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# Trade Protectionism and Environmental Regulations: The New Nontariff Barriers\*

*C. Ford Runge\*\**

## I. INTRODUCTION

This article reviews some economic and legal aspects of the growing role of environmental, health, and safety regulations operating as disguised barriers to trade. While this has always been a recognized problem in trade policy, the issue has gained new force as environmental policies move to the forefront of many national agendas. Because environmental standards have a growing national constituency, they are especially attractive candidates for disguised protectionism. International distinctions in the tolerable level of environmental risks are created because the weight attached to environmental standards tends to vary with the income levels of different countries. Incentives are created to move restricted product and processes into areas of lax regulation, notably developing countries, while denying import access to countries that may not subscribe to the regulatory policies of the developed countries. Without multilateral action, environmental standards become sources of trade tension.

The article is organized as follows. First, the issue of environmental

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regulation is discussed in an international context, with special emphasis on food, health, and safety. Second, the problems created by national income disparities and the different priorities of national governments are noted. Third, a case study based on a recent United States - Canada dispute over salmon and herring exports is analyzed. The article closes by suggesting an agenda for both domestic and international policy reforms, focusing on a multi-tiered set of international standards that will help distinguish legitimate health and environmental regulations from disguised non-tariff barriers.

## II. THE INTERNATIONALIZATION OF ENVIRONMENTAL RISKS

On January 1, 1989, the European Community (EC) announced a ban on all beef imports from the United States containing hormones used to help increase cattle growth. Citing health risks, the EC action touched off a cycle of retaliation worth hundreds of millions of dollars that has affected the world trading system. This apparently isolated example of health regulations acting as trade barriers is part of an emerging pattern of environmental and health issues with major consequences for the world economy. These consequences are especially important to trade between developed and developing nations.

Other developments include discussions by the European Commission in September, 1989 of rules to further restrict imports of cattle or dairy products produced with the aid of bovine somatotropin (BST), a bovine growth hormone. In February of 1989, the Natural Resources Defense Council released a report citing significant health risk from the use of Alar, a chemical used to prevent blemishes on apples. United States regulatory agencies may ultimately ban its use, and the EPA announced that it would increase its capacity to ban certain agricultural chemicals. Senator Pete Wilson (R, Ca), the governor elect for California, introduced federal legislation in December, 1989 that would ban companies from exporting pesticides that are illegal in the United States. Responding to the political influence of the Western Growers Association, Wilson stated that "export of dangerous pesticides creates a competitive inequity between foreign and American farmers and growers." In October, 1989, a dispute settlement panel formed under the United States/Canada free trade agreement determined that Canadian restrictions on foreign salmon and herring fishing were an effective barrier to trade.

These examples are part of an emerging pattern in which environmental and health risks are increasingly traded among nations along with goods and services. These risks arise directly from the transfer of

technology, and will increasingly affect international investment, trade, and development.<sup>1</sup>

This pattern of trade underscores the problem of formulating government policies in an interdependent world economy. While the United States and other signatories to the General Agreement on Tariffs and Trade (hereinafter "GATT") pursue more open borders in the ongoing Uruguay Round, safety and environmental regulation grows in importance for domestic electorates — especially in wealthy countries of the North. Increasingly, different national regulatory priorities will pose problems for trade harmonization, blurring the distinction between domestic and foreign economic policy. Without additional attempts to come to terms with environmental issues through multilateral institutions such as the United Nations, OECD, World Bank, and GATT, differences in national regulatory approaches will bedevil both the environment and the trade system in the next decade and beyond.

The examples cited above demonstrate that environmental regulations are not purely domestic policy issues. As economist Ingo Walter of New York University has written, "the fact of national sovereignty in environmental policy, when coupled with its economic consequences, leads directly to repercussions on international economic relations."<sup>2</sup>

Indeed, there has been longstanding recognition of the possibility of conflicts between national environmental policy and more liberal international trade. The GATT articles, adopted in 1947, explicitly recognize the possibility that domestic health, safety, and environmental policies might override general attempts to lower trade barriers.<sup>3</sup> GATT Article XI headed "General Elimination of Quantitative Restrictions", states in paragraph (1)

No prohibitions or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

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<sup>1</sup> Nolan, Hon. Richard and C. Ford Runge, *Trade in Disservices: Environmental and Health Damages in International Trade*, Staff Paper P89-8, February 1989. Department of Agricultural and Applied Economics, University of Minnesota.

