environmental groups were split in their reaction to the vote. Supporters of NAFTA pointed to the fact that NAFTA protected the right of each country to establish any standard it wanted as long as it sought "legitimate" environmental objectives, was based on scientific data, and treated foreign and domestic products alike. Furthermore, the environmental side agreement established a means to seek sanctions for lax enforcement of environmental laws. If the Commission for Environmental Cooperation found that a country was violating or not enforcing its laws, it could impose fines and ultimately impose trade sanctions.[17]

12 In fact, Mexican standards on environment and health approximated those of its northern neighbors. It was enforcement of those standards which was lax in Mexico.

13 The American Federation of Labor and Congress of Industrial Organizations was the umbrella organization of labor unions in the United States.

14 Lane Kirkland, "U.S.-Mexico Trade Pact: A Disaster Worthy of Stalin's Worst," *Wall Street Journal*, April 18, 1991, p. A17.

15 NEPA required environmental assessments of major actions *by government agencies* that may have an environmental impact. The appeals court ruled that, since NAFTA was negotiated with the integral involvement of the President and was not "final agency action," the courts had no jurisdiction in the matter. (Mary Benanti, "NAFTA Environmental Study Not Needed, Court Rules," *Gannett News Service*, September 24, 1993.)

16 Daniel Magraw, "NAFTA's Repercussions: Is Green Trade Possible? North American Free Trade Agreement," *Environment*, vol. 36 (March 1994).

17 "Nafta and the Environment," *The New York Times*, September 27, 1993, p. A16.

European Community

In its drive during the 1980s to add social cohesion to economic collaboration, the European Community (EC) found it necessary to centralize much of its members' environmental policymaking. By the end of the decade, environmental policy had become a mainstay of EC activity, institutionalized in the treaties which gave the EC its authority. The EC directorates for Environment and Trade had issued more than 200 directives and regulations covering most aspects of environmental management, some in great detail. Furthermore, the EC acted as a single negotiating unit for its member states with increasing frequency, a notable example being the 1988 negotiation of the Montreal Protocol on ozone layer protection. The transfer of authority for environmental policy from national governments to the central commission occurred largely for economic reasons:

> As the economic reforms of the EC began to take hold, the costs of economic growth without regard for the environment became increasingly apparent. It also became apparent that separate initiatives by individual member states to adopt environmental standards might be futile. . . . Differing standards could distort competition in some industries.[18]

This harmonization of member-country standards was not without friction. A prominent test occurred in the 1980s when Denmark enacted a law requiring that bottlers market all soft drinks and beer in reusable containers. Bottlers in neighboring countries charged that the law put their products at an unfair disadvantage, because their costs incurred in transporting empty containers back to bottling plants were higher than those of Danish firms. The European Court of Justice ruled in favor of Denmark, judging that, since environmental protection was "one of the Community's essential objectives,"[19] it was a valid goal of trade-restrictive measures, which the Danish law was considered to be. The ruling was "clearly a landmark decision. It was the first case in which a member state sought to justify a limit to trade strictly on environmental grounds, and also the first time the Court sanctioned a trade barrier on the same grounds."[20]

The ruling opened the door for several subsequent laws by EC nations. The most notorious was Germany's stringent recycling law of 1991. It required all companies to take back and recycle all materials used in packaging their goods, or pay another company to do so, by the start of 1993. The European packaging industry complained that the law, in the words of the *Economist*, crossed "the indistinct line between national environmental protection and protection of a more reprehensible sort."[21] The law nevertheless went into effect, without legal challenge.

The program that German industry set up to meet the requirements of the recycling law[22] suffered from the effects of its own success. By 1993, so much packaging material had been collected that it far exceeded the demand in Germany for goods made from recycled materials. Neighboring EC countries were flooded with the subsidized excess German waste. Their governments and domestic recycling industries complained. French wastepaper merchants demonstrated in Paris; France threatened to ban imports of waste materials from Germany. Because the costs of waste management proved higher than earlier, optimistic estimates, the national recycling program announced in mid-1993 that it would need an infusion of DM500 million ($293 million) to avoid collapse, and further restructuring would almost certainly be necessary.

Other national laws in Europe aimed to reduce solid waste by assigning responsibility to companies for the final fate of their products, or by instituting green labeling programs, mandatory deposits on products such as bottles, and bans on materials such as plastics. All of these standards disrupted trade to a greater or lesser extent. Perhaps the most wide ranging of these standards was a proposed German law on automobiles, requiring manufacturers to take back and recycle auto bodies at the end of their usefulness. Though driven by green

18 Nigel Haigh and Konrad von Moltke, "The European Community: An Environmental Force," *EPA Journal*, vol. 16, no. 4 (July/August 1990): 59.

