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The Environment and International Trade

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This article examines the increasingly important and often contentious relationship between international trade and environmental regulation in the United States. It begins by explaining why these two policy areas have recently become more interdependent and then explores some of the specific controversies surrounding the contemporary linkages between trade policy and environmental regulation. The article concludes by analyzing the long-term political and economic impact of the relationship between trade and environmental policy.

The growth of policy linkages between the formerly distinct policy areas of trade and environmental regulation is related to the convergence of two postwar trends: a reduction in trade barriers and an increase in environmental regulation. ¹

Since the mid-1930s, the United States has played an important leadership role in promoting free trade. In 1948, twenty-three nations led by the United States entered into a General Agreement on Tariffs and Trade (GATT), which committed its signatories to reduce barriers to trade among them. A series of "rounds" of global trade talks steadily reduced tariff levels. By the time of the eighth round of trade negotiations, known as the Uruguay round, trade negotiators had begun to pay increasing attention to reducing nontariff barriers (NTBs) as well. These are government policies that discriminate against imported products through means other than tariffs. Examples of NTBs include quotas, procurement policies favoring domestic producers, and government health safety and environmental regulations. Many of the latter, often inadvertently, but sometimes intentionally, restrict trade by imposing greater burdens on foreign producers than on domestic ones. An important accomplishment of the Uruguay round of trade negotiations, which led to the establishment of the World Trade Organization (WTO) in [End Page 72] 1995 as the successor organization to the GATT, was to strengthen the ability of the GATT/WTOs to prevent national standards from serving as "technical barriers to trade." It did this by strengthening the Agreement on Preventing Technical Barriers to Trade, commonly referred as the Standards Code, making it an official part of the GATT/WTO agreement, and establishing new procedures to facilitate its enforcement.

As a result of trade liberalization, an increasing number of public policies that were formally the exclusive purview of national governments have become subject to international scrutiny. Many national environmental policies have become globalized. In formulating their environmental policies, nations must now take into account their impact not only on national producers but on their foreign competitors as well. At the same time, trade agreements have provided foreign producers with a legal vehicle for challenging the domestic regulations of their trading partners, if those regulations appear to discriminate unfairly against their exports.

The second trend fostering increased policy linkages between trade and regulation has been the steady expansion of environmental regulation. The past three decades have witnessed a significant increase in the number of government regulations that directly affect traded goods. These include automobile emission standards; rules governing the content and disposal of packaging; chemical safety regulations; regulations for the processing, composition, and labeling of food; and rules to protect wildlife and natural resources. The steady growth of protective regulation has forced exporters to cope with an increasingly diverse and complex array of national standards, many of which have made trade more difficult. Because nations generally want to maintain their own standards in spite of—or sometimes because of—the burdens they impose on imports, the continual growth of national environmental regulations has become a growing source of trade conflict.

The geographic scope of environmental policy has also expanded over the last two decades. Many environmental problems require actions by more than one national government if they are to be effectively addressed. These include saving endangered species located in foreign lands or international waters, protecting the ozone layer, safeguarding the shipment and disposal of hazardous wastes, and preserving tropical forests in developing

countries. Many international environmental agreements include trade restrictions either as a means to prevent "free riding" or because the harm itself is trade related.

More controversial are the initiatives of a number of "green" countries to use trade restrictions as a way of changing the domestic environmental practices of their "less green" trading partners by keeping out products made in environmental harmful ways. Many developing countries have strongly criticized [End Page 73] this use of trade restrictions by developed countries as a form of "eco-imperialism," while environmentalists regard the use of such eco-barriers as an effective and responsible way for the citizens of "green" countries to "improve" the environmental practices of developing nations.

As a result of the expansion of both trade and regulation, the debate between supporters of environmental regulation and advocates of free trade has become both more visible and more contentious. Free-trade advocates want to limit the use of regulations as barriers to trade, while environmentalists and consumer advocates want to prevent trade agreements from serving as barriers to regulation. The trade community worries about an upsurge of "eco-protectionism"--the justification of trade barriers on environmental grounds. For their part, consumer and environmental organizations fear that trade liberalization will serve to weaken both their own country's regulatory standards as well as those of its trading partners--a point that was frequently made during the heated debate over American ratification of the North American Free Trade Agreement (NAFTA) during the late 1980s and early 1990s.

Trade and Environment and the GATT

Tuna/Dolphin

The first time an environmental issue significantly intruded into trade politics in the United States occurred in 1991, when a GATT dispute panel found that an American statute banning imports of tuna from nations whose dolphin protection standards were laxer than American ones violated America's treaty obligations under the GATT. The origins of this controversy dates from the 1960s, when American commercial fisherman abandoned traditional pole-and-line fishing and began to employ purse seines to catch tuna. ² Purse seines are enormous nets approximately one mile long and 600 feet deep, which are placed under and around schools of tuna. They are then tightened, the water is gradually let out of them, and the tuna are brought on deck. By the early 1970s, the United States purse seine fleet numbered more than one hundred vessels, each costing between six and ten million dollars and capable of holding more than one thousand tons of tuna. Because many dolphins drowned when the nets designed to trap the tuna swimming beneath them were tightened, the introduction of this new fishing technology had a catastrophic effect on dolphin mortality. By the end of the 1960s, tuna fishing boats in the eastern tropical Pacific (ETP)--nearly all of which were American-owned--were killing close to half a million dolphins each year. [End Page 74]

Public outcry over the increase in dolphin deaths helped prompt passage of the Marine Mammal Protection Act (MMPA) in 1972. This legislation, which sought to protect all warm-blooded animals that swim in the oceans, established as a goal of American policy the reduction of the rate of dolphins killed or maimed to "insignificant levels." At congressional hearings on the reauthorization of the MMPA in 1988, a broad coalition of twenty-eight national environmental organizations urged Congress to legislate a four-year phaseout of all purse seine fishing. While Congress refused to do so, the 1988 Amendments to the MMPA did impose regulations on imports of tuna from foreign fishing vessels as well as domestic ones. They specifically limited the number of dolphins that could be killed in the ETP by foreign tuna vessels to an incidental killing rate not to exceed 1.25 times the average of the U.S. fishing fleet. The Amendments also stated that, "unless the Secretary of Commerce issued a finding that foreign tuna imports met standards comparable to those of the United States, these imports must be banned." ³

In 1988, American officials began to express concern to the Mexican government about the number of dolphins being killed by Mexican owned fishing vessels. The Mexican government agreed to modify its tuna fishing regulations, and the number of dolphins killed by its fishing fleet declined significantly. ⁴ Nonetheless, largely because the number of American dolphin kills had fallen even more dramatically, Mexican fishing fleets were still killing dolphins at a higher rate than their U.S. counterparts. In the fall of 1990, the Earth Island Institute, a California nonprofit organization, sued the Department of Commerce to enforce the Act's restrictions on tuna imports. In October 1990, a U.S. District Court ordered the Secretary of Commerce to ban all tuna imports from Mexico, Venezuela, and the Pacific island of Vanuatu.

For Mexico, which had joined the GATT in 1986, the American tuna embargo represented an effort by a developed nation to use environmental standards to protect domestic firms from competition from producers in developing nations. In February 1991, with the support of several other nations, Mexico filed a formal complaint with the GATT.

In August 1991, a GATT dispute panel found that the American trade embargo violated the "national treatment" provisions of the GATT. According to the panel, GATT rules do not permit signatory nations to restrict imported products on the basis of how they are produced outside their legal jurisdiction. Otherwise, the panel concluded, nations would only be assured of access to the markets of those countries whose regulations were similar to their own.

