Trade and Environment: Some North-South Considerations

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Introduction
Since issues related to trade and the environment were first identified as a major foreign policy subject in the early 1990s, considerable progress has been made in clarifying legal, economic, and other aspects related to the trade and environment debate. Developing countries, however, remain deeply wary of the legitimacy of the so-called "greening" of trade rules in isolation of commitments by the North to provide tangible assistance to the South through additional financing, technology transfer, increased commitments to overseas development assistance, and other initiatives to promote sustainable development.

Key to breaking this North-South impasse is an understanding of the broader political and economic context of the trade and environment issue, beginning with the commitments made by the North to the South at the 1992 United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit. The message emerging from developing countries is that trade and environment issues cannot move forward in isolation from the wider development commitments previously
made at UNCED. This article begins in part I with a brief description of the North-South impasse. Part II examines the political and economic context of UNCED, while part III describes the context of the General Agreement on Tariffs and Trade\(^1\) (GATT), including the new World Trade Organization (WTO) recently established under the Uruguay Round.\(^2\) Part IV discusses how to link UNCED with the GATT and the WTO, and part V concludes with several suggestions for moving the North-South debate toward the “win-win” context provided by sustainable development.

I. The North-South Impasse

Analytic work about the integration of environmental considerations into trade rules has increased in recent years.\(^3\) A number of issues are being addressed, including: clarifying the compatibility of the GATT with selected international environmental agreements (IEAs)\(^4\) which contain trade measures as a means to help achieve environmental goals; examining links between scientific data of environmental change, risk assessment, the role of the Precautionary Principle,\(^5\) and the process by which such

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4. Approximately 179 international environmental agreements (IEAs) have been negotiated and signed by governments. Several of those agreements, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, contain trade measures such as quotas and bans. EDITH BROWN WEISS ET AL., INTERNATIONAL ENVIRONMENTAL LAW: BASIC INSTRUMENTS AND REFERENCES (1992). See also ROBERT HOUSMAN & DURWOOD ZAEELKE, THE USE OF TRADE MEASURES IN SELECT MULTILATERAL ENVIRONMENTAL AGREEMENTS (UNEP Environment and Trade Series, forthcoming 1994).
5. Adopted in the Rio Declaration of the 1992 United Nations Conference on Environment and Development (UNCED), the Precautionary Principle states that “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing effective measures to prevent environmental degradation.” Rio Declaration on Environment and Development, June 14,
factors are translated into environmental strategies and standards; assessing competitive investment and other implications of differing environmental standards; and calculating trade and general economic costs and benefits associated with the internalization of environmental externalities.

In these and other issues, it is increasingly important to understand the North-South dimensions of trade-environment issues. Although important economic and other divergences among the nations of the South make generalizations about common positions of "developing countries" increasingly irrelevant, it is still fair to say that initiatives to integrate environmental issues with trade are largely seen by the South as originating from and reflecting Northern country priorities. Given the threat they potentially pose to the important economic benefits developing countries expect from trade liberalization, many developing countries view amending trade rules to accommodate developed country environmental priorities with considerable caution.

One of the South's central concerns is that environmental considerations in trade rules may disguise protectionist measures. At the GATT Marrakech Ministerial meeting in April 1994, for example, the Minister of the Environment of Malaysia, Rafidah Aziz, stated that environmental issues "are now clearly being used to promote protectionist motives, particularly to keep out imports from countries which have a better competitive edge and comparative advantage." Developing countries are hesitant to adopt trade policies encompassing environmental provisions without some assurance that linking trade and the environment will prove beneficial and not result in increased protectionism for the North.

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6. See generally Robert Stonehouse et al., Environmental Data, Risk Assessment and Environmental Standards (UNEP Environment and Trade Series No. 4, 1994).


9. As Gerald Helleiner notes, "The protection offered to smaller countries by a multilateral rules system is far from perfect, but it is certainly greater than that available from the interplay among more powerful international actors pursuing their own interests in a world without rules." Gerald K. Helleiner, Considering U.S.-Mexico Free Trade, in Ricardo Grinpun & Maxwell A. Cameron, The Political Economy of North American Free Trade 45, 53 (1993).