<sup>2</sup> Walter, Ingo, *International Economic Repercussions of Environmental Policy: An Economist's Perspective*, in Rubin and Graham, *ENVIRONMENT AND TRADE* (Rubin & Graham ed.) (Allanheld, Osmun 1982).

<sup>3</sup> JACKSON, J.H., *WORLD TRADE AND THE LAW OF GATT* (Bobbs-Merrill NY 1969).

Yet Article XX, headed "General Exceptions", provides

. . .nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting part of measures:

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

A similar set of exceptions is applied to health-related measures under Article XX(b). GATT law emphasizes that any restrictions posed on foreign practices for environmental or health reasons must also reflect a domestic commitment, so that the exceptions cannot be misused as a disguised form of protection.

These attempts in the GATT articles to balance the objectives of more open trade with national sovereignty over environmental and health measures have not successfully defused the problem. Indeed, although tariff barriers, especially in the manufacturing sector, have fallen several-fold since 1947, nontariff barriers have become an increasingly seductive means of protection.<sup>4</sup> Recognizing this problem, in 1971 a special commission (the Williams Commission) sought to identify key areas of potential trade conflict, and to recommend policies to prevent the spread of nontariff protectionism. In that year the Williams Commission recommended that "serious efforts be made to harmonize environmental quality standards to the greatest possible extent". But that goal has been far easier to state than to achieve. Writing in the early 1980's, Rubin and Graham noted that developed countries were moving along a far faster track of environmental regulations than other parts of the world. As they emphasized, a strong political constituency had emerged in the developed countries for environmental standards. Less obvious was the fact that this constituency could also be turned to the purpose of protectionism. "In the United States, and perhaps elsewhere hard political battles to establish environmental standards have recently been fought and won. Proponents of these standards will fight equally hard to prevent their modification to accommodate an international consensus."<sup>5</sup>

At roughly the same time, the Tokyo Round of Multilateral Trade

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<sup>4</sup> RUBIN AND GRAHAM, ENVIRONMENT AND TRADE (Allanheld Osmun NJ 1982).

<sup>5</sup> *Id.*

Negotiations promulgated a "Standards Code" that has tried (also largely without success) to grapple with the balance between health, safety, and environmental standards and trade liberalization.<sup>6</sup> This 1979 code supplemented the GATT rules that require "national treatment" (no less favorable to importers than to domestic parties) and prohibit the "nullification or impairment" of trade concessions through the back door device of nontariff barriers.<sup>7</sup> The purpose of the Code was to prevent any product, technical, health, safety, or environmental standard from creating "unnecessary obstacles to international trade."<sup>8</sup>

The main principles of the Code are reiterated in United States domestic trade legislation. However, this legislation clearly indicates congressional reluctance to surrender sovereignty over such wide-ranging standards to the GATT or other multilateral bodies. In addition to the usual caveats concerning why international standards may be inappropriate to the United States (e.g. national security), The Trade Agreements Act of 1979<sup>9</sup> explicitly notes in section 402 that the United States may elect nonconformance with international standards in order to assure "the protection of human health or safety, animal or plant life, or health, or the environment."<sup>10</sup>

Despite an additional decade of discussions including substantial attention to both technical standards and nontariff barriers in the Uruguay Round, scheduled to end in 1990, it is still unclear when and where such standards constitute an unnecessary obstacle to international trade. If anything, the temptation to use environmental and health standards to deny access to home markets is stronger now than in the 1980's. As the European Community moves toward its goal of market integration in 1992, it will have strong incentives to create common regulations for internal purposes, but to impose restrictions vis-a-vis the rest of the world. A similar propensity may occur as a result of harmonization under the United States/Canada free trade agreement. However, even if national standards can be harmonized there is every reason to expect subnational jurisdictions to utilize various health and environmental standards to protect certain markets.