The GATT dispute panel ruling was the most visible--and controversial--in the trade agreement's forty-four-year history. American environmental **[End Page 75]** groups were outraged by it. David Phillips, the executive director of the Earth Island Institute, stated that the Mexicans "are kidding themselves if they think that GATT can force the U.S. to abandon laws to protect the global environment. In the 1990s, free trade and efforts to protect the environment are on a collision course." ⁵ A spokesman for Congress Watch, a public-interest lobbying group founded by Ralph Nader, characterized the GATT panel's decision as a "breathtaking attack on the progress made in the last 10 years." ⁶ A policy analyst for the World Wildlife Fund depicted the decision as "a major setback because it totally disregards legislation designed to provide environmental protection for common resources." ⁷

Congressional reaction was equally hostile. At a congressional hearing on the GATT ruling, Congressman Henry Waxman (D-Calif.), chairman of the House Subcommittee on Health and the Environment, stated: "This is a worst-case scenario come true--repeal of a vital environmental law because of conflict with a trade agreement." ⁸ A group of Congress members wrote a letter to the President that stated: "This inhumane ruling would run roughshod not only over these hard-fought dolphin protection measures, but over our fundamental right to engage in worldwide conservation measures." ⁹ Sixty-four Senators and nearly a hundred Representatives wrote to President Bush stating that they would refuse to weaken the MMPA and demanded the GATT be changed to make it compatible with all American environmental laws.

Greening the GATT

The tuna/dolphin case served as a catalyst for putting environmental protection on the agenda of the domestic debate over the provisions of the Uruguay Round, which was then being negotiated. For many environmentalists, the dispute panel ruling in the tuna/dolphin case demonstrated the inadequacies of GATT rules to allow nations to address legitimate environmental concerns. Indeed, even before the panel had issued its ruling, a number of environmental organizations had begun urging that the GATT be amended to take into account the growing importance of environmental issues. Now the case for GATT reform had become even more compelling. As one activist put it, "If a 19-year old conservation law not generally perceived to be protectionist in intent, could be viewed by a GATT panel as a fundamental violation of world trade rules, then it became easy to explain to the public why such rules were in need of reform." ¹⁰ At demonstrations in front of the American Capitol, environmentalists carried posters depicting a monstrous "GATTzilla," with a dolphin in one arm and a canister dripping DDT in the other, chanting GATT's new meaning: "Guaranteeing A Toxic Tomorrow." ¹¹ The Earth Island Institute claimed that "without substantial **[End Page 76]** overhaul, GATT will pose a grave threat to environmental protection laws throughout the world." ¹²

A broad coalition of environmental organizations proposed a number of reforms in the GATT. ¹³ They included a provision permitting "pace-setting" governments which had enacted standards higher than the international norm to block imports from countries having lower environmental standards or employing harmful industrial processes. This would enable governments to keep out a product because of the way it was produced or harvested: "If GATT is not to be an impediment to the switch to clean production, the definition of 'like' product must be changed to take into account a product's impact on the environment." ¹⁴

In addition, "a green GATT would also authorize trade barriers against governments failing to enforce their own environmental laws or violating existing environmental agreements." ¹⁵ A related proposal would permit signatory nations to impose countervailing duties on imports produced under environmental standards lower than their own on the grounds that the failure to enact and enforce adequate pollution control laws or resource conservation standards constituted an unfair subsidy.

The Uruguay Round agreement, which was signed by 132 countries, did not attempt to address any of the specific issues raised by the tuna/dolphin dispute, let alone the broader questions about the future relationship between trade and the environment. The trade negotiators in Geneva, preoccupied with other pressing issues, had neither the interest nor the capacity to address another issue. However, largely as a response to the criticism of the GATT by environmentalists, the agreement did explicitly acknowledge one principle that had formerly been implicit. The preamble to the Standards Agreement marked the first mention of the word "environment" in the text of this international trade agreement.

The agreement affirmed the right of each country to "maintain standards and technical regulations for the

protection of human, animal, and plant life and health and of the *environment*" (italics added). ¹⁶ It also noted that a country should not be prevented from setting technical standards (which include environmental regulations) "at the levels it considers appropriate," a phrase meant to discourage nations from harmonizing standards in a downward direction. ¹⁷ In addition, an Agreement on Subsidies and Countervailing Measures permitted governments to subsidize up to 20 percent of one-time capital investments to meet new environmental requirements, provided that its subsidies are "directly linked and proportionate" to environmental improvements. ¹⁸

Most important, the trade negotiators formally agreed to address the relationship between trade and environment in their future negotiations. In an **[End Page 77]** effort to diffuse criticisms from environmentalists, the GATT agreed to an American initiative to convene its Working Group on Environmental Measures and International Trade. This committee had been established in 1971 but had never met. At the GATT's April 1994 ministerial meeting in Marrakech, which officially ratified the results of the Uruguay Round negotiations, a resolution was approved that committed the newly established World Trade Organization to undertake a systematic review of "trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members." ¹⁹ A working group was charged with looking at the overall relationship between fair trade rules and environmental measures and with suggesting changes in WTO rules to make the trade agreement more compatible with environmental standards.

The CAFE Dispute

After the Uruguay Round negotiations were concluded, but before the Uruguay Round agreement was voted on by Congress, a GATT dispute panel issued a decision in a second trade dispute involving a foreign challenge to an American environmental regulation. The European Union had requested the convening of a dispute panel to determine the GATT consistency of three American automobile regulations and taxes, namely, corporate average fuel economy standards (CAFE), the so-called gas-guzzler tax, and a tax on luxury cars. The former two were environmental/conservation measures, while the third was a revenue one. The EU claimed that all three measures were discriminatory since their burdens fell disproportionately on European car exports to the United States. While vehicles manufactured in Europe accounted for only 4 percent of American car sales in 1991, they contributed 88 percent of the revenues collected by these measures.

Of the three regulations and taxes addressed in the EU's complaint, CAFE was the most politically important. Originally established in 1975 in the midst of the energy crisis, and subsequently tightened in 1980, CAFE standards are designed to promote fuel efficiency. They are based on the miles per gallon achieved by the sale-weighted average of all vehicles sold by each manufacturer. If a manufacturer's vehicles fall below this standard, they are subject to a substantial financial penalty. Although the penalty applies equally to all car makers doing business in the United States, it has been paid exclusively by European manufacturers. American and Japanese firms have been able to avoid CAFE penalties by averaging their smaller, more fuel-efficient vehicles with their larger, less fuel-efficient ones. The European firms, however, do not have this option since they only export fuel-inefficient luxury vehicles to the United States. **[End Page 78]**

The *Financial Times* predicted that "should the United States lose this case, it would face as much outcry as the so-called 'tuna-dolphin decision.'" ²⁰ However, in October, 1994, a GATT dispute panel ruled in favor of the United States. It concluded that product regulations were GATT-consistent as long as they did not explicitly discriminate on the basis of country of origin and were necessary to protect public health or the environment. This GATT panel decision helped diffuse environmental opposition to the Uruguay Round Agreement, which was approved by Congress two months later.