The concern that changes to trade rules in order to accommodate environmental priorities may create new forms of protectionism has also been a long-standing concern of the Group of 77 (G-77). Speaking on behalf of the G-77 to the United Nations General Assembly in late 1993, Ambassador Fernando Jarmillo of Colombia warned of the growing offensive in developed countries against trade liberalization. He expressed concern that protectionism has intensified and that trading by developed countries has been affected by ever more sophisticated restrictive practices. Of concern are the long-term implications of recent trade-environment cases relating to environmental production process methods (PPMs). Although the cases thus far have largely focused on species protection rather than industrial production, developing countries are concerned that the PPM issue will begin to erode traditional GATT distinctions between the product and production process issues related to industrial sectors.

Fear of opening the door to increased GATT-acceptable protectionist measures has produced a general resistance within the South to linking trade and the environment. In addition, there are a few clear cut differences of opinion with respect to specific issues within the trade-environment debate. Procedural issues related to trade-environment and national sovereignty questions revolve around clarifying who selects and prioritizes environmental problems, based upon which set of environmental data and risk assessment, and more crucially, upon which set of environmental and other values.

Consequently, many developing countries are turning to the broader political commitments of the 1992 Earth Summit as providing the appropriate context in which to approach trade-environment issues. The bottom line of many developing countries is clear: trade-environment issues...
cannot move forward in isolation of wider development commitments, such as those affirmed at UNCED. Such commitments include technology transfer, additional and concessional financing, and other initiatives associated with sustainable development. In that context, many developing countries point to the lack of commitment from developed countries in building development equity, the alleviation of poverty, and other issues of long-standing importance in the North-South debate.

II. The Earth Summit

A. Basic Policies

The UNCED summit made a number of policy recommendations related to trade and the environment that addressed both Northern and Southern concerns. The Rio Declaration, which comprises twenty-seven principles establishing the political foundation upon which to build sustainable development, addresses trade-environment links in a number of ways, including a commitment by governments to public access to information and a recognition of the need to improve scientific understanding. However, in terms of Southern issues, four principles are of particular importance. Principle 12 states in the relevant part that

trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges . . . should be avoided. Environmental measures addressing trans-


16. In the 1987 report entitled Our Common Future, the World Commission on Environment and Development defined sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs." The World Commission on Environment and Development, Our Common Future 8 (1987).

17. Maurice Strong, the secretary general of the conference, estimated that $125 billion per year in additional financing would be needed to implement sustainable development. At the second meeting of the Commission on Sustainable Development, held in May of 1994, governments reiterated the need to find new and innovative ways to generate additional financing for sustainable development, including examining joint public-private sector leveraging of funds to assist developing countries.

18. Rio Declaration, supra note 5. See generally Hunter et al., supra note 5. As Hugo Schally of the Mission of Austria to the United Nations in Geneva has pointed out, the Principles of the Rio Declaration are intended to be understood as a whole, as opposed to being selected individually.
boundary or global environmental problems should, as far as possible, be based on an international consensus.\textsuperscript{19}

In addition to discouraging disruptions by unilateral environmental measures to an open trading system, the Rio Declaration states in Principle 6 that "[t]he special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries."\textsuperscript{20} Along with this broad recognition of the special needs of developing countries is a more explicit recognition of the relativity of environmental standards reflecting developmental and other differentials, as outlined in Principle 11: "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries."\textsuperscript{21} In addition, Principle 9 affirms the role of developed countries in assisting the South as part of the common goal of sustainable development: "States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies."\textsuperscript{22}

Taken together, the policy context of UNCED related to trade and the environment can be characterized thus: i) trade measures, particularly unilateral trade measures associated with environmental protection, are discouraged; ii) the special needs of developing countries are explicitly recognized; iii) national environmental standards and laws should be allowed to differ and may reflect different stages of economic development; and iv) capacity-building by technology transfer and development assistance is part of the process of achieving sustainable development.