19 "Commission of the European Communities vs. Denmark" (case 302/86), 20 September 1988: [1988] ECR 4607, [1989] 1 CMLR 619. Gaz: 302/86.

20 Dr. Giandomenico Majone, "Protecting the Environment or Protecting Industry?: Environment and Trade in the European Community," (Harvard University, Cambridge, Mass., March 26, 1993, photocopied), p. 5.

21 "Free Trade's Green Hurdle," *Economist*, June 15, 1991, p. 61.

22 In response to the recycling law, which was known as the *Töpfer Law* after Germany's environment minister, German companies set up an organization named Duales System Deutschland (DSD). Manufacturers and distributors were required to join DSD or take back their own packaging. DSD members paid a fee for the right to put green dots on their packages. Dotted packages could be left in any of widely dispersed DSD bins.

intentions for all appearances, these recycling laws often affected commercial ends too. "The truth is that obligatory recycling protects markets as well as the environment. Signing on to the DSD scheme, for instance, puts one more barrier in the way of a foreign firm wanting to sell in Germany."[23]

GATT

In 1988, the U.S. Congress amended the Marine Mammal Protection Act (MMPA), which dated from 1972. The amendment banned imports of tuna caught by all countries that continued to use fishing methods fatal to dolphins, and that killed dolphins at a greater rate than did the U.S. commercial fishing fleet.[24] The ban extended to nations acting as trade intermediaries to such countries. The target of the ban was purse-seine nets. For unexplained reasons, schools of yellowfin tuna often swam beneath dolphins in the eastern Pacific Ocean, making both species targets for fishing boats using these nets. As the nets were reeled in, dolphins drowned.

The Bush administration was said to oppose the new requirement because it angered the Mexican government at a time when the nations were in preliminary discussions for a free trade agreement.[25] When the White House attempted to evade enforcement of the law, Earth Island Institute filed a lawsuit against the federal government. In 1991, a federal court enjoined the U.S. Department of Commerce to enforce the law. The department imposed an embargo on tuna imports from Mexico and several other nations. Mexico, with an economically important tuna fishing fleet, subsequently filed a complaint with GATT.

GATT, which was created after World War II as an arm of the United Nations, was both a set of rules and an institution based in Geneva. Its guiding doctrine was nondiscrimination in trade. Signatories had to treat domestic and foreign products and industries equally, and had to treat every other signatory's goods as favorably as they treated those of the most favored nation. When disputes occurred, the GATT bureaucracy assembled panels of trade experts to arbitrate. The panel findings were nonbinding until adopted by the General Assembly of GATT, which comprised representatives of all 100-plus signatory nations.

On its surface, the marine mammal act appeared to adhere to GATT rules. It applied equally to domestic and foreign boats. Furthermore, the General Agreement allowed signatories to disregard other GATT rules under certain conditions, two of which related to environmental values:

> 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 prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: . . . necessary to protect human, animal or plant life or health; [or] . . . relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.[26]

Both of these aims were stated in the text of the MMPA. Mexico charged that the law reflected protectionism and economic coercion, however. In late 1990, Mexico filed an official complaint with GATT—a move purportedly suggested by the Bush administration, which was concerned that the attention focused on the dispute might scuttle NAFTA.[27] (Mexican fishermen had denounced the MMPA as an example of actions that could be expected if NAFTA was passed.) The European Community and seven other nations submitted third-party briefs in support of Mexico's position.

The Mexican complaint extended to a newer, related U.S. law, the Dolphin Protection Consumer Information Act of 1990. This law required tuna products labeled "dolphin safe" to meet certain standards for dolphin protection. Congress's intent was to encourage voluntary labeling by tuna packagers, which had found that American consumers were differentiating between dolphin-safe and dolphin-inimical tuna.[28]

The three-person GATT arbitration panel concluded that the MMPA was incompatible with GATT precepts.

23 Frances Cairncross, "All That Remains. A Survey of Waste and the Environment," *Economist*, May 29, 1993, p. 12.2

24 In 1987, the U.S. fleet killed 13,992 porpoises, compared with more than 103,000 killed by foreign fleets. ("Marine Mammal Protection Act Amendments of 1988," 16 U.S.C.A. 1371.)

25 Paul Reuber, "Trading Away the Environment," *Sierra*, January/February 1992, p. 24.

26 General Agreement on Tariffs and Trade, *Basic Instruments and Selected Documents* (Geneva: GATT, May 1952), pp. 48–49.

27 "Divine Porpoise," *Economist*, October 5, 1991, p. 31.