Trade and Environment Under the WTO

Reformulated Gasoline

It is a measure of the continued importance of trade/environmental linkages that the first trade dispute adjudicated by the WTO involved the alleged use of an environmental regulation as a nontariff trade barrier. On October 17, 1996, a dispute panel ruled that American compliance standards for reformulated gasoline violated American obligations under the WTO. ²¹ The standard in dispute, issued by the Environmental Protection Agency under the 1990 Clean Act Amendments, required the sale of clean-burning gasoline in the nation's smoggiest cities beginning on January 1, 1995. To provide refiners with sufficient time to adjust their production, the EPA issued a five-year interim standard rather than a fixed one. Each year between 1995 and 1997, refiners were required to reduce the amount of olefins, a chemical that contributes to ground-level ozone concentration, by a certain percentage, with 1990 as the base year.

However, because the EPA believed that foreign data for 1990 was unreliable, this rule only applied to American

refiners. Foreign producers of gasoline were required to use the 1990 American average as their baseline. This meant that the standards applied to imported gasoline would in some cases be stricter and in other cases more lax than those for domestic producers. Venezuela, one of the primary suppliers of gasoline to the United States, filed a formal complaint with the GATT. It argued that the American rule violated the trade agreement's national treatment clause, which requires that all "like" products be held to similar standards, regardless of their country of origin. The EPA responded by proposing a corrective rule that allowed foreign refiners to establish their own baseline if they could supply adequate documentation. Venezuela's national oil company was able to do and Venezuela withdrew its complaint.

This compromise upset both American environmentalists, who regarded it as weakening an American regulatory standard in order to appease a foreign [End Page 79] producer, and the American domestic refinery industry, which, having been forced by the 1990 Clean Air Act to invest billions of dollars in new technologies for refining gasoline, wanted to maintain a federal rule that protected them from less expensive imported gasoline. A coalition of American oil companies and environmentalists persuaded Congress to require EPA to reinstate its original rule. Venezuela responded by resubmitting its complaint, first to the GATT and then to the newly established WTO. It was joined by Brazil, another gasoline exporter to the United States.

The WTO ruled in favor of Venezuela on the grounds that the United States had treated gasoline produced by foreign refiners differently than domestic ones and that it had not demonstrated that this difference was necessary to protect American air quality. The United States appealed the decision to a WTO internal review board, which in April 1996 affirmed the panel's ruling. Two months later the Clinton administration announced that it would propose changes in the application of clean air rules to bring the United States into compliance.

While roundly criticized by environmentalists, compared to the tuna/dolphin case, the political fallout from the Venezuelan gasoline case was relatively modest. Not only was it difficult for the public to become outraged over different methods for calculating the base-line standard for a relatively obscure pollutant, but even some environmentalists were prepared to admit that the American rule was motivated more by protectionism than environmental protection. A report issued by the International Institute for Sustainable Development noted:

The facts of the case speak against the United States: by all accounts, the measures Brazil and Venezuela complained against are discriminatory and statements by US officials exist indicating that they were aware of this. This was also the case in which the trade barriers erected by the United States provided little environmental benefit, except perhaps to ease the political difficulties in applying the law. ²²

Shrimp/Turtle

No sooner had the reformulated gasoline dispute been resolved than another trade dispute emerged that challenged an American environmental regulation. In 1989, Congress had passed legislation requiring that American registered shrimp boats be fitted with a device to protect turtles from becoming entrapped. In 1995, this regulation was applied to foreign fishing vessels. As a result, shrimps and shrimp products caught by foreign nationals whose countries did not require turtle protection devices could no longer [End Page 80] be imported into the United States. India, Malaysia, Pakistan, and Thailand requested the formation of a WTO dispute panel in October 1996. The four countries, whose complaint was supported by a number of other Pacific Rim nations including Australia, argued that WTO rules prohibit a nation from imposing its domestic environmental laws outside its borders. The United States countered that international trade rules permit nations to take measures that are necessary "to protect natural resources" and that most of the turtle species being killed by shrimpers endangered. Indeed, unlike dolphins, sea turtles were internationally recognized as an endangered species under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

While Thailand did enact legislation mandating turtle-exclusion devices (TEDs) on the shrimp-crawl nets used by its fisherman, and was therefore exempt from the American ban, it supported the complaint as a "matter of principle." ²³ For its part, the U.S. shrimp industry was divided. While firms that deal with imported shrimp criticized the law as discriminatory, American shrimpers endorsed the ban on the grounds that it created a level playing field.

In April 1998, a WTO dispute panel ruled against the United States; six months later its decision was upheld by the WTO's Appellate body. However, its decision was considerably more nuanced than in the tuna/dolphin case. The WTO indicated both that trade restrictions based on production process methods could be used for environmental protection purposes and that trade barriers could be used to protect natural resources, including species, outside a nation's own borders. It struck down the American statute on two rather technical grounds, namely, that the United States had gone too far in requiring other nations to adopt a regulation that was essentially the same as the United States and that it had not done enough to pursue bilateral or multilateral approaches to shrimp protection before applying its own unilateral sanctions.

While American environmentalists strongly criticized the WTO appellate decision, the political fallout from this panel ruling was less than in the case of the tuna/dolphin decision, in part because no trade agreement was either being negotiated or considered by the U.S. Congress at the time. For its part, the U.S. government chose to focus on the principles expressed in the decision and portrayed it as a victory for American environmental concerns. Unlike in the tuna/dolphin case, the United States indicated that it would comply with the panel ruling. The Department of State amended U.S. regulations, eliminating the blanket ban on shrimp from foreign countries that had not been certified by the United States and instead announcing that it would judge shipments of shrimps individually. Those that had [End Page 81] been caught by boats using TEDs would be allowed into the United States, regardless of whether the regulatory policies of their country mandated TEDs. On November 26, 1998, the United States informed the WTO that it would comply with the ruling of the dispute panel.

Tuna/Dolphin: The Resolution

While the shrimp/turtle ruling was still pending before the WTO, the tuna/dolphin dispute was finally resolved. In May 1992, the United States, Mexico, and eight other tuna-catching nations signed the first major international accord to protect dolphins. This agreement was endorsed by the Earth Island Institute and other American environmental organizations. In October, Congress approved the International Dolphin Conservation Act, which authorized the United States to pursue an international agreement to establish a global moratorium on the use of purse seine nets that encircle dolphins, and provides for an embargo of up to 40 percent of a nation's fish exports to enforce compliance. David Phillips, executive director of the Save the Dolphins Project at the Earth Island Institute, described the legislation as "a breakthrough proposal for dolphins." ²⁴

Nevertheless, the U.S. tuna embargo remained in effect because a 1993 amendment to the MMPA had reduced the U.S. quota of dolphin kills to 800 in 1993 and to zero after February 28, 1994. Thus even though the fifty Mexican boats fishing in the ETP were only killing, on average, less than one dolphin for every shoal of tuna they netted, they were still in violation of the MMPA's 1.25 kill ratio since the number of dolphins being killed by the handful of American flagged vessels still tuna fishing in the ETP was virtually zero. While American officials admitted that "there is no longer a viable environmental argument" to continuing to enforce the embargo, environmentalists and their allies in Congress appeared "determined to enforce the law to the letter." ²⁵

After three years of intensive negotiations, a compromise was reached between the United States and the Latin American nations whose vessels fished in the ETP. In exchange for allowing their tuna to be sold in the U.S., Mexico and ten other countries pledged to cap their annual dolphin kill at five thousand animals per year. This compromise bitterly divided the environmental community. A number of important environmental organizations, including Greenpeace and the World Wildlife Fund, supported it on the grounds that opening U.S. markets was the best way to encourage more countries to fish in a dolphin-friendly manner. However, it was strongly opposed by eighty-five environmental and animal rights groups, who viewed the compromise as a trade treaty masquerading as environmental policy. After intensive lobbying by both the Mexican government and the Clinton [End Page 82] administration, legislation was enacted in the summer of 1997 that finally ended the seven-year tuna embargo.