B. Environmental Standards

1. The North-South Debate

As the UNCED work indicates, the issue of environmental standard-setting provides a key example which demonstrates how the North-South debate plays out within a particular issue. Many developing countries are wary of environmental standards that fail to take into account their special economic and development situations and needs.

Concern for respecting the development needs of Southern countries when devising international environmental standards was explicitly addressed at UNCED. Within the trade-environment context, the Minister

\begin{itemize}
\item \textsuperscript{19} Rio Declaration, supra note 5, at 878.
\item \textsuperscript{20} Id. at 877.
\item \textsuperscript{21} Id. at 878.
\item \textsuperscript{22} Id. at 877.
\end{itemize}
of Environment of Jamaica, Easton Douglas, recently linked the two issues thus: "[D]eveloping countries cannot be expected to attain [higher international] standards, however arrived at, in a relatively short period, unless there is a transfer of know-how, capital and technology, to enable them to do so." This statement reinforces the endorsement at UNCED for relative as opposed to internationally harmonized standards. It underlines a long-standing concern, familiar since the "jobs-versus-environment" debate of the 1970s, that higher standards constitute increased capital and operating costs and diminished competitiveness.

The North-South impasse was temporarily bridged at UNCED as developed countries committed to provide tangible assistance to developing countries, who in turn agreed to integrate environmental protections within the development process, in an effort to achieve sustainable development. Within the context of the GATT negotiations, however, the South has perceived Northern attempts to focus the international environmental protection debate on the upward harmonization of standards to be an effort to ignore the commitments made at UNCED to respect the development needs of individual countries.

2. Environmental and Consumption Pattern Standards

For many developing countries, being coerced into meeting the higher standards of the North does not constitute a legitimate means of achieving sustainability. Instead, many developing countries have argued during

23. Easton Douglas, Minister of the Environment for Jamaica, Statement before the UNEP-UNCTAD informal, high-level session entitled Environment and Trade: Perspectives of Developing Countries, in Geneva, Switzerland (Feb. 17, 1994) (an informal meeting report of this session is on file with the Cornell International Law Journal). In Agenda 21, the detailed blueprint of policy recommendations adopted by governments during UNCED, differing environmental standards were addressed within the context of trade-environment links thus: "The challenge is to ensure that trade and environment policies are consistent and reinforce the process of sustainable development. However, account should be taken of the fact that environmental standards valid for developed countries may have unwarranted social and economic costs in developing countries." Agenda 21, supra note 15, ch. 2, para. 2.20.

24. The assumption underlying this concern has never been validated. In fact, several important studies, including those by the Business Council for Sustainable Development and Professor Stephen Meyers of the Massachusetts Institute of Technology show that companies and sectors which increase environmental expenditures also improve their overall economic performance. Recent interest in cleaner production is based on the premise that reduced per unit energy inputs, increased process efficiency, reduced waste generation, and waste reuse and recycling enhances both environmental and competitive performance. For a general discussion of the relationship between environmental standards and competitiveness, see Repetto, supra note 8.

25. Id. The idea that adherence with environmental standards will diminish competitiveness is based on the misconception that compliance necessarily equals higher costs, fewer jobs, and lower productivity. Rather, diminished competitiveness may result from relying on quick-fix methods of pollution control instead of modifying production methods, which can increase competitiveness in the long-term by upgrading the efficiency of the industry and promoting the development of innovative goods and services. See generally Curtis A. Moore & Alan S. Miller, Green Gold: Environmental Technology and the Race to Capture Industrial Dominance of the 21st Century (1993).
UNCED and in the follow-up process that the onus for change and improvement rests not with the South, by way of raising pollution abatement standards, but with the North, by changing unsustainable consumption patterns. Per capita energy and resource consumption and waste generation by developed countries have been the major sources of a variety of global environmental problems, including ozone layer depletion and climate change associated with greenhouse gas emissions. The "common but differentiated" concept in Principle 7 of the Rio Declaration supports this notion: "States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."