28 Kathleen Deveny, "Tuna Firm Hopes New Bait Hooks Buyers," *Wall Street Journal*, April 22, 1993, p. B1.

First, applying environmental regulations outside of a nation's jurisdiction would be a breach of other nations' sovereignty. Second, making trade regulations hinge upon other nations' processes of production would be "eco-colonialism"—the use of commercial and political muscle to impose the green values of one country or one set of countries on others. The contents and denizens of the oceans—and, by extension, other "global commons" such as Earth's atmosphere—were beyond the control of any single nation, regardless of the appropriateness of that nation's environmental policies.

Environmentalists were dismayed with not only the decision's effect on dolphins but also its broader impact. Viewed as a legal precedent, it appeared to compromise the legitimacy of several existing multilateral agreements on environmental protection which sought to protect animals and goods in the global commons. A political storm ensued. "The implications of the decision for a wide array of U.S. laws and programs are truly frightening," said U.S. Representative Gerry Studds, who with several dozen Congressional colleagues sent letters of protest to President Bush. The Sierra Club was apoplectic:

> Meeting in a closed room in Geneva last June, three unelected trade experts . . . conspired to kill Flipper. . . . Because of the extraordinary breadth of the GATT decisions, however, potential victims of free trade are not limited to finny mammals. . . . Out go international bans on driftnetting, whaling, and seal-clubbing. . . . And if you want to protect the ozone layer, make sure you're acting in your own airspace.[29]

When the GATT arbitration panel referred its findings back to the disputants, they responded gingerly, downplaying its significance and shelving its resolution until a more appropriate time. The two administrations agreed to defer referral of the matter to the General Assembly indefinitely. Several months later, an attempt by the United States, Mexico, and Venezuela to resolve the impasse bogged down. The three countries proposed a five-year moratorium on the use of purse-seine nets in Pacific tuna fishing. The proposal was dropped when several members of Congress expressed unequivocal opposition to changing the MMPA, which the pact would have required.

The panel decision, though the most significant clash of environmental and trade values, and the one that attracted by far the most attention, was not the only objection that many environmentalists had toward GATT. The *Economist* summarized the most common grievances:

- Trade liberalization encourages economic growth, and so damages the environment.
- GATT (and the proposed North American Free Trade Agreement), by limiting national sovereignty, limits the right of countries to apply whatever environmental measures they choose.
- GATT does not allow countries to keep out a product because of the way it is produced or harvested.
- GATT prevents a country (from) imposing countervailing duties on imports produced under lower environmental standards than its own. It also discourages subsidies, which are one way to compensate producers for meeting higher environmental standards than their rivals.
- GATT will—if certain Uruguay-round[30] proposals are agreed [upon]—encourage the harmonization of product standards. This would expose higher standards on, for instance, food additives or pesticide residues, to challenge as trade barriers.
- GATT prevents countries [from] imposing export bans, which they may want to use to protect, say, their own forests or elephants. American environmentalists want to ban the export of certain pesticides that are prohibited in the United States but sold to developing countries.
- GATT frowns on the use of trade measures to influence environmental policy outside a country's territory. Yet increasingly the issues that arouse environmental passion are those affecting what greens call the "global commons"—the oceans and atmosphere, animal and plant species threatened with extinction—that concern all countries.
- GATT may undermine international environmental agreements, through its prohibition of trade measures that discriminate against individual nations. Yet such measures may be the most effective way for countries that play by the rules of an international agreement to penalise others that do not.

29 Paul Rauber, "Trading Away the Environment," *Sierra*, January/February 1992.

30 Negotiations to amend GATT took place every few years. The latest were known as the Uruguay Round, after the location of the declaratory meeting. The round began in 1986 and was originally due to conclude at the end of 1990.

GATT resolves disputes in a secretive way, without allowing environmentalists to [state] their arguments and without making important papers on a case available to them.[31]

GATT began to respond to the criticism in 1992. The GATT Secretariat issued a report defending the effect of the General Agreement on the environment, and the director-general promised that the next negotiating round would focus on trade aspects of environmental agreements and environmental aspects of trade agreements. At the request of Scandinavian members, an official GATT working group on Environmental Measures and International Trade was revived. The group had been formed in 1970 but had never been convened.