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<sup>6</sup> Code of Conduct for Preventing Technical Barriers to Trade, GATT, Multilateral Trade Negotiations, Doc. MTN/NTM/W1192/Rev. 5; *See Supra* note 4, at 162.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> *Supra* note 5, at 8.

<sup>9</sup> 19 U.S.C.S. §§ 2501-2581 (West 1990).

<sup>10</sup> *Supra* note 5, at 9.

### A. The North/South Gap in Regulation

Underlying the development of these trade tensions are fundamental differences in the views of developed and developing countries (the "North" and "South") concerning the appropriate level and extent of environmental regulation. Differences in the domestic policy response to these problems are well represented in the food systems of the North and South. Since so much recent attention has focused on food and agricultural chemical use in the North, and because the agricultural sector is of key importance in almost all developing economies of the South, it provides a useful case in point.

In the developed countries of North America and Western Europe, the "food problem" arises not from too little food and land in production, but generally too much. As predicted by Engels' Law, the incomes of developed countries have increased, and the share of this income spent on food has fallen in proportion to other goods and services. This characteristic makes food an "inferior good" in economics jargon. In contrast, environmental quality and health concerns have grown in importance with increasing income levels. They are what economists call "superior goods," in the sense that they play a larger role in the national budget as national incomes increase.<sup>11</sup>

In low-income developing countries, while the share of national resources devoted to food and agriculture remains large (creating substantial markets for yield-increasing products), environmental quality and occupational health risks are widely perceived as concerns of the rich. Even if these risks are acknowledged, the income levels of most developing countries do not permit a structure of environmental regulation comparable to that in the North. This two-tiered structure of international environmental regulation, with stricter regulatory regimes in developed countries paired with lax or non-existent regulations in developing countries, increases the North-South flow of environmental risks. A kind of "environmental arbitrage" results, in which profits are gained by exploiting the differential in regulations. This environmental arbitrage results from conscious policy choices that reveal differences in the value attached to environmental quality by rich and poor countries. As these paths of institutional innovation increasingly diverge, so will the differential impact of environmental constraints on producers in the North and competitors in the South such as Argentina and Brazil.<sup>12</sup>

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<sup>11</sup> Runge, *Induced Agricultural Innovation and Environmental Quality: The Case of Groundwater Regulation*, LAND ECONOMICS at 249-58 (1987).

<sup>12</sup> Runge, Houck, and Halback, *Implications of Environmental Regulations for Competitiveness*

The competitiveness implications of these trends are not lost on Northern producers. They have been quick to see the trade relevance of environmental and health standards. Growing consumer concerns with the health and environmental impacts of agriculture create a natural (and much larger) constituency for nontariff barriers to trade, justified in the name of health and safety. As between countries in the North, obvious differences in values also exist, although the regulatory gap is less yawning.

An example of the problem created by this regulatory gap arises in the agricultural fertilizer and chemical industry. Since World War II, food systems in both the North and South have become increasingly dependent on chemicals and fertilizers in order to raise agricultural productivity. Chemical "inputs" have been responsible for dramatic increases in yields, and have made food an important meeting point for environmental, health, and trade issues. Yet many of the chemical and fertilizer inputs on which agriculture now depends have been found to have health and environmental impacts, especially if poorly managed or inappropriately used. In response, the food systems of developed countries have been constrained by regulations designed to protect environmental quality and human health.

In most developing countries, however, food production and agricultural development remain the primary focus of concern. Because agriculture is a major trade sector, incentives are created to export restricted agricultural and industrial production methods from North to South. In addition, when products produced by methods regulated in the North are imported from the South where such regulation is lax or nonexistent (e.g., Mexican or Chilean fruits and vegetables), competing producers may demand protection. As a specific example, consider the evolution of U.S. policies toward pesticides, herbicides and fungicides. How does the regulatory climate, affecting sales of these chemicals, interact with trade flows in this sector?