The WTO Committee on Trade and the Environment

In January 1995, the WTO General Council officially established a Committee on Trade and the Environment (CTE). This committee, which is open to all WTO members, meets six or seven times a year. It has discussed a number of issues, including WTO rules governing the exports of domestically prohibited goods and the growing use of eco-labeling by developed countries. The latter issue has proven extremely contentious. Those nations, primarily in northern Europe, that have made widespread use of eco-labels have defended them as a valuable source of information to consumers. Many of their trading partners, however, have expressed concern that the criteria used to award labels are biased in favor of domestically produced goods. A similar controversy has arisen over the compatibility of national packaging requirements with fair-trade rules.

The most important issue addressed by the CTE concerns the relationship between multinational environmental agreements (MEAs) and WTO rules. A number of international environmental agreements contain provisions obligating their signatories to restrict the import of goods that are either proscribed or are produced in ways that are environmentally harmful. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) restricts or prohibits trade in endangered species, while the Montreal Protocol both restricts trade in ozone-depleting chemicals as well as in products made using proscribed chemicals. If a nation is a signatory to both an MEA and the WTO, the two compliment each other. But a potential problems can arise if a nation is a member of the WTO, but not a signatory to an MEA, since WTO rules restrict a nation's ability to limit imports from another WTO signatory on environmental grounds.

The EU, which maintains that "trade measures can be necessary to achieve the environmental objectives of these [environmental] agreements" has urged the CTE to support a change in the WTO agreement that would exempt

trade restrictions that are sanctioned by MEAs from WTO challenges. ²⁶ Such a rule change would affect approximately 180 agreements. The EU's proposal has been strongly opposed by developing nations, who fear that it could be used to coerce them into adopting the environmental policies and priorities of their "greener" trading partners.

The committee had hoped to resolve at least some of the issues on its agenda by the WTO ministerial meeting in Singapore in June 1996. But it **[End Page 83]** was unable to do so. This impasse is in part due to the strong opposition of developing countries to any change in WTO rules that would weaken the WTO's current strictures against trade restrictions on environmental grounds. In fact, several developing countries would like the CTE to be abolished and its work turned over to the WTO's Standing Committee on Trade and Development on the grounds that the latter body would be more sympathetic to the interests of the WTO's poorer members in economic development.

But an equally important reason has been the lack of leadership by the United States. While the United States was the main supporter of the creation of the CTE, the Clinton administration has shown little interest in proposing "greener" trade rules; indeed the Advisory Committee on Trade and Environment of the United States Office of Trade Representative has yet to meet. As one official in Geneva observed, "The US is proposing nothing and systematically trashing everyone's else's proposals. It is a major obstacle to getting anything done." ²⁷ As a result, the only decision relevant to trade and the environment made by the WTO Ministerial conference in Singapore was to make the CTE a permanent body of the WTO. This outcome was very frustrating to environmentalists who had looked forward to changes in WTO rules that would make the trade agreement more environmentally friendly following the conclusion of the Uruguay Round. A number have concluded that the environmental community should abandon any effort to "green" the WTO.

While the committee remains stalemated, the issues it was formed to grapple with are becoming increasingly important. For example, the United States has strongly criticized the EU's eco-labeling criteria, claiming that the European decision to base eco-labels on the life-cycle of a product has a "potential for discrimination against U.S. firms whose production processes and methods differ from those used in the EU while having comparable environmental impacts." The Office of the USTR has listed the EU's eco-labeling scheme in its annual report to Congress under "Super 301" as a topic of continuing concern. ²⁸ Yet the use of eco-labels is rapidly proliferating: there are now more than twenty-five regional and national eco-labeling programs, each with its own criteria. According to the U.S. Council on International Business, "Environmental labeling programs have an undeniable impact on trade and have posed special obstacles to U.S. companies doing business internationally. . . . In their current form, eco-labels will continue to disadvantage U.S. companies." ²⁹

Of even greater significance is the relationship between WTO rules and a future treaty on global climate change. Many of the provisions of such a treaty could conflict with WTO rules. For example, a global-climate-change treaty might include an agreement to tax products based on the amount of **[End Page 84]** carbon emitted by their production. Yet WTO rules prohibit a nation from taxing an imported product on the basis of how it was produced. Thus a signatory to a global climate change treaty could apply this tax only to goods within its borders, leaving domestic producers disadvantaged. By highlighting the tension between international trade rules and global environmental initiatives, a global climate-change-treaty might break the deadlock in the CTE over proposals to reform WTO rules to make them more environmentally friendly. At the same time, it would force the Clinton administration to play a more constructive role in the deliberations of the CTE. To date, however, this problem remains an academic one since the international negotiations in both Kyoto and Buenos Aires have not produced a firm international agreement on limiting carbon emissions, let alone one that requires trade restrictions.

Trade and Environment and NAFTA

For all the visibility surrounding the impact of international trade agreements on American environmental standards, American environmental organizations played a relatively modest role in both the politics surrounding the ratification as well as the terms of the final Uruguay Round agreement. By contrast, their impact on both the debate over congressional approval of the North American Free Trade Agreement and the provisions of the agreement itself was much more central. Indeed, it is NAFTA that was critical in placing trade policy on the agenda of the American environmental movement.

The Role of Environmentalists

Opposition to NAFTA was spearheaded by citrus and vegetable growers, the American textile industry, and the AFL-CIO, all of whom feared competition from Mexican producers and their vast pool of cheap labor. But from the outset much of the criticism of NAFTA focused on the proposed treaty's impact on environmental and consumer protection in the two countries. Alternatively playing the roles of unrelenting opponent and constructive participant, the debate over NAFTA marks the coming of age of the American environmental movement in the politics of trade

policy in the United States.

One of the main concerns of American consumer and environmental organizations focused on the impact of Mexico's *maquiladora* factories, which, due to the lax enforcement of Mexico's environmental laws, were generating substantial amounts of toxic waste and pollution. The National Toxics Campaign reported that many *maquiladoras* were disposing their hazardous wastes [End Page 85] illegally, contaminating rivers and streams. ³⁰ Environmentalists pointed out that contamination levels in the Rio Grande were many times greater than those considered safe for recreational use. ³¹

Nor were the effects of this pollution confined to Mexico; the border regions of the United States were also affected by Mexican environmental practices. Raw sewage dumped into the New River in northern Mexico had been carried across the border to California, while Tijuana's lack of adequate waste disposal had polluted beaches in San Diego. A public health official from El Paso, Texas, already faced with rates of hepatitis, dysentery, and tuberculosis substantially above the U.S. average, warned that "unless the government marries free trade and the environment, we will be totally burnt. We cannot cope with more growth." ³² One American environmental writer predicted that "if Bush gets his version of free trade between the United States and Mexico, this systematic poisoning of an entire region . . . could prove impossible to stop." ³³ Craig Merrilees, co-director of a grassroots anti-NAFTA organization, stated: "We think the experience across the border is the best predictor of what will happen under a broader agreement. It's a wild-West, dump-and-run kind of situation that has turned the 2,000 mile border into one big Love Canal." ³⁴

Environmentalists also feared that investment liberalization, in the context of Mexico's laxer pollution enforcement, would encourage American producers to relocate to Mexico. This would not only exacerbate Mexico's pollution problems, but it would also cost American jobs. A third concern revolved around the trade agreement's impact on American regulatory standards. Echoing the fears of downward harmonization that they had also voiced in connection with the S&P Uruguay Round Agreement, consumer groups predicted that increased exports of Mexican produce to the United States would expose the American public health to a growing "circle of poison," since many pesticides prohibited or suspended by EPA were still being used by Mexican farmers. "Fruit and vegetables imported from Mexico have DDT and other pesticide residues that have been banned in the US. If a free trade agreement further liberalizes agricultural commerce, years of US environmental reform could be undone." ³⁵