After more than seven years of bitter arguing, ministers from 109 countries signed the Uruguay Round of the GATT negotiations in April 1994. Prior to the signing, the United States tried to make GATT more environmentally friendly by instituting a committee which would examine whether trade rules should be changed to accommodate environmental objectives. Reflecting the suspicion among developing countries—especially the large exporting countries of Asia—that the United States and other industrialized countries were simply using environmental issues as a disguised form of nontariff protection, India, Brazil, and other developing countries blocked the proposal. Nevertheless, it appeared inevitable that environmental issues would play an even greater role in future trade negotiations. To examine the relationship between the multilateral trade agreement and international environmental agreements, a new World Trade Organization (WTO)[32] Subcommittee on Trade and the Environment was established at the close of the Uruguay Round. This subcommittee's mission was to consider whether environmental provisions such as green taxes undermined free trade principles, and report on the reconciliation of environmental objectives and free trade goals. It was to report back to the WTO in 1996.[33]

MULTILATERAL ENVIRONMENTAL AGREEMENTS

In a 1991 report on GATT's environmental effects, the GATT Secretariat examined multilateral environmental agreements and national trade regulations with environmental rationales (see **Exhibits 2** and **3**). Trade measures were found to be employed in 17 of 127 multilateral agreements, at least three of which posed problems for GATT: the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Montreal Protocol on Substances That Deplete the Ozone Layer (see **Exhibit 4**). In addition, multilateral and unilateral measures to protect tropical timber contained trade provisions which raised difficulties for GATT.

The Basel Convention. This accord was drafted in 1989 in Basel, Switzerland, and took effect in mid-1992 when 20 national governments, which was the minimum number necessary, ratified it. Although the United States was involved in the negotiations and the Senate voted to approve the treaty, no legislation to put its terms into effect was enacted. Thus, as of 1994 the United States was still not a full partner to the pact, making it the only western industrialized country, or Organization for Economic Cooperation and Development (OECD) member, that was not among the ratifiers. The convention's objectives were to limit transboundary movement of hazardous waste and regulate the remaining international trade. Because most transboundary movement of hazardous waste occurred only when some company or person shipped it, trade controls were central to the agreement. It prohibited trade in hazardous waste with non-Parties, except where separate, bilateral agreements were reached. It required a hazardous-waste exporting nation to notify the recipient nation of an intended shipment and receive the recipient government's written approval before proceeding. The convention contained a *caveat venditor* clause, endeavoring to move environmental responsibility from the importer of hazardous waste to the exporter; governments were to disallow exports if they believed that the waste would not be disposed of "in an environmentally sound manner." In instances where shipments of hazardous waste had occurred, but environmentally sound disposal had not, the convention required the return of the hazardous waste to the country of origin.

In the beginning of 1994, the Clinton administration sent legislation to Congress to bring American waste

31 "A Catalogue of Grievances," *Economist*, February 27, 1993, p. 26.

32 Effective 1995, the World Trade Organization was to take the place of GATT.

33 Doral Cooper and Melissa Coyle, "Thinking Green at the Trade Talks," *Legal Times*, June 20, 1994, p. 32

disposal legislation in line with the Basel Convention. Then, in March 1994, Basel signatories agreed to tighten the existing rules, and ban the shipment of hazardous industrial wastes and residues produced in any industrialized, or OECD, country, to any non-OECD country. The United States, objecting to a total ban, argued that western industrialized countries should be allowed to continue exporting some wastes for recycling, such as scrap metal, if the governments concerned agreed. The U.S. Chamber of Commerce withdrew its support for ratification of the treaty, stating that a ban of any kind was contrary to the goals of open world trade, and that the ban on shipments of waste heading for recycling plants in developing countries could cost the United States about $2.2 billion per year.[34]

CITES. This agreement, which sought the protection of endangered species, was brought to life with great fanfare in 1973 as the "Magna Carta for wildlife." Since many endangered species were migratory and crossed international borders, this agreement could be effective only if a large number of nations signed on. By 1993 the number of signatory nations had grown to more than 120. Many different animals—including species of elephants, rhinoceroses, whales, turtles, bears, seals, bats, and migratory birds, among others—were designated endangered species by majority vote of the signatories. That designation outlawed trade in those animals and their body parts.

The success of CITES was mixed. A ban on trafficking of rhinoceros horns constricted supply without lessening demand. As the price of horns in East Asian markets shot up to around $2,000 per kilogram,[35] poaching in Africa accelerated. Conservationists in several countries responded with an unorthodox but creative measure, sawing off rhino borns to reduce the value to poachers of rhinos afoot. Conversely, a 1989 ban on international trade in ivory, instituted to protect the African elephant, was "one of the only success stories in conservation," according to a noted researcher and author on elephants.[36] The wisdom of the ban was passionately disputed, however. Some experts called for "sustainable utilization" instead: killing elephants in numbers that herds could replace, and using proceeds from sales of ivory and other body parts to support conservation programs. In 1992, six southern African nations requested that CITES permit limited killing. But a large majority of signatories, including many other African nations, voted to deny the petition. While the United States several times threatened countries with sanctions for violating CITES—for example, President Clinton threatened China and Taiwan with sanctions for illegal trafficking in rhinoceros horns and tiger bones—as of the middle of 1994, the United States had never imposed sanctions on another country for trafficking in endangered species.[37]