U.S. sales of these products grew at an average of 6 percent per year between 1965 and 1974, fluctuated throughout the 1970s, and fell along with farm financial conditions and acreage cut-backs in the 1980s.<sup>13</sup> From the perspective of U.S. industry, softening domestic demand in the 1980s had stimulated a search for foreign marketing opportunities. By 1986, the U. S. pesticide industry exported 34 percent of its total sales

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*in Agricultural Trade*, Chapter 4 in *AGRICULTURAL TRADE AND NATURAL RESOURCES: DISCOVERING THE CRITICAL LINKAGES* (Boulder and London) (Sutton and Reinner ed. 1988).

<sup>13</sup> See International Trade Commission, *Synthetic Organic Chemicals*, 1978-86; 1965-78 (USDA 1978); *The Pesticide Review* (U.S. Bureau of the Census Report No.s FT210, FT410, FT610).



value (\$1.4 billion) compared with 26 percent in 1965. Part of the incentive to increase foreign sales arose from the substantial fixed costs of bringing new products to market in the face of internal research and development expenses and U.S. Environmental Protection Agency (EPA) registration requirements. Research and development in the industry is a major expenditure due to specialized personnel, manufacturing specifications, and tight government controls. Large quantities of chemicals must now be screened to find those that target specific markets and conform to environmental regulations.<sup>14</sup>

In 1986, for example, pesticide researchers screened 13,500 compounds for every one registered by the EPA, compared with 5,500 compounds screened per registration in 1967. The time lag between product discovery and marketing likewise rose from an estimated 5 years in 1967 to 10 years in 1986. Anticipated amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Safe Drinking Water Act (SDWA) and the 1990 Farm Bill are all likely to effectively constrain agricultural chemical uses.<sup>15</sup>

These are but several examples which may raise the fixed costs of doing business domestically, creating incentives for firms producing fertilizers and chemicals to expand markets where regulatory oversight is less constraining. These fixed costs create powerful motivation, once a chemical is registered and in use, to build long-term markets. If domestic markets tighten due to market or regulatory factors, foreign markets are all the more crucial in spreading these fixed costs over sufficient sales volume. Finally, this process is likely to make entry into the pesticide industry by smaller firms more difficult, concentrating industry activity in larger firms with international marketing strategies.

Studies examining the general impact of environmental regulations on the location decisions of major industries have been relatively inconclusive, although there is a growing evidence that the regulatory gap between North and South will have long-term implications for both environmental and trade policy. As Walter noted, “. . . environmental factors may gradually take on greater importance in the decisions and planning of multinational firms, so that the international locational effects on industry of differential environmental policies throughout the

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<sup>14</sup> Swanson and Dahl, *The U.S. Pesticide Industry: Usage Trends and Market Development*, Staff Paper P89-5, January 1989, Department of Agricultural and Applied Economics, University of Minnesota.

<sup>15</sup> Batie, *Agriculture as the Problem: The Case of Groundwater Contamination*, CHOICES (3rd Quarter, 1988); Benbrook, *The Environment and the 1990 Farm Bill*, J. SOIL AND WATER CONSERV. (November-December 1988).

decision system of international firms may take on somewhat greater significance in the years ahead."<sup>16</sup> Of perhaps even more importance will be the response of farmers and others in both developed and developing countries for whom relocation is *not* an option. In the North, these producers will have an incentive to raise protectionist nontariff barriers in the name of health, safety and the environment, while in the South, they may be compelled to suffer higher risks in order to maintain competitive advantage.