In July 1990, Friends of the Earth became one of the first American environmental groups to issue a statement on NAFTA. In a document submitted to the International Trade Commission, the organization contended that the negative environmental impact of the FTA with Canada indicated the need to extend the scope of U.S.-Mexico negotiations to include environmental issues. Subsequently, twenty-four Canadian, Mexican, and American environmental groups issued a declaration calling for the inclusion of environmental issues in the negotiations over NAFTA. ³⁶ [End Page 86]

U.S. and Mexican negotiators initially dismissed these challenges out of hand; they insisted that NAFTA would be limited to liberalizing trade in goods and services. Hermínio Blanco, Mexico's chief negotiator, stated that Mexico had no intention of changing its environmental laws, while the U.S. Trade Representative Robert Fisher explicitly rejected any widening of the scope of the negotiations. ³⁷ Four months later, representatives of seventeen American labor, environmental, agricultural, consumer, and religious organizations held a press conference in Washington to demand that Congress not extend fast-track negotiating authority for NAFTA. ³⁸ Their position was supported by produce growers from Florida, who urged that their fruit and vegetables be excluded from the agreement because lower wages and weaker environmental regulations in Mexico amounted to unfair competition.

For American environmental groups, often frustrated by their inability to have a greater impact on environmental policy outside the United States, the political opportunity offered by NAFTA was unprecedented. The debate over the treaty in the United States provided them a vehicle for influencing the environmental policies of a developing country. As Stewart Hudson of the National Wildlife Federation put it, "We have to take a stand here and set a correct model." ³⁹ The participation of environmental groups in the anti-fast-track coalition helped legitimate congressional opposition to the extension of Presidential fast-track negotiating authority, since "opposing fast-track on environmental grounds was easier than arguing the concerns of labor with the attendant risk of being accused of being in the pocket of special interests." ⁴⁰

The environment quickly became a "lightning rod for legislators who have many reasons to be obstreperous on free trade." ⁴¹ House Majority leader Richard Gephardt, long an opponent of trade liberalization, stated in a public letter to the President that his willingness to support NAFTA depended not only on provisions to protect American jobs, but also on the inclusion of strict environmental safeguards. He argued that "neither Mexico nor Canada nor America is benefited by a system that benignly looks upon massive air pollution, poisonous pesticides and child labor as 'comparative advantages,'" adding that American farmers "can not and should not have to compete

against farmers who use pesticides that fail to meet U.S. standards." ⁴²

As the debate over NAFTA heated up in the spring of 1991, President Bush belatedly recognized that the environmental critique of the agreement threatened NAFTA's approval in Congress. Fearful of an anti-NAFTA alliance between labor and environmental groups, the Bush administration began to reach out to environmental organizations. Bush agreed to the request of Senator Lloyd Bentsen (D-Tex.) and Representative Dan **[End Page 87]** Rostenkowski (D-Ill.) that the USTR appoint five representatives from environmental NGOs to its top-level NAFTA advisory committees and the White House pledged to conduct parallel negotiations to develop an environmental side agreement.

The United States and Mexico subsequently released a draft plan committing both countries to cooperate to improve environmental quality along the border. ⁴³ EPA Administrator William Reilly stated that the plan was intended to "reassure those who have concern about the environmental consequences of free trade." ⁴⁴ It called for additional investment in waste-water treatment plants, increased restriction on cross-border shipments of hazardous wastes, and the hiring of more officials to enforce environmental laws in Mexico. The following month, U.S. Trade Representative Carla Hills assured environmentalists that NAFTA would not be rushed through until proper safeguards were in place. She promised that the United States was "not going to bend environmental and safety commitments," adding that "we've no intention of letting pesticides come in from Mexico as we wouldn't from Italy or France." ⁴⁵

Two months later, both governments announced a highly publicized plan to clean up the American-Mexican border. It committed both countries to spend one billion dollars over three years, about two-thirds of which would come from Mexico, to provide water treatment plants, better roads, and solid waste disposal sites along the border. The plan represented the first large-scale attempt to integrate the planning and environmental strategies of the two governments and represented an explicit recognition of the linkages between natural resources and trade.

Nonetheless, environmental opposition to NAFTA became increasingly important. "With organized labor unable to make its traditional protectionist arguments stick, environmental objections to the treaty . . . emerged as a focus of national debate." ⁴⁶ David Ortman of Friends of the Earth observed that he was "astounded at the number of members of Congress" who supported the demands of the environmental movement that the trade agreement and environmental regulation be explicitly linked. Congressman Bill Richardson of New Mexico, a supporter of free trade, predicted that "what will decide the free trade agreement will not be the commercial side . . . but the environmental issue." ⁴⁷

The Greening of NAFTA

Although NAFTA was officially signed by the heads of state of all three nations shortly after the 1992 U.S. presidential elections, newly elected President Bill Clinton declined to submit the trade agreement to Congress. Instead, **[End Page 88]** the new administration began to negotiate a number of changes in the agreement, including the addition of a supplementary environmental agreement. A new agreement was announced in the summer of 1993, when the administration submitted the treaty, along with an environmental side agreement, to Congress.

The side agreement prohibits any country from lowering its environmental standards to attract investment and explicitly permits each country to impose stringent environmental standards on new investments, provided they apply equally to foreign and domestic investors. It also requires all three countries to cooperate on improving the level of environmental protection and encourages, but does not require, the upward harmonization of regulatory standards. Furthermore, as the direct response to environmental concerns over the GATT's decision in the tuna-dolphin case, the agreement specifically states that the provisions of international agreements on ozone levels, hazardous wastes, and endangered species take precedence over NAFTA.

The agreement's most innovative feature (though formally separate from NAFTA) is the Supplemental Agreement on the Environment. Negotiated by the Clinton administration with considerable input from American environmental organizations, it established a Commission for Environmental Cooperation, headed by a Secretariat and a Council composed of the senior environmental official from each country, advised by representatives of environmental organizations. The CEC has authority in a number of areas. It is empowered to consider trade-environment data, assess the environmental impact of projects that are likely to have transboundary effects, and explore ways of improving the compatibility of environmental regulations and technical standards in the three countries.

While the Side Agreement does not require any of the three signatories to enact new environmental laws, it does authorize the use of fines as well as trade sanctions for the nonenforcement of existing ones (though only the

former can be applied against Canada). It also extends to citizens the right to make submissions to the commission on any environmental issue, requires the Secretariat to report its response, and may require that its reports be made public. In fact, these provisions provide more opportunity for nonbusiness participation than current American trade law, which only permits aggrieved producers to file complaints with or sue the ITC. Although the commission is empowered to address any environmental or natural resource issue, the range of issues subject to dispute settlement panels is limited to the enforcement of those environmental laws that are related to trade or competition among the parties.