The Minister for the Environment and Forests in India, Kamal Nath, recently provided a more forceful expression of the South's concern with Northern consumption patterns. He made the following link between trade, the environment, and sustainable development, within the context of North-South issues:

It would be a retrograde way of shaping environmental norms to allow dispute resolution panels of GATT to indicate the direction the global environment should take. Not only retrograde, but naive, because the roots of the linkage between trade and environment are not to be found in superficial assumptions. They go much deeper, and are systematic. There is a social and environmental subsidy which industrialized nations receive from developing countries. This insidious subsidy renders all development in the North unsustainable by definition. It makes a mockery of free trade; and if we have to set things right, then the subsidy must be accounted for.

In light of the differing economic situations, development needs, and consumption patterns of the North and South, many developing countries view universal standards as an unacceptable means of linking trade and the environment. Because the North pushed for upwardly harmonized standards and production process methods during the final GATT negotiating round without emphasizing their parallel UNCED commitments to the South, attempts to incorporate the environment into the international trade regime in this manner have exacerbated the South's concerns that "green" trade rules will primarily benefit the North.


27. Rio Declaration, supra note 5, at 877.

28. Shri Kamal Nath, Minister for the Environment and Forests for India, Statement before the UNEP-UNCTAD informal high-level session entitled Environment and Trade: Perspectives of Developing Countries, in Geneva, Switzerland (Feb. 17, 1994) (an informal meeting report of this session is on file with the Cornell International Law Journal).
III. GATT/WTO

A. Economic Gains from the Uruguay Round

The grievance that the South faces persistent protectionism from the North was, from a procedural and substantive perspective, reinforced during the final negotiating push to conclude the GATT negotiations in December 1993. Developing countries were mostly sidelined during the final negotiating brinkmanship between the United States and the European Union.

Additional concerns have also been raised about the short-term negative impacts some developing countries may possibly face in the implementation of the Uruguay Round. For example, speaking on behalf of the least developed countries at the Marrakech meeting, Shamul Islam, Minister of Commerce of Bangladesh, warned that the "concerns of the [least developed countries] have not been adequately reflected in the Final Act." Other developing country concerns that require additional analysis are the possible erosion of the special treatment of developing countries under the Final Act; uncertainty over changes to the General System of Preferences (GSP) and preferences identified in the Lome Convention; and unclear reward links between North-South technology transfer and the TRIPS agreement on intellectual property rights. Overshadowing these issues is the alarm expressed by most developing countries in reaction to recent proposals by the United States and France to include labor issues in trade rules.

The economic benefits associated with the implementation of the Final Act over the next ten years tend to show developing country concerns to be well-founded. According to a November 1993 study by the GATT Secretariat, the benefits expected from the WTO are $230 billion per year, coupled with an estimated increase in world merchandise trade of twelve percent, or $745 billion per annum.29 During the final round of negotiations, the principle focus was on several extremely thorny developed country issues, including allowable agricultural subsidy levels for the European Union and the United States, the inclusion of financial services in the Agreement on Services, and a debate between the United States and France over market access of U.S. motion pictures to the French market.

30. After the Uruguay Round, supra note 10.

31. JOSEPH FRANCOISE ET AL., ECONOM-WIDE EFFECTS OF THE URUGUAY ROUND, (1993). In November 1993, the OECD Secretariat estimated that the benefits of the Round would be in the order of $270 billion per year. By contrast, the OECD World Bank estimated that the expected gains would be $213 billion per year. Additionally, in mid-1994, the UNCTAD Secretariat is expected to release its own study of the global economic effects of the Uruguay Round agreements; its estimates, not yet finalized, are in the vicinity of $70 billion per annum. This broad range of forecasts can be explained partly by the different economic models used as well as by different uses of economic multipliers. At the same time, it has also prompted some to question the underlying objectivity of the forecasts. In late December 1993, for example, weeks before the final deal was struck, French Prime Minister Edouard Balladur was quoted in the media as dismissing the "fantasy growth figures which some people promise us." David Buchan & Andrew Hill, GATT Deal May Enrich World by Dollars 270bn, Fin. Times, Nov. 1, 1993, at 7.
In breaking out these estimates, developed countries are expected to reap most of the rewards: roughly seventy percent of total annual economic gains will be concentrated in Europe and North America. The rest of the world's economy, including all developing countries, will share the remaining thirty percent of overall gains. In addition, there are concerns, as noted above, that some developing countries may suffer, at least in the short-term, because of the Final Act. This concern has largely focused on developing country net food importers: with the inclusion of agricultural subsidies in the final text, the Final Act is expected to raise food prices.