Increasing production and consumption of chemicals in the food industry over the last forty years have thus created a flow of trade that is both beneficial and fraught with risks. Despite current criticism of their use in agriculture, these products have been responsible for much of the global increase in agricultural output, without which billions of people would be both poorer and more hungry than they are today. In the post-war period, gains in food production throughout the developed and developing world have been powered by significantly increased applications of these products. But this trend has been accompanied by growing concern over environmental impacts. The point is not to end the use of these chemicals, but to use them responsibly and knowledgeably.<sup>17</sup>

To do so immediately raises the question of regulatory standards affecting their use. Modern chemical inputs require substantially more information to use safely and effectively, and such standards are complicated both to develop and to apply. Especially in the South, the inputs themselves are aggressively marketed and subsidized, yet farm-level education (including the basic literacy necessary to read package instructions) is seldom given comparable attention. Yet the absence of such standards exacts a high toll. Human poisoning in developing countries due to overapplication of pesticides is common. For example, per capita pesticide poisonings in the seven countries of Central America are 1,800 times higher than in the United States, according to Jeffrey Leonard of the Conservation Foundation.<sup>18</sup> How are standards to be developed that reflect the North's concerns with environmental quality, while attending to the different needs and priorities of the South?

Given the tension separating North and South, and the lesser differences between countries in the North, it would appear that a single set of

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<sup>16</sup> Walter, *International Economic Repercussions of Environmental Policy: An Economist's Perspective*, in Seymour and Rubin, *ENVIRONMENT AND TRADE* (Allaneld, Osmun, N.J. 1982).

<sup>17</sup> Baanante, Bumb, & Thompson, *The Benefits of Fertilizer Use in Developing Countries*, International Fertilizer Development Center, Muscle Shoals, Alabama (1989).

<sup>18</sup> Leonard, *Remedies are Available for Latin America's Environmental Ills*, CONSERVATION FOUNDATION LETTER, No. 2 (1989).

standards is unlikely to be successful. The Subsidies Code adopted during the Tokyo Round is at least a necessary starting point, but some mechanism must be found to accommodate differences in national priorities linked to levels of economic development and cultural factors.

B. Determining When a Standard Is an "Unnecessary Obstacle to Trade"

How might such standards be developed? Consider a 1989 case heard by a panel convened under the U.S./Canada Free Trade Agreement.<sup>19</sup> The case involved a panel established to hear testimony over Canadian restrictions on exports of Pacific Coast unprocessed salmon and herring. Such restrictions date to 1908, but were found illegal under GATT in 1987 after the United States complained that they were unjustifiable restrictions on trade. In 1988, Canada accepted the GATT finding, but stated that it would continue a "landing" requirement for foreign boats which would allow inspection of their catch. The ostensible reason for the requirement was an environmental one: to allow the fish harvest to be counted and monitored so as to preserve the fishery from overexploitation.

According to the United States, the requirement that its boats must land in Canada constituted an export restriction, because of the extra time and expense U.S. buyers must incur in landing and unloading, as well as due to dockage fees and product deterioration. The Canadians held that they were pursuing "conservation and management goals" for five varieties of salmon (some of which had previously not been covered by the landing requirement) as well as herring. Essentially, the Canadians sought to justify under Article XX of the GATT (the "General Exceptions" section noted above) what had otherwise been found GATT-illegal, by appealing to an environmental claim under Article XX(g): conservation of exhaustible natural resources.

The U.S. argued that although the new herring and salmon regulations "are carefully worded to avoid the appearance of creating direct export prohibitions or restrictions, their clear effect is to restrict exports".<sup>20</sup> Moreover, the Canadian landing requirement was argued not to be "primarily aimed" at the conservation of herring and salmon stocks, which had been the interpretation given to Article XX(g) by the 1987 GATT ruling. Thus, the United States held that the Canadian landing requirement was an environmental policy acting as a disguised

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<sup>19</sup> McRae, *Canada's Landing Requirements for Pacific Coast Salmon and Herring*, (1989).

<sup>20</sup> *Id.* at 13.

restriction on international trade. Canada argued that the landing requirement was “primarily aimed” at the conservation of the salmon and herring fisheries.

