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Daniel C. Esty
Yale Law School

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GATting the Greens

Not Just Greening the GATT

Daniel C. Esty

Until recently, trade policymakers and environmental officials worked on separate tracks, rarely perceiving their paths as intersecting. Now that environmental protection has become a central issue on the public agenda, trade and environmental policies seem deeply intertwined and in some cases badly tangled. Environmentalists are calling the General Agreement on Tariffs and Trade (GATT) outdated or worse and are demanding a "greening" of the GATT to reflect environmental concerns. Trade experts have responded with a sharp defense of the international trade regime and have expressed fear that further progress toward free trade will be undermined by protectionism in the guise of environmentalism.

The battle lines between trade and environmental policymakers need not become entrenched. Both camps defend principles that foster long-term security and prosperity, deter irresponsible shifting of costs to other nations or genera-

tions, and face a constant threat of erosion from special interests. Much of the discussion to date has focused on possible legal refinements to the GATT to build environmental sensitivity into the international trading system. But creating a new parallel international regime designed to defend the environment as a necessary element of a prosperous global economy and to coordinate policies with the GATT would offer the prospect of a broader peace between the trade and environmental communities. Like GATT, it would provide a bulwark against domestic political pressures that undermine long-term thinking and serve as an honest broker for the economic future, allocating costs, benefits and responsibilities in transnational disputes. In sum, instead of just "greening" the GATT, we should "GATT" the greens.

START WITH A PILLAR

GATT is a central pillar of the post-World

DANIEL C. ESTY is a Visiting Fellow at the Institute for International Economics and an International Affairs Fellow at the Council on Foreign Relations. As a Deputy Assistant Administrator at the U.S. Environmental Protection Agency, he helped negotiate the environmental provisions of the North American Free Trade Agreement.

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War II international order. Its rules, norms and dispute settlement procedures are designed to prevent governments from adopting shortsighted, “beggar-thy-neighbor” policies that limit imports and promote exports to establish a competitive advantage at the expense of other countries. Such policies invite retaliatory actions by others and lead to a downward spiral into global economic chaos, as occurred in the 1930s in the wake of the Smoot-Hawley tariffs. Despite the mutually destructive nature of such policies, governments risk slipping into protectionism because politicians tend to respond to the loud voices of organized special interests who benefit from closed markets rather than to the quiet requirements of the general welfare.

The architects of the Bretton Woods economic order recognized this danger of political failure and, with the lessons of the Great Depression and World War II fresh in their minds, set up the GATT as a government-to-government contract to safeguard an open world market. By enshrining the principles of liberal trade in an international regime, the creators of the GATT elevated the commitment to freer trade to a nearly constitutional level, thereby limiting the power of governments around the world (and legislatures in particular) to give in to the pleadings of domestic special interests seeking to hide from the rigors of the global marketplace.

MORE THAN A PASSING RESEMBLANCE

No comparable system exists to protect environmental values and policies against a similar defect in our system of interest-group democracy. Governments

rarely require polluters to pay fully for the environmental damage they cause. Like the economic losses from protectionism, the costs of environmental degradation are spread widely across society, making it difficult to organize those affected.

The existence of threshold effects, time lags between emissions and detection of environmental problems, and sometimes substantial scientific uncertainties over the source, scope and magnitude of ecological damage makes the harm from environmental degradation and the benefits of pollution control easy to dismiss as too distant or speculative. Moreover, environmental issues often present classic examples of the “tragedy of the commons,” in which harmful actions by one individual or a small number of people will have no noticeable effect on a public resource, but the same behavior from larger numbers destroys the resource. These characteristics of environmental issues leave governments with a nearly irresistible temptation to ignore pollution problems and let the costs of environmental neglect fall onto the ultimate inactive and unorganized interest group—generations yet unborn.

Global environmental issues offer the additional opportunity, as in the trade context, to transfer burdens to foreigners. In dealing with problems such as climate change, where the pollution from one country spreads across the entire planet, governments recognize that costly emission controls on domestic industries (the benefit of which redounds largely to others around the world) cannot be justified using the relevant political calculus (i.e., domestic costs versus domestic benefits) and might disadvantage their producers in

international competition with companies whose governments require less spending on pollution abatement. There exists a tendency to engage in damaging, beggar-thy-neighbor environmental behavior driven by competitive pressures—the same phenomenon that, in the trade context, led the “wise men” directing U.S. postwar foreign policy to establish the GATT.

Today, the world needs GATT-like rules of mutual economic forbearance to protect the environment.

AFTER RIO: YES, WE HAVE NO CHAOS

Confusion and incoherence characterize the current management of international environmental affairs, as a dozen different U.N. agencies, the secretariats to various environmental treaties and conventions, the World Bank, regional political groups, and the world’s 180 countries acting individually try to cope with the planet’s environmental problems.

The U.N. Environment Programme, for example, has limited responsibility, financing and political support and therefore cannot play a coordinating role. The institutional legacy of the Earth Summit—the Commission on Sustainable Development—suffers from the same defects and is further hobbled by an unfocused mission. Its road map is Agenda 21, a 1,000-page compendium of environmental concerns and needs.

Even the international organizations with established structures and resources, such as the World Bank’s Global Environmental Facility, have neither the ability to manage issues comprehensively nor the authority to serve as an honest broker to settle disputes. With no single organization possessing a broad or strong

enough mandate to coordinate environmental efforts, the response to the planet’s ecological problems will remain unfocused, ineffective, and insufficient.