The Montreal Protocol. Signed by 24 nations in 1987, this agreement sought to phase out emissions of ozone-depleting substances such as chlorofluorocarbons (CFCs). Countries agreed to require companies and other producers and users of ozone-depleting substances within their borders to halve emissions by 1999. Trade controls applied to non-Parties only: both imports and exports of ozone-depleting substances were prohibited. Amendments to accelerate the phase-out were drafted in 1990; they would halt emissions completely by 1999. New trade measures in the amendments would require parties to ban imports of all CFC-containing products, which covered a broad range of goods. The amendments had yet to take effect.

Tropical Timber. The first article of the 1983 International Tropical Timber Agreement (ITTA) called for sustainable management and conservation of tropical forests. That objective largely languished until 1990, when, under pressure from environmentalists, the 44 member nations of the International Tropical Timber Organization (ITTO) established guidelines for sustainable forest management. The ITTA thereby became "the first and so far only commodity trade agreement to contain environmental and conservation goals."[38] The ITTO agreed on the year 2000 as the target for the conduct of all international tropical timber trade (95% of which was accounted for by ITTO members) according to the guidelines.

Despite these agreements, relations among ITTO members were contentious. In 1985, Indonesia had

34 "Momentum for Basel Convention Bill Said Lost Since Industry Pulled Support," *BNA International Environment Daily*, May 23, 1994.

35 "Government Under Fire for Inaction in Protection of Rhinos, Elephants," Agence France Presse (news service report), June 7, 1993

36 Cynthia Moss quoted in Joy Aschenbach, "Conservationists Trying Radical Ways to Preserve 'Megaspecies,'" *Los Angeles Times*, June 20, 1993, p. A-22.

37 "U.S. Panel Wants Trade Sanctions on Taiwan," *The Reuter European Community Report*, April 7, 1994

38 Stephan Schmidheiny et al., *Changing Course* (Cambridge, Mass.: MIT Press, 1992), p. 73

banned the export of raw logs and rattan, at the same time leaving the cutting of timber legal; the Philippines followed suit. The EC (comprising countries which were members of both GATT and the ITTO) objected, arguing that the move violated GATT's principle of nondiscrimination by giving favorable treatment to Indonesian and Philippine industry and by constricting the supply of raw materials. The complaint had not been settled in 1993, but the World Wildlife Fund believed the EC's position to be supported by GATT rules. Since a concomitant of the producer nations' action was reduced logging of tropical forest, WWF lobbied for a change in the General Agreement.

The disputants switched sides in 1992, after the Austrian Parliament passed a law requiring labeling of timber from tropical regions, with the aim of preserving tropical timber. Malaysia and Indonesia complained bitterly and alleged discrimination, since only timber from tropical regions, and not from temperate regions, was affected. ASEAN, the Association of Southeast Asian Nations, called the law "a unilateral discriminatory measure that cannot be accepted under GATT."[39] After Malaysia filed a protest with GATT (a move just short of requesting arbitration by a GATT panel), Austria rescinded most of the law.

The Basel Convention, CITES, and the Montreal Protocol all "break the GATT's rule that no country must treat one trading partner worse than another, by imposing more restrictive trade provisions on nonsignatories than apply to signatories," said the *Economist*.[40] In addition, CITES risked running afoul of a second rule that forbade discrimination of a product on the grounds of national origin. As long as all potential exporters agreed to abide by bans, as all did in the case of ivory, the ban would meet GATT requirements. But if any country decided to allow sales of banned animal products abroad (to non-Party nations), as some southern African nations desired with ivory, CITES import bans would automatically become GATT-illegal.

In 1993, no nation had yet complained to GATT about its treatment under multilateral environmental agreements, but the potential existed. If a clash did occur, it was unclear which code would prevail. GATT was not a freestanding institution like the United Nations, but rather a treaty—like the Basel Convention, like CITES, like the Montreal Protocol. Many nations were signatories to all or most of these.

PERSPECTIVES

Environmentalists

The attention that environmentalists paid to trade was in part a result of change in the environmental movement. Modern environmentalism had developed in the United States in the 1960s, motivated by indiscriminate use of pesticides and widespread pollution of air and water and galvanized by the 1962 publication of Rachel Carson's *Silent Spring*. By the 1990s, the nature and perception of environmental threats had changed. Many of the most prominent latterday problems—loss of biological diversity, atmospheric ozone depletion, and alleged global warming, for example—were transnational in source and damage. Their resolution required international cooperation.