The debate over NAFTA sharply divided the environmental community, as it did the business community. A number of NGOs, including Friends of [End Page 89] the Earth, Public Citizen, and the Sierra Club, continued to strongly oppose NAFTA. They argued that the agreement was both too weak and too powerful: it would be ineffective in making Mexico enforce its environmental laws and not strong enough to undermine U.S. regulatory standards. Other environmental groups, however, chose a different strategy: they were willing to support the agreement in exchange for participation in shaping its terms. As a result, these groups were able to exercise greater influence over the tone and content of the environmental provisions of NAFTA. In the end, six major national environmental organizations, including the Natural Resources Defense Council, the Audubon Society, the Environmental Defense Fund, and the World Wildlife Federation, endorsed the agreement. They concluded that the provisions of the supplementary environmental agreement on which they had insisted and helped the Clinton administration negotiate offered adequate regulatory safeguards. ⁴⁸

NAFTA thus marked a new level of environmentalist participation in the making of American trade policies. Previous debates over trade agreements negotiated by the United States had been dominated by interest groups whose primary concern was their *economic* impact. Now, for the first time, the regulatory dimensions of a trade agreement had become politically salient. "The principal legacy of the NAFTA process . . . is the mobilization of environmental groups in the trade policy arena. For the first time environmentalist groups have made a serious run at shaping international trade policy." ⁴⁹ Literally hundreds of meetings took place between executives of large environmental groups and administration officials. And the support of environmentalists was, in turn, critical to the agreement's congressional passage.

Trade and Environment After NAFTA

NAFTA and Environmental Regulation

Since the passage of NAFTA, the participation of American environmental organizations in the trade-environmental dialogue has declined. ⁵⁰ One reason is limited resources. Even those organizations appointed to advisory boards through NAFTA have lacked the resources to maintain a high level of participation. In addition, the environmental political agenda is large and highly dynamic. Since NAFTA, other concerns, such as the defending environmental laws and regulations from the Republican controlled Congress elected in 1994, or supporting EPA's efforts to issue strict air pollution standards under the 1990 Clean Air Act Amendments, have been more pressing. To the extent that while many environmental groups are interested in [End Page 90] global issues, their attention has been focused more on problems such as global warming and biodiversity rather than on trade-environment rules or disputes.

For all the controversy surrounding the environmental provisions of both NAFTA and the Side Agreement, the actual impact of both on regulatory standards and their enforcement has been relatively modest. The CEC has established an office in Montreal with thirty employees. To date, it has received four petitions by environmental organizations. Two of the complaints, which were brought by American NGOs alleging the failure of the United States to enforce its own environmental laws, were rejected on the grounds that the actions they complained about were actually changes in national legislation rather than the lack of enforcement of existing laws.

A third petition requested the CEC Secretariat to prepare a factual record explaining the death of forty thousand migratory birds in the Silva Reservoir, located two hundred miles northwest of Mexico City. It did not allege an enforcement failure by Mexico but instead requested information. The petition was accepted and the Mexican government cooperated with an extensive investigation by a trinational scientific panel. The panel concluded that the deaths were caused by botulism, probably attributable to untreated urban and industrial sewage emptying into the reservoir. The CEC proposed that a sewage treatment facility be constructed with some of the costs shared by the three NAFTA signatories.

In August 1996, the CEC agreed to prepare a factual record based on a petition by Mexican environmental NGOs which alleged that the Mexican Government had failed to follow its own environmental laws when it authorized the construction of a five-hundred-meter pier and cruise ship terminal that threatened an important coral reef at Cozumel. This marked the first time that the CEC secretariat had acted on a complaint under Article 14 of the environmental side accord, which permits any person or organization to file a petition alleging the lack of enforcement of environmental laws by any of the three NAFTA countries.

The Mexican government reluctantly agreed to the preparation of a report by the CEC but sharply dissented from its finding that it has violated its own environmental laws by permitting construction of the pier and terminal. It claimed that approval for the project predated NAFTA and therefore the CEC lacked jurisdiction. Construction of the pier and terminal, which Mexico claims is needed to handle increased tourism, which is a major source of revenue in this very impoverished region, continued, though it was partially modified in response to environmental concerns. Under the provisions of the side agreement, either the United States or Canada could have petitioned for the imposition of trade sanctions or fines against Mexico, [End Page 91] but neither country chose to do so. To date, all complaints under the CEC have been initiated by private parties.

The CEC does have some accomplishments. For example, it has established a North American environmental research program, begun development on a North American Pollutant Release Inventory to monitor air quality, and has initiated a plan to protect various threatened and endangered species. Most important, the three NAFTA signatories have agreed to phase out or reduce the use of a number of dangerous chemicals and pesticides. "Taken together, these actions suggest that the CEC may be developing into an institution that could have significant effect on some environmental issues in North America."⁵¹ However, NAFTA and the negotiations associated with it have had very little impact on the most pressing environmental issue associated with Mexican-American relations, namely, the reduction of transboundary pollution. While funds have been earmarked for pollution abatement in the border region, to date only a few projects have been funded.

The Future of Trade/Environmental Linkages

NAFTA significantly affected the politics surrounding the possible extension of NAFTA to include Chile. From the onset of negotiations between the United States and Chile, it was clear that the latter's environmental record would be an important issue. As the *Financial Times* noted in May 1994, "the environment is likely to prove the biggest sticking point. Chile's mining, fishing forestry and fruit industries--backbone of the export sector--have been criticized on environmental grounds."⁵² For its part, Chile began to make a number of efforts to improve its environmental performance. It has also indicated its willingness to include environmental provisions in a trade agreement with the United States, provided American demands did not damage the competitiveness of its economy. In December 1995, Chile and Canada announced their intention to negotiate an Agreement on Environmental Cooperation as part of a free-trade agreement between the two countries. Based on the North American Agreement on Environmental Cooperation, these agreement reflected the strong and growing public interest in Chile in environmental issues and was intended to facilitate the eventual inclusion of Chile into NAFTA. Chile has since entered into free-trade agreements with both Canada and Mexico.

But in the United States, the place of trade-environment linkages in any future trade agreement has proved much more contentious. On balance, political developments since the approval of the Uruguay Round Agreement [End Page 92] in December 1994 have made the American environmental community increasingly critical of the role of trade agreements in improving or even protecting environmental quality. While their fears that NAFTA and the WTO would weaken American environmental and consumer laws have not been realized, they have been disappointed by the apparent inability of trade liberalization to *strengthen* environmental standards. No progress has been made in changing WTO rules to make them more compatible with stricter national and global regulatory standards, including the promotion of sustainable development. They are equally disappointed with the environmental impact of NAFTA. As a specialist on trade policy for the Sierra Club put it, "the side agreements really haven't delivered on commitments made by the Clinton Administration in 1993."⁵³ Even those environmental organizations that supported the passage of NAFTA now insist that the environment become a priority "on the par with other negotiating objectives" in trade talks rather than be included in a side agreement as it was under NAFTA.⁵⁴ Not surprisingly, those environmental groups that opposed NAFTA were equally opposed to a free-trade agreement with Chile and other Latin American nations.

A number of congressional Democrats, led by Richard Gephardt, the Democratic House leader, expressed their opposition to any reauthorization of fast-track unless both workers' rights and environmental protection were built into any new trade agreement itself, rather than in a side accord as was done with Mexico. According to Gephardt, NAFTA has proven a failure: along the Mexican border "each day the environment dies another death."⁵⁵ Gephardt's position reflects the extent to which both trade unions and many environmental organizations have seized upon the issue of labor and environmental standards as a way of challenging future trade agreements. Clearly, the stricter or the more extensive the labor and environmental requirements of any new trade agreement negotiated by the United States, the more disadvantageous it will be for America's trading partners, and thus the more difficult it will be to negotiate.