In light of the exclusivity of the final negotiations, continued concerns about the effects of the Final Act upon some developing countries, and the uneven distribution of economic benefits between North and South, some developing countries view the trade-environment debate as potentially creating yet another avenue leading to economic domination by the North through protectionism.

32. Discussing "developing country" perspectives on trade and environment is extremely difficult, largely because of profound economic performance differences within developing countries themselves. For example, in an October 1993 survey by the staff of the International Monetary Fund, aggregate output in developing countries was forecast to rise by six percent in 1993 and five and one-half percent in 1994. Yet, much of that overall activity is concentrated in a handful of developing countries, notably China, Hong Kong, South Korea, Taiwan, Singapore, Indonesia, Malaysia, India, Thailand, Chile, Mexico, Argentina, and Egypt. Such increases in economic activity are also reflected in increases in portfolio investments in selected developing countries. A "massive strategic move by international investors into the so-called emerging markets" is underway, particularly in South-East Asian economies. Barry Riley, Funds Pour into New Growth Regions—While Economic Progress in the Developed Countries Has Slowed Seriously, Expansion in the Rest of the World Has Generally Been Rapid, and Often Accelerating, Fin. TIMES, Feb. 7, 1994, at 1. By contrast, many developing countries continue to experience either no growth or, in the case of many African countries, negative per capita GDP movement in comparison with the levels of two decades ago.

33. The UNCTAD Secretariat and other bodies are currently analyzing the Final Act's effects on net food importers. It is important to note, however, that the GATT Secretariat argues that overall benefits to developing countries from further trade liberalization will be beneficial. In an analysis of the trade effects associated with market access rules contained in the Uruguay Round, the GATT Secretariat, in late November 1993 (prior to the completion of the Round) provided an analysis of the trade effects on developing countries and concluded that

[the trade effects in each industrial product category are positive for suppliers subject to MFN tariffs, as well as for suppliers receiving preferential treatment (trade creation more than offsets trade diversion), and are negative for partner-country suppliers within free-trade zones. Overall, the expansion of exports from economies which benefit from GSP (Generalized System of Preferences) to industrial economies through trade creation appears to heavily outweigh any losses through trade diversion resulting from the reduction of preference margins.]

GATT SECRETARIAT, AN ANALYSIS OF THE PROPOSED URUGUAY ROUND AGREEMENT, WITH PARTICULAR EMPHASIS ON ASPECTS OF INTEREST TO DEVELOPING COUNTRIES (Nov. 29, 1993) (on file with author).
B. Environmental Provisions in the Uruguay Round

Thus far, concerns over disguised protectionism have kept environmental protection provisions perceived as vulnerable to such manipulation out of the GATT. The final round has produced some agreements, however, which have survived the protectionist suspicion.

In December 1993, the governments agreed to include several environmental provisions in the Final Act of the Uruguay Round. Among the most important are those contained in the Agreement on Technical Barriers to Trade34 (TBT Agreement), and the agreement on Sanitary and Phytosanitary Standards35 (SPS Agreement). Both Agreements, by encouraging governments to adopt international standards, may spark future controversy in light of the UNCED recognition of relative as opposed to harmonized standards. However, the WTO enables governments to adopt national standards provided certain disciplines are met.