Opinions varied, but in general, environmentalists believed that unregulated trade could exacerbate international environmental problems in several ways. It expanded economic development, leading to more intensive use of global resources and greater volume of pollutants. Free trade regimes might also undermine tough national regulations, either explicitly through international judicial decisions or indirectly through competitive forces in the marketplace. The specific complaints on trade-related environmental problems were many and varied, but a common theme of environmentalists was a belief that trade and environmental quality had become inextricably linked. In the words of the OECD (a multinational organization with directorates on both trade and environment), ". . . with the development of the international dimensions in both trade and environmental issues, . . . the potential for conflicts . . . is on the rise."[41]

In this light, the exclusion of environmental concerns from GATT became shortsighted at best. Because of its broad ramifications, the issue that alarmed environmentalists the most was the GATT panel decision on the MMPA. "The panel decision sits out there as some sort of a precedent unless GATT is fixed," said an anonymous White House official. ". . . [W]e need to address the broader question: How do we ensure the

39 "Certification System Would Classify Tropical-Timber Goods," *Nikkei Weekly*, December 28, 1992, p. 3.
40 Frances Cairncross, "Sharing: A Survey of the Global Environment," *Economist*, May 30, 1992, p. 13.
41 Organization for Economic Cooperation and Development, *The State of the Environment* (Paris: OECD, 1991), p. 274.

multilateral trading system accommodates and reinforces appropriate environmental laws, statutes, and values?"[42]

Economists

To many mainstream economists the logic underlying international trade rules applied to environmental considerations, and the reasoning of the GATT panel in the MMPA dispute was sound. Furthermore, many economists rejected the notion that trade was environmentally negative. They believed instead that the indirect effect of trade could be environmentally beneficial.

The reasoning behind this notion was succinctly stated by the Business Council for Sustainable Development, an international consortium of corporate leaders: "Unless nations trade, they cannot develop. Unless nations develop economically, they cannot protect their environments, clean up environmental damage, or make efficient use of resources."[43] The results of a widely quoted study by two Princeton University economists were in agreement. By measuring concentrations of sulfur dioxide, an important air pollutant, in urban areas of 42 different nations, they found that pollution increased with economic development only at low levels of national income. The relationship was reversed at higher levels, with the turning point coming at about $5,000 per-capita gross domestic product.[44]

A subsequent study by the World Bank found that the relationship between income and pollution varied with the type of pollution (see **Exhibit 5**). Some environmental problems improved with per-capita income growth "because increasing income provides the resources for public services such as sanitation and rural electricity."[45] This category included most forms of air and water pollution and some types of deforestation and encroachment on natural habitats, according to the World Bank study. However, some problems worsened as income increased, such as per-capita carbon dioxide emissions. Even then, "the key . . . is policy. In most countries individuals and firms have few incentives to cut back on wastes and emissions, and until such incentives are put into place—through regulation, charges, or other means—damage will continue to increase."[46]

Economists defended the GATT panel ruling on the tuna trade as an affirmation of the principles on which the agreement was based, not an arbitrary side ruling. The GATT Secretariat argued that acceptance of the MMPA would have created an unresolvable tension in the General Agreement. The panel had made a distinction between national regulations on products and national regulations on production. The former were allowable, but not the latter.[47]

To allow otherwise would encourage a return of the disastrous trade policies of the 1930s. "Inevitably differences exist between countries stemming from their varying histories, social aspirations, political objectives and constraints, and economic circumstances," the GATT Secretariat later wrote. "These are differences that cannot simply be ironed out to produce a generalized policy structure that is a clone of policies favoured by other countries."[48] Protection standards that Americans and other Westerners found obvious might not be so obvious to those in other countries, wrote a trade economist: ". . . [I]f we have our dolphins, the Indians have their sacred cows."[49]

Business

Many businesspeople were also suspicious of environmentalists' demands on trade policy: "From the perspective of commercial policy, environmental controls may be regarded as one more category of actual or potential trade barriers."[50] Environmentalists added to the precariousness of the world trading system, which had been instrumental in spurring prosperity since the Second World War. "The ideal of 'free trade' is today

42 Dianne Dumanoski, "Free Trade Law Could Undo Pacts on Environment," *Boston Globe*, October 7, 1991, p. 25

43 Schmidheiny, *Changing Course*, p. 69

44 Gene M. Grossman and Alan B. Krueger, "Environmental Impacts of a North American Free Trade Agreement," (National Bureau of Economic Research, Cambridge, Mass., December 14, 1991, photocopied). See "Urban Concentrations of Sulfur Dioxide," **Exhibit 5**, for a stylized version of Grossman & Krueger's graph.