In a significant decision, the Panel found that if the effect of such a measure is to impose a “materially greater commercial burden on exports than on domestic sales,” it amounted to a restriction on trade, whether or not its trade effects could be quantitatively demonstrated. The Panel “was satisfied that the cost of complying with the landing requirement would be more than an insignificant expense for those buyers who would have otherwise shipped directly from the fishing ground to a landing site in the United States.”<sup>21</sup> With regard to the Article XX(g) exception, the Panel was conscious “of the need to allow governments appropriate latitude in implementing their conservation policies,” and that the trade interests of one state should not be allowed to override the “legitimate environmental concerns of another.”<sup>22</sup> “If the measure would have been adopted for conservation reasons alone,” the Panel found, “Article XX(g) permits a government the freedom to employ it.” However, balancing this is the “primarily aimed at” test, which determines whether the measure is part of a genuine conservation or environmental policy, or is in fact a disguised barrier to trade.

This line of reasoning led the Panel to two conclusions. First, “since governments do not adopt conservation measures unless the benefits to conservation are worth the costs,” the magnitude of costs to the parties— foreign and domestic—who actually bear them must be examined.” Second, “how genuine the conservation purpose of a measure is, must be determined by whether the government would have been prepared to adopt that measure *if its own nationals had to bear the actual costs of the measure.*”<sup>23</sup> In this case, the Panel was unconvinced that the measure would have been imposed on all Canadian boats primarily for conservation reasons. Specifically, the Panel found that Canada would not have adopted such a measure “if it had required an equivalent number of Canadian buyers to land and unload elsewhere than at their intended destination.”<sup>24</sup> Alternative methods of monitoring catch rates were available which posed far fewer restrictions on trade.

Generalizing from this case, it seems possible to envision the development of criteria based on (a) estimated costs of health, safety and environmental regulations; (b) evidence on who bears these costs; and (c)

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<sup>21</sup> *Id.* at 25.

<sup>22</sup> *Id.* at 29.

<sup>23</sup> *Id.* at 31 (emphasis added).

<sup>24</sup> *Id.* at 32.

judgments of whether such measures would be imposed *in the absence of any trade effects*. Such criteria can serve as a basis for the development of standards determining which environmental and health measures constitute unnecessary obstacles to trade.

Consider a specific example arising from the 1989 United States decision to embargo Chilean fruit and vegetable imports after traces of cyanide were found in two grapes. Would the costs imposed on Chile by a complete embargo have been imposed on domestic U.S. interests if two California grapes had been adulterated? In estimating these costs, and their trade effects, differences in national levels of living must also come into play. Since Canadian and U.S. fishing interests are in the main a homogeneous group, the problem does not arise. Where the measures promulgated in one country loom much larger in relation to incomes in another (e.g., Chile and the United States), an *a priori* argument for a differentiated approach exists.

In view of differences in levels of economic development and national priorities, it is clear that standards cannot be wholly uniform. Jeffrey James, in *The Economics of New Technology in Developing Countries*,<sup>25</sup> suggests that despite valid arguments for improved health and environmental regulations in the South, "it does not follow from this that countries of the Third World should adopt either the same *number* or the same *level* of standards as developed countries." James suggests what may be called *intermediate* standards, "in the same sense and for the same basic reasons as that which underlies the widespread advocacy of inter-mediate technology in the Third World." This does not imply a "downgrading" of U.S. regulations, but an "upgrading" of developing countries' norms, together with the recognition that the social costs of regulation are relative to national income.

Under GATT law, these distinctions are recognized as "Special and Differential Treatment" of lower income countries. While "S&D" often creates serious long run distortions, the terms under which it is granted, as James emphasizes, may actually reduce current regulatory differentials by raising norms in the South, thus improving developing countries' environmental policies. While this may not satisfy all competing producers in the North, it can contribute to reductions in overall trade tension while improving environmental quality in the South.

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<sup>25</sup> JAMES, *THE ECONOMICS OF NEW TECHNOLOGY IN DEVELOPING COUNTRIES* (Stewart and James eds. 1982).