Under the TBT Agreement, for example, a government may adopt product standards which it deems necessary to meet domestic objectives, provided such standards are both non-discriminatory and not more trade-restrictive than necessary to achieve the intended objectives.36 Similarly, under the SPS Agreement, although parties should adopt international standards for food, health, and related standards, they are allowed to adopt standards which differ from international standards provided they also are non-discriminatory, least-trade-restrictive, and based on sufficient scientific evidence.37

In addition to the TBT and SPS Agreements, the Final Act contains a limited number of additional environmental provisions, including the identification of non-actionable subsidies related to environmental retrofitting, the recognition of the importance of the environmental services sector, and the inclusion of sustainable development goals in the Act's Preamble.38

To address issues related to trade and the environment which were not included in the Final Act text, however, governments also approved

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34. Agreement on Technical Barriers to Trade, GATT Doc. MTN/FA II-A1A-6 (Dec. 15, 1993) [hereinafter TBT Agreement], in Final Act, supra note 2.
36. TBT Agreement, supra note 34, art. 2.2.
37. SPS Agreement, supra note 35, para. 11.
38. The Preamble to the Final Act states that members' relations in the field of trade and economic endeavour should be conducted with a view of raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand...[in] the products of and trade in goods and services, while [working] for the optimal use of the world's resources in accordance with the objectives of sustainable development, seeking both to protect and preserve the environment... 

the creation of a WTO Committee on Trade and the Environment. Over the next two years, the Committee will address a number of issues, including the use of trade measures for environmental purposes, eco-labelling and eco-packaging, domestically prohibited goods, dispute settlement procedures, and other issues. Many developing countries are concerned that the Committee will not adequately represent the South but will merely provide another mechanism for Northern economic dominance within world trade. These countries feel that the GATT may not be the proper forum for the trade-environment debate to proceed. Before moving forward, developing countries want to ensure that the North will fulfill its UNCED obligations.

IV. Linking UNCED and the WTO

The lack of reciprocity involved in the final GATT negotiations has led many developing countries to believe that the WTO will not seriously consider their concerns before making policy recommendations. As the WTO Committee’s work gets underway, several developing countries have expressed the need to link possible changes in trade rules within the overall policy context of the UNCED. For example, Ambassador Haron Siraj, Ambassador of Malaysia to the GATT, made the following remarks immediately following the successful completion of the Uruguay Round negotiations in mid-December 1993:

We have also to remember that much work will be needed to be done in respect to trade and environment. We in the developing countries remain committed to the need to ensure GATT’s effective contribution towards the realization of Agenda 21. Developed countries have shown a great interest in the subject, particularly in the later stages of the negotiations and, given such a show of commitment, we would also hope that these would find manifestation in other areas of Agenda 21 being dealt with in other fora. We would like to see this consistency in their commitments.

The above statement tends to underline the South’s perception that the trade-environment agenda is driven by the North and can only move

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39. Issues related to the trade-environment debate include national sovereignty issues and the responsibility of developed countries to provide financial support and technology transfer to developing countries. In this regard, UNCED recognized the sovereign right of countries to establish their own policies for natural resource exploitation and national environmental protection in Principle 2. Rio Declaration, supra note 5, at 876. Principle 7 deals with the “common but differentiated responsibilities,” whereby developed countries are identified as bearing greater responsibility for global environmental problems and should bear proportionally higher costs by way of additional financing and technology transfer partnerships with developing countries. Id. at 877.

40. Ambassador Haron Siraj, Remarks at an Informal Meeting of the GATT (Dec. 15, 1993). In similar remarks to a recent informal session of the GATT, Ambassador Siraj pointed to the “general lack of consistency in fulfilling commitments under Agenda 21, and more trade barriers and unilateral measures imposed by some developed countries have complicated this process of confidence building.” Ambassador Haron Siraj, Statement to the UNEP-UNCTAD Informal Meeting on Environment and Trade (Feb. 17, 1994) (on file with author).
forward within the context of the GATT if other UNCED obligations are met. These include technology transfer and additional financing. Anything less, and developed countries can be accused of following double standards in international cooperation commitments related to the environmental agenda.