45 The World Bank, *World Development Report 1992. Development and the Environment* (New York: Oxford University Press, 1992), p. 10

46 Ibid.

47 General Agreement on Tariffs and Trade, "United States—Restrictions on Imports of Tuna: Report of the Panel" (DS21/R), September 3, 1991.

48 GATT Secretariat, *International Trade 90–91* (Geneva: General Agreement on Tariffs and Trade, 1992), Volume I, pp. 29–30

49 Jagdish Bhagwati, "Environmentalists Against GATT," *Wall Street Journal*, March 19, 1993, p. A10.

50 Seymour J. Rubin, "A Predominantly Commercial Policy Perspective," in Seymour J. Rubin and Thomas R. Graham, eds., *Environment and Trade: The Relation of International Trade and Environmental Policy* (Totowa, N.J.: Allenheld, Osmun, & Co. Publishers, Inc., 1982), p. 3.

under attack from two different camps: those who would intervene for the sake of the environment, and those who are motivated to intervene on the basis of new theoretical concepts—reciprocal trade, negotiated trade, and managed trade."[51]

Not that all such trade barriers were unwarranted; preventative environmental measures were sometimes a necessity. Remedial measures were extremely costly, often in high multiples of what prevention would have cost. "There can hardly be a quarrel with the proposition that, in many cases, the requirements of environmental policy take precedence over the desiderata of world trade. Nonetheless, a measure that speaks to environmental protection may well be aimed principally at trade restriction."[52]

In the early 1980s, for example, the United States had justified a ban on imports of tuna and tuna products from Canada on grounds of conservation of exhaustible natural resources—but no catch limits had been set for U.S. fishing fleets on most of the species of tuna being embargoed. A few years later, Canada tried the same defense for its ban on exports of unprocessed herring and salmon. Similarly, no limits had been set on Canadian consumption of herring and salmon. Both laws were taken before GATT panels, which rejected the claims of each defendant in turn.

Many feared for the stability of the international trading system, which was under constant strain in the 1980s and 1990s. "The dolphin issue has really brought things to a boil," said Abraham Katz, president of the U.S. Council for International Business, an affiliate of the International Chamber of Commerce. "American environmentalists are not only attacking Mexico, but the whole system of world trade to support their concept of sustainable economic development. It could easily prompt a backlash."[53]

SOLUTIONS

Many observers of and participants in the environment-trade debate called for a meeting of minds to resolve the conflict. However, "the main protagonists speak quite different languages. The culture clash between trade experts and environmentalists is striking."[54] The latter wanted GATT's activities opened to public scrutiny and participation by nongovernmental organizations. Trade experts by and large denied that such measures were necessary or wise, saying that trade and environment, despite their increased entanglement, remained largely separate issues.

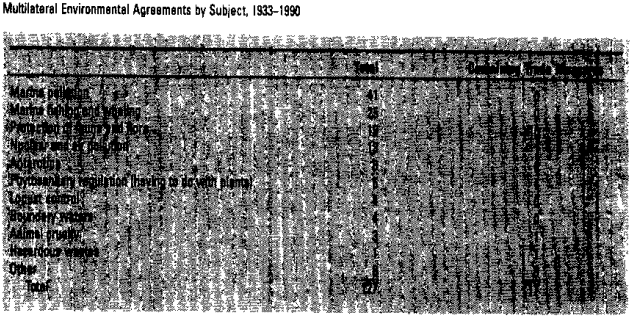
One suggested solution came from U.S. Senator Max Baucus (D-Mont.), chairman of the Senate International Trade subcommittee. He proposed creation of an Environmental Code in the GATT, to be in force until an international agreement setting environmental standards was negotiated. Under the code, international commerce in goods produced in ways violating internationally recognized norms would be banned or at least curbed. Each nation would be able to set its own environmental protection standards. Where products or processes failed to meet an importing nation's standards, that nation could charge countervailing duties, as long as the standards were supported by a sound scientific basis and were applied to competing domestic producers.[55]

The collision of environmental policies and free trade goals "raises vexing questions," wrote the Worldwatch Institute. "Under what circumstances are environmental goals legitimate grounds for suspending the usual trade rules? Are there cases in which trade considerations should override environmental ones? And who makes these difficult decisions?"[56]

51 Schmidheiny, *Changing Course*, p. 69.
52 Rubin, pp. 3-4.
53 Keith Schneider, "Balancing Nature's Claims and International Free Trade," *New York Times*, January 19, 1992, p. 5.
54 Cairncross, "Sharing: A Survey of the Global Environment," p 14.
55 Janet Martinez, "GATT Dispute Settlement Case: Mexican Tuna" (Harvard Law School, Cambridge, Mass., 1992, photocopied), pp 14-15
56 French, *Costly Tradeoffs*, p. 41.