The debate over the renewal of the reauthorization of the fast-track issue in the fall of 1997 revealed the extent to which the issue of trade/environmental linkages has become highly polarized. Congressional Republicans strongly opposed including either labor or environmental standards in the provisions of any new trade agreement. Their position was endorsed by a group of more than fifty American international economists, who claimed that American insistence on uniform standards in the face of large international differences in regulatory requirements

would hurt poor countries and "slow down or even possibly halt the opening up of world markets through trade-liberalizing negotiations." ⁵⁶ Unions and environmental groups were **[End Page 93]** equally insistent that fast-track reauthorization mandate negotiations on environmental and labor standards.

The Clinton administration, under increasing pressure from business to secure reauthorization of fast-track not only to extend NAFTA to Chile and other Latin American nations but also to write new WTO rules for services and the protection of intellectual property rights, decided to back the Republican position. ⁵⁷ Abandoning an earlier promise to make America's trading partners adopt labor and environmental standards as a part any future trade agreement, the administration announced that it would not seek to include such standards as part of an agreement's core provisions. However, in an effort to appease congressional Democrats, the administration promised both to negotiate separate environmental and labor side agreements when appropriate and to seek to work through international organizations to strengthen both labor and environmental standards on a global basis.

Nonetheless, the administration was unable to secure congressional approval of fast-track reauthorization, though this had more to do with the strong and effective opposition of organized labor than with the influence of the American environmental community. Still, the fact that the former relied so heavily on the latter's arguments about downward harmonization reveals the extent to which trade/environmental linkages have become a permanent part of the political agenda of trade policy in the United States. While trade policy will continue to be primarily shaped by other issues and interests, there is no question that consumer and environmental groups have become increasingly hostile to globalization and constitute an important part of an increasingly vocal political constituency that opposes further trade liberalization.

The influence of consumer and environmental groups on American trade policy surfaced again in the summer of 1998 when the details of a proposed Multilateral Agreement on Investment that had been negotiated under the auspices of the Organization for Economic Cooperation and Development (OECD) became public. Intended to formulate a set of rules to govern the way nations treated foreign investors--essentially guaranteeing them that they would be treated similarly to domestic firms--the MIA was strongly criticized by American consumer and environmental groups. Labeling it "NAFTA on steroids," they claimed that the MIA would significantly compromise the ability of governments to impose consumer and environmental standards on foreign investors, thus undermining democratic controls over multinational firms. ⁵⁸ While the MIA collapsed when several OECD member states, including France, Canada, and the United States, as well as the European Union, insisted on so many hundreds of exceptions as to make the treaty largely irrelevant, there is little doubt that the intense opposition of American labor and environmental groups played a role in its demise. **[End Page 94]**

The Environmental Impact of Trade Liberalization

What has been the overall impact of more liberal trade policies on environmental protection? To a significant extent, any assessment of the environmental impact of trade liberalization depends in large measure on one's analysis of the relationship between environmental quality and economic development. If the two are viewed as incompatible, then clearly trade liberalization has, by definition, had adverse environmental consequences, especially for developing countries. Alternatively, if economic development is viewed as contributing to the improvement of environmental quality, then trade liberalization can be regarded as having had a positive environmental impact.

The available evidence suggests that for relatively poor countries, increased economic growth and economic interdependence generally does result in a deterioration of domestic environmental quality: pollution levels increase and natural resources are depleted at an accelerating rate. But environmental quality tends to improve as per capita income increases because nations are in a better position to devote resources to conservation and pollution control. Thus, in the long run, economic development often contributes to the strengthening of environmental standards.

Nor is it the case that trade liberalization results in more environmentally irresponsible economic practices. On the contrary, the experiences of Latin America and the formerly Communist nations of Eastern and Central Europe indicate that the polluting and energy-inefficient firms are also likely to be economically inefficient. By exposing these firms to global competition, trade liberalization has actually improved local environmental conditions. ⁵⁹ In agriculture, the lowering of barriers to trade tends to transfer production from developed to developing nations. Because farming in developing countries tends to be less technologically intensive than in developed countries, overall environmental quality often improves. Simultaneously, land is freed up in the developed nations for conservation and other purposes. ⁶⁰

As the recent strengthening of Mexico's domestic environmental policies suggest, increased economic interdependence has not resulted in a regulatory "race to the bottom." An important reason is that with the exception of a handful of industries, the costs of compliance with environmental standards are relatively modest.

Accordingly, firms have little incentive to migrate to "pollution havens" to lower their production costs, even with the removal of barriers to trade. For example, contrary to the fears of both environmentalists and unions, there are no reliable accounts that American firms [End Page 95] have relocated to Mexico in order to take advantage of the latter's less well enforced environmental standards. Nor is there any evidence that nations have lowered their environmental standards in order to retain or attract investment. As Judith Dean writes:

More stringent regulations in one country are thought to result in a loss of competitiveness, and perhaps industrial flight and the development of pollution havens. The many empirical studies which have attempted to test these hypotheses have shown no evidence to support them. ⁶¹

Indeed, in many cases, stricter domestic regulatory standards represent a source of competitive *advantage* because it is often easier for domestic firms to comply with them. For example, recycling requirements almost invariably work to the advantage of those firms that produce close to their customers, thus providing domestic firms with an important incentive for supporting them. Moreover, the lure of access to green export markets has played a critical role in encouraging firms to support stricter domestic product standards. For example, in the early 1970s Japan modeled its automobile emission standards on those of the United States--its major export market--while an important factor underlying the support of German auto firms for stricter EC emissions standards during the 1980s was the fact that the vehicles they were producing for sale in California were already meeting the world's stricter emission standards. Likewise, according to a recent study conducted by the U.S. General Accounting Office, countries that export significant quantities of agricultural products to the United States frequently take U.S. standards into account in establishing their domestic pesticide regulations. ⁶² Moreover, as Michael Porter has argued, stricter regulatory standards can also encourage domestic firms to develop improved pollution control technologies, which they can then export as the regulatory standards of their trading partners become stronger. ⁶³ And foreign firms investing in developing countries often introduce stricter regulatory standards than comparable domestic plans. ⁶⁴ Thus, in a number of cases, increased economic interdependence has led to the strengthening rather than the weakening of environmental standards--a "race to the top" that has been characterized as "the California effect." ⁶⁵

Many of the environmental abuses attributable to trade liberalization have more to do with domestic politics than international economics. Trade liberalization does not dictate the rate at which a nation allows its natural resources to be exploited or the value it accords to hardwood forests, jungles, or endangered wildlife. These are essentially set by national governments. [End Page 96] Developed nations have made enormous progress in protecting their domestic environments even as their economies have become more open; there is nothing in the terms of international trade agreements or the logic of trade liberalization that prevents developing nations from doing likewise.

There are two important ways in which international trade strengthens environmental standards. One has to do with the extent to which increased national living standards facilitated by increased exposure to the global economy both permits and encourages developing nations to devote more resources to improving their own physical environment. The second has to do with the role of environmental NGOs in rich countries in strengthening both the environmental regulations of their own countries as well as in those of their trading partners. In both cases, the role of politics is critical. Trade liberalization does not by itself improve environmental standards. Rather it is the combination of freer trade *plus* the political influence of green pressure groups. Thus while the opposition to freer trade by environmental groups in developed nations is often misguided, their political influence has played a critical role in minimizing the conflict between trade liberalization and environmental protection in both the developed and the developing world.

"Globalization" is not only about the freer flow of goods and capital. It also encompasses the movement of regulatory standards across national boundaries. On balance, the postwar period has witnessed both a strengthening of environmental standards and an increase in trade liberalization. While there is nothing inevitable about either of these trends, there is little reason to expect that either will be reversed. However, there is every reason to expect that the relationship between trade and the environment will continue to be highly contentious.