### III. CONCLUSION: TOWARD ACTIVIST MULTILATERAL ENVIRONMENTAL POLICIES

The global consequences of failure to confront these complex problems are increasingly clear, in both environmental and trade terms. The Brundtland Commission Report, undertaken by the United Nations and the World Commission on Environment and Development, has underscored the need for international action on a wide range of environmental issues.<sup>26</sup> Despite such calls to action, little has yet been done to move effectively to reduce environmental and health hazards at the international level, and to coordinate environmental and trade policy through GATT, the World Bank, and other multilateral institutions.

Environmental risks traded across national borders require international policy responses. The World Bank has recently raised the profile of environmental issues in project planning and appraisal. But many, both inside and outside the Bank, are skeptical of the commitment. It is vital that the United States government, as a principal financial supporter, emphasize the seriousness of the issues to Bank staff. Similarly, United States activities in U.N. agencies such as the Food and Agriculture Organization (FAO) and U.N. Environmental Program (UNEP) need to place environmental needs in developing countries far higher on the agenda than in the past. By raising the level of environmental standards in the South, the gap in regulations with the North will be reduced, easing trade tensions.

Unfortunately, despite recent attempts to deal with these issues in forums such as GATT, the linkages from environmental regulation to international trade have not been clearly recognized. The Food and Agriculture Organization of the United Nations has worked to develop comprehensive rules affecting food and agricultural health and safety, called the "Codex Alimentarius."<sup>27</sup> A special technical working group at the GATT Secretariat in Geneva is attempting to use this code as the basis for harmonizing member countries' regulations. Unfortunately, there are no agreed-upon standards except for a few items, and none are regarded as binding in law. With the exception of the beleaguered GATT working group, the issue has not been given priority by international institutions.

Beyond environmental considerations are shorter term problems of trade distortion and market access. These distortions threaten more lib-

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<sup>26</sup> WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (OXFORD UNIVERSITY PRESS 1987).

<sup>27</sup> Food and Agriculture Organization, *Introducing Codex Alimentarius*, FAO/WHO FOOD STANDARDS PROGRAM (Rome 1987).

eral international trade in ways that are damaging to both developed and developing country interests. In spite of the vital importance of environmental quality, as well as more open trade, to developed country interests, those industries most clearly victimized by the changing structure of environmental regulations in the North are likely either to resist environmental regulatory reform, or to demand import protection from countries that do not face similar constraints. In periods when rapid growth in trade is one of the only avenues out of debt and deficits (for both the North and the South), these distortions cannot be dismissed as unimportant.

Given the complexity of formulating international approaches to environmental and trade policies, it is understandable that some have argued for loosening the environmental regulatory constraints affecting industry in order to allow it to compete more effectively in global markets. However, this appears to be inconsistent with the growing importance attached to the environment and health in the political processes of all countries. Yet tight regulatory constraints in developed economies *do* have cost and competitiveness implications. The perception that foreign competition does not face similar constraints breeds animosity and protectionism. Both at home and internationally, environmental standards must therefore be strengthened.

The key is to recognize the inherently international character of environmental quality and health—issues which are similar in nature to human rights. Only the force of international standards defining the duties of nations, corporations and individuals, can hope to resolve these difficult issues. This does not, as I have emphasized, suggest that these standards cannot be sensitive to levels of development.

To begin this process, the United States must take the lead in urging existing multilateral institutions to coordinate their efforts. Some of this coordination is underway. The GATT, IMF and World Bank, for example, have agreed to work more closely on issues of trade, aid and development. The use of environmental and health regulations as trade barriers would provide an especially appropriate focal point for these efforts.

In addition to the development of carefully reasoned legal arguments determining when environmental and health standards are in fact trade barriers, an international accord on environmental and health regulations would be appropriate. Similar in nature to the 1988 Montreal Protocol agreed to by 40 nations to reduce emissions shown harmful to the ozone layer, its purpose would be primarily invocational—to call for the rights, duties and liabilities that define national regulations on environment and health—which can then be brought more nearly into ac-

cord. In absence of such an agreement, groups within nations will continue to advocate the use of regulations as disguised protectionism, or loosening standards of environmental quality in the name of greater competitiveness.