Exhibit 1
"GATTzilla"

Exhibit 2
Multilateral Environmental Agreements by Subject, 1933–1990



Source: GATT Secretariat, *International Trade 90–91*.

Exhibit 3
Unilateral Trade Regulations Related to the Environment, 1980–1990[a]

Area of Environmental Concern	Objective/Rationale	
	Protection of the Environment	Public Health and Safety
Hazardous substances	87	94
• General	5	1
• Fertilizers, pesticides, insecticides, fumigants	20	51
• Ozone-depleting substances	16	0
• Polychlorinated phenyls (PCBs, PCPs, and PCTs)	6	3
• Heavy metals	3	6
• Chlorine and PVC plastic	3	0
• Other chemicals and toxic products	34	33
Air pollution	71	8
Noise emissions	20	24
Energy conservation	2	22
Transport of dangerous products	5	11
Water pollution	12	0
Waste (recycling and disposal)	8	2
Radiation	3	8
Conservation of endangered species	3	0
Total	211	188

a Signatories to the Agreement on Technical Barriers to Trade, a 1979 code affiliated with GATT, were required in certain conditions to indicate the objective and rationale of newly proposed technical regulations. These conditions included times when the objective or rationale was protection of the environment or protection of health and safety of humans, animals, and plants.

Source: GATT Secretariat, *International Trade 90–91*.

Exhibit 4
Selected Multilateral Environmental Agreements with Trade Provisions

- The Convention on International Trade in Endangered Species of Wild Fauna and Flora [(CITES)], 1973

Objective is the protection of endangered species against overexploitation through international trade.

Trade provisions: Trade of species threatened with extinction . . . and trade in species that may become endangered unless trade is strictly regulated . . . is authorized by export and import permits approved by the Scientific Authorities of the Parties concerned. . . .

Species that a Party identifies as being subject to regulation within its own jurisdiction and as requiring international cooperation to control trade . . . is subject to an export permit authorized by the Scientific Authority of the Party. . . .

[CITES] permits a Party to exempt itself from the requirements of the convention with regard to a specific species. . . .

Note: CITES builds on a long history of controlling trade in endangered species through the issue of export permits. It adds the twist of requiring an import permit for an export permit to be issued, in order to prevent circumvention [by] non-Parties.

- Montreal Protocol on Substances That Deplete the Ozone Layar, 1987

Objective is to reduce and eliminate man-made emissions of ozone-depleting substances.

Trade provisions: Trade provisions affect non-Parties only.

Parties are to ban the importation of controlled substances as of 1 January 1991, and ban the export of controlled substances as of 1 January 1993.

Parties are also to ban the export of the relevant [production] technology to non-Parties.

The 1990 amendments, which are not in force, require Parties to ban the importation of CFC-containing products as of 1 January 1993.

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 (ratified by minimum number of governments in 1992)

The **objectives** of the agreement are to limit the transboundary movement of hazardous waste among party countries, to set up notice and consent procedures, to define the scope of the agreement, and to define what constitutes illegal traffic, and [to define] the responsibilities of the parties.

Trade provision: Categories of waste are defined . . . and characteristics of hazardous waste. . . .

In addition, a Party may define as or consider to be a hazardous waste other substances in its domestic legislation.

Each Party may prohibit the import of hazardous wastes for disposal and shall inform other Parties; Parties shall not export hazardous wastes to a Party unless the State of import consents in writing, provided the State has not prohibited the import; [a] Part[y] shall not allow the export of hazardous waste to a Party or prevent the importation of a hazardous waste if it has reason to believe that the waste will not be disposed of in an environmentally sound manner; trade [in hazardous waste] with non-Parties is prohibited [except where separate, bilateral agreements are entered into]. . . .

A proposed transboundary movement of hazardous wastes or other wastes shall be notified by the State of export to the State of import, which must consent to the movement with or without conditions, and export will be allowed only if the disposal will be conducted in an environmentally sound manner . . . , and [the State of export shall] re-import the material if this is not the case. . . .

Illegal traffic in hazardous wastes is also subject to the duty to re-import.

Notes: (i) The agreement leaves open a definition of hazardous waste;

(ii) [It] recognizes the necessity of developing rules on liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes. . . .

Source: GATT Secretariat, *International Trade 90–91.*