GREEN VERSUS GATT

The lack of an Institutional Environmental Organization to protect environmental values the way the GATT guards free trade principles lies at the heart of the antagonism between trade and environmental interests. Although never pure in its focus and now encumbered by 50 years of compromises designed to maintain reciprocal benefits among the parties to the agreement, the GATT establishes parameters for behavior in the international trading system and defends an open (or at least relatively open) global marketplace against encroachments. GATT’s perceived singular mission and relative success makes environmentalists both angry and envious. They see the GATT as insular, rigid and impenetrable. But they also recognize the GATT’s efficacy, which is in part a function of its narrowly tailored mission and ability to shield itself from political forces advancing other priorities. Thus, while denouncing the GATT, environmentalists admire its power and would like to remold it to serve “green” purposes.

Concern in the environmental community over the negative effects of free trade began to heat up in 1990 with the announcement of plans for a North American Free Trade Agreement, which eco-skeptics argued would allow Mexico to become a “pollution haven” and would undermine higher U.S. environmental standards. In 1991 this discontent boiled over when a GATT dispute settlement

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panel appeared to elevate trade obligations above environmental protection efforts by declaring the United States to be in violation of its GATT obligations for instituting an import ban on Mexican tuna caught using nets that killed large numbers of dolphins. In the face of the perceived hostility of free trade to ecological interests, some environmentalists launched an all-out attack on the GATT. Papering Washington with posters of a dolphin-eating, pollution-spewing "GATTzilla" and running newspaper advertisements under the headline "Sabotage," free-trade critics painted an unflattering portrait of the GATT as a secretive, international conspiracy of faceless bureaucrats in Geneva carrying out sneak attacks on democracy and American sovereignty.

In truth, the GATT is not hostile to the environment but agnostic. In defense of its environmental posture, the GATT recently issued a report that suggests, among other things, that trade liberalization contributes to environmental protection by improving the efficiency of resource use and raising incomes, making possible increased expenditures on the environment. GATT officials further argue that using trade threats or sanctions is not a cost-effective or "first best" way to obtain compliance with environmental agreements or promote environmental policy goals. They insist that the adoption of proper environmental policies such as the "polluter pays" principle—which requires pollution costs to be internalized in the prices producers and consumers see—can ensure that trade liberalization also results in environmental gains.

It is here that the debate between the trade and environmental communities breaks down. Economic growth does not necessarily translate into more resources for environmental protection. More significantly, first best environmental policies (e.g., taxing pollution) are frequently politically unachievable. Nevertheless, trade theorists have become consumed with policy proposals to make trade and environment policies mutually supportive by means of economically "appropriate" environmental policies, which would force polluters to pay for the damage they cause. But their relative disinterest in the real-world political difficulty of getting such measures adopted casts doubt on the seriousness of their commitment to incorporating environmental concerns into trade policy-making. Their inattention to the political failure that stymies movement toward economically sound environmental policies seems particularly ironic, since the GATT was created because governments left to their own devices find it politically nearly impossible to maintain "appropriate" trade policies.

Environmentalists, while acknowledging the universal currency of market incentives, accepting the need to internalize pollution costs and even conceding the value of proper resource pricing as a way to reconcile trade and environmental interests, have become fixated on changing the rules and procedures of the GATT. As a result, they have largely failed to consider the possibility that restructuring environmental policy mechanisms offers a more sound basis for protecting environmental values.

SUCCEEDING WHERE OTHERS FAIL

As the GATT built on a few central concepts such as nondiscrimination, negotiations to establish an International Environmental Organization (IEO) might initially focus on defining general environmental principles to guide the world community. For example, universal acceptance and application of the polluter-pays principle—forcing governments, industry and individuals alike to bear the full costs of the environmental burdens they impose on society—would create powerful incentives for pollution prevention and environmental care, consistent with the long-term interest of the public in a healthy environment and ongoing economic growth. Over time, an IEO might develop a broader body of international environmental law and a cohesive set of rules, norms, methodologies and procedures for countries to follow in carrying out a shared commitment to the protection of the planet.

Whether or not an IEO is created, the rules and procedures of international trade will have to be updated to reflect environmental concerns. The GATT's traditional bar against "extraterritorial" trade restrictions designed to encourage other nations to adopt environmentally sound production processes needs to be amended, and countries invoking trade measures designed to uphold international environmental agreements must not be subject to GATT countermands. In addition, the policy context of GATT decisions needs to be broadened by the undertaking of environmental analyses prior to trade negotiations and by allowing environmental groups and other non-government organizations to submit

views on issues under GATT review or which are the subject of dispute settlement procedures. In the absence of an IEO, of course, the policy void GATT must fill will be greater, requiring more substantial changes in the GATT to inculcate environmental values and permit it to reconcile internally competing trade and environmental goals.

Creating an IEO and multilateral rules to promote the economic and ecological sustainability of life might allow the community of nations to adopt together the optimal environmental policies they cannot enact alone. Clarifying environmental requirements and dispute settlement procedures, for example, would reassure the trade and business communities, which dislike uncertainty and fear that future trade liberalization will be undermined by efforts to recast the GATT as an environmental institution. Whether a new environmental organization is created or the GATT is amended, reconciliation between the trade and environmental communities depends on a realignment of international relations to accommodate the environment as a critical issue of post-Cold War foreign affairs.

In anticipation of next year's 50th anniversary of the Bretton Woods Conference, a number of major reviews of the international organizations set up to manage world affairs in the wake of World War II are underway. Initiatives to update this institutional structure offer the current world leaders a chance to look forward, establish mechanisms to address 21st-century global challenges and respond to today's "political failures" before they devolve into crises. ●