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Notes

1. This is the central theme in David Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Cambridge, Mass., 1995).

- [2.](#) Unless otherwise noted, this section is based on National Research Council, *Dolphins and the Tuna Industry* (Washington, D.C., 1992), 1-22, and Kerry L. Holland, "Exploitation on Porpoise: The Use of Purse Seine Nets by Commercial Tuna Fishermen in the Eastern Tropical Pacific Ocean," *Syracuse Journal of International Law and Commerce* 17 (Spring 1991): 267-79.
- [3.](#) Robert Housman and Durwood Zaelke, "The Collision of the Environment and Trade: The GATT Tuna/Dolphin Decision," *Environmental Law Reporter* (April 1992): 10271.
- [4.](#) David Colson, "US Policy on Tuna-Dolphin Issues," *U.S. Department of State Dispatch* (24 August 1992): 668.
- [5.](#) James Brooke, "America--Environmental Dictator," *New York Times*, 3 May 1992, 7.
- [6.](#) John Vidal, "Global Conservation Threatened as GATT Declares War," *The Guardian*, 6 September 1991, 29.
- [7.](#) Ibid.
- [8.](#) Ibid.
- [9.](#) Quoted in Ted McDorman, "The U.S.-Mexico GATT Panel Report on Tuna and Dolphin: Implications for Trade and Environmental Conflicts," *North Carolina Journal of International Law and Commercial Regulation* 17 (1992): 488.
- [10.](#) Steve Charnowitz, "Environmental and Labor Standards in Trade," *The World Economy* 15 (May 1992): 336.
- [11.](#) Ibid., 336.
- [12.](#) Ibid.
- [13.](#) The material below is based on David Dodwell, "Game of Give and Take," *Financial Times*, 30 September 1992, 12, and "A Catalogue of Grievances," *Economist*, 27 February 1993, 26. See also Lori Wallach, "Hidden Dangers of GATT and NAFTA," in Ralph Nader et al., *The Case Against Free Trade* (San Francisco, 1993), 60-91.
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- [15.](#) Harold Gilliam, "The Real Price of Free Trade," *San Francisco Examiner: This World*, 3 January 1994, 14.
- [16.](#) Richard Steinberg, "The Uruguay Round: A Legal Analysis of the Final Act," *International Quarterly* 6 (April 1994): 35 (italics added).
- [17.](#) Ibid.
- [18.](#) Quoted in Daniel Esty, *Greening the GATT* (Washington, D.C., 1994), 170.
- [19.](#) "Decisions Adopted by Ministers in Marrakesh," *Focus: The GATT Newsletter*, May 1994, 9.
- [20.](#) Quoted in "U.S. Auto Fuel-Efficiency Taxes to Be Examined by GATT Panel," *Trade and the Environment: News and Views from the GATT*, 3 June 1993, 4.
- [21.](#) For a more detailed discussion of this trade controversy and the background to it, see David Vogel, "Trouble for Us and Trouble for Them: Social Regulations as Trade Barriers," in *Comparative Disadvantages? Social Regulations and the Global Economy*, ed. Pietro Nivola (Washington, D.C., 1997), 119-24.
- [22.](#) *The World Trade Organization and Sustainable Development: An Independent Assessment* (Winnipeg, Manitoba, 1996), 41.
- [23.](#) Chana Schoenberger, "Shrimp Dispute Tests U.S. Use of Trade to Protect Environment," *Wall Street Journal*, 18 July 1997, A14.

- [24.](#) "Congress Considers New Bill to Save Dolphins," *Dolphin Alert* (Fall 1992): 2.
- [25.](#) "Must Try Harder," *Economist*, 21 August 1993, 22.
- [26.](#) Quoted in William Lasch III, "Green Showdown at the WTO," Contemporary Issues Series #85, Center for the Study of American Business, March 1997, p. 12.
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- [28.](#) Venna Jha and Simonetta Zarelli, "Eco-Labeling Initiatives as Potential Barriers to Trade," in *Life-Cycle Management and Trade* (Paris: OECD, 1994), 64.
- [29.](#) Quoted in Lasch, "Green Showdown at the WTO," 9.
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- [35.](#) Richard Rothstein, "Exporting Jobs and Pollution to Mexico," *New Perspectives Quarterly* 8 (Winter 1991): 23.
- [36.](#) *Ibid.*, 20.
- [37.](#) *Ibid.*
- [38.](#) *Ibid.*, 18-19.
- [39.](#) Roberto Suro, "In Search of a Trade Pact with the Environment in Mind," *New York Times*, 14 April 1991, E4.
- [40.](#) *Ibid.*, 20.
- [41.](#) *Ibid.*, 4.
- [42.](#) Letter to President George Bush from Congressmen Richard Gephardt, 27 March 1991.
- [43.](#) Keith Bradsher, "U.S. and Mexico Draft Plan to Fight Border Pollution," *New York Times*, 2 April 1991, C1, C6.
- [44.](#) *Ibid.*, C6.
- [45.](#) Jane Kay, "Environmentalists Urge Tough Mexico Trade Law," *San Francisco Examiner*, 9 September 1991.
- [46.](#) Jonathan Marshall, "How Ecology Is Tied to Mexico Trade Pact," *San Francisco Chronicle*, 25 February 1992, A8.
- [47.](#) Damian Fraser, "Environment Hit by Too Much Free Trade," *Financial Times*, 2 July 1992, 4.
- [48.](#) For criticisms of the environmental provisions of both NAFTA and the side agreement, see Gary Hufbauer and Jeffrey Scott, *NAFTA: An Assessment*, rev. ed. (Washington, D.C., 1993), 92-97.

- [49.](#) Stephen Mumme, "Environmentalists, NAFTA, and North American Environmental Management, *Journal of Environment and Development* 2 (Winter 1993): 215.
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- [51.](#) Richard Steinberg, "Trade-Environment Negotiations in the EU, NAFTA, and WTO: Regional Trajectories of Rule Development," *American Journal of International Law* 91 (1997): 250-51.
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- [60.](#) For a comprehensive analysis of the impact of trade liberalization on both economic efficiency and environmental quality, see *The Greening of World Trade Issues*, ed. Kym Anderson and Richard Blackhurst (Ann Arbor, 1992).
- [61.](#) Judith Dean, "Trade and the Environment: A Survey of the Literature," in *International Trade and the Environment*, ed. Low, World Bank Papers, 1992, p. 15. According to a recent comprehensive study, "there is almost no evidence that investors in developing countries are fleeing environmental costs at home." Gunnar S. Eskeland and Ann E. Harrison, "Moving to Greener Pastures? Multinationals and the Pollution-have Hypothesis," Policy Research Working Paper 1744, the World Bank, 1997. For a contrary position, see Richard Stewart, "Environmental Regulation and International Competitiveness," *Yale Law Journal* 102 (June 1993): 2041-2122.
- [62.](#) Quoted in Charles Pearson, "Trade and Environment: The United States Experience" (New York: UN Conference on Trade and Development, January 1994), 52.
- [63.](#) See Michael Porter, *The Competitive Advantage of Nations* (New York, 1990), 685-88; and also Curtis Moore and Alan Miller, *Green Gold* (Boston, 1994).
- [64.](#) "The evidence suggests that foreign-owned firms in four developing countries are less polluting than comparable domestic plants." See Eskeland and Harrison, "Moving to Greener Pastures."
- [65.](#) See Vogel, *Trading Up*, chap. 8.

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