Many developing countries see the commitments by the North during the UNCED negotiations as a means of ensuring that their fears of protectionism are not realized. Linking the UNCED obligations with the WTO is perceived as a solution in part because the UNCED obligations are not inconsistent with trade liberalization. For example, Principle 12 of the Rio Declaration specifically provides:

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental protection. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus.41

The above principle might be characterized as an approach of policy containment. The emphasis is on reiterating the critical importance of an open, liberal trading system, including its importance for promoting sustainable development, and ensuring that liberalization is not disrupted by arbitrary or unjust environmental measures, particularly unilateral trade measures. The economic and environmental benefits of trade liberalization are accepted at the outset, and no reference is made in UNCED to the need to assess environmental impacts associated with trade liberalization.42

Principle 12 is attractive to many developing countries because it adopts a policy sequencing assumption which, put most simply, links the economic benefits of trade liberalization with improvements in environmental protection. Trade represents an important source of economic growth, particularly for developing countries. As economies grow through trade, countries then have the economic means to address the problems of environmental protection.43 Within this context, attempts to "leapfrog"

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41. Rio Declaration, supra note 5, at 878.
42. However, Principle 17 of the Rio Declaration encourages governments to adopt national environmental impact assessment policies in order to assess "proposed activities that are likely to have a significant adverse impact on the environment," which presumably would include trade liberalization. Id. at 879.
43. This view of policy sequencing, linking the benefits of increased economic wealth associated with international cooperation to improved environmental protection, has some empirical backing, including a study by Gene M. Grosman and Alan B. Krueger of Princeton University. In an updated study, the authors conclude that for certain air and water quality environmental indicators, no evidence [suggests] that environmental quality deteriorates steadily with economic growth. Rather, for most indicators, economic growth brings an initial phase of deterioration followed by a subsequent phase of improvement.
the development-environment sequence, whereby environmental priorities are put ahead of development gains, are either rejected or else viewed together with developed country obligations to assist developing countries.\footnote{The above is obviously an oversimplification of a very complex problem. There are cases in which technologies and development patterns have been “leapfrogged” to avoid the mistakes experienced by developed countries. The ozone layer is one example.}

V. Suggestions for an Effective Trade-Environment Linkage

Progress is evident when looking at the kind of political and economic bargains that can be struck in linking trade-environment issues with broader development cooperation. In 1993, the North American Free Trade Agreement\footnote{North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 296 and 33 I.L.M. 605.} (NAFTA), signed by Mexico, the United States, and Canada, marked the first trade accord to contain specific environmental provisions. The environmental “side-agreement,” signed by the three NAFTA parties in late 1993, builds upon and elaborates some of the environmental provisions found in the NAFTA.\footnote{Can.-Mex.-U.S.: North American Agreement on Environmental Cooperation, 32 I.L.M. 1480 (1993).} For example, an estimated $2 billion will be provided through the North American Development Bank\footnote{Project expenditures under the North American Development Bank are comparable to total multilateral funding commitments for global environmental management under the Global Environment Facility (GEF). In April 1994, the GEF was replenished, having disbursed a total of approximately $2.3 billion over three years to assist developing countries in environmental protection.} to help carry out the mandate of the newly established Border Environment Cooperation Commission. Finances will be directed to help fund technology transfer, capacity building, information exchange, and other activities.\footnote{The North American Agreement on Environmental Cooperation, for example, has a mandate to promote sustainable development within the context of NAFTA, to help implement the environmental provisions contained in the agreement, and to encourage transparency and public participation in matters related to the environment. In addition to general obligations, a Commission for Environmental Cooperation will be established. \textit{See generally} Robert Housman, \textit{Reconciling Trade and the Environment: Lessons from the North American Free Trade Agreement} (UNEP Series on Environment and Trade No. 3, 1994).}
Although environmental provisions in the trilateral NAFTA are not easily translated to the multilateral GATT/WTO arena, the kind of tangible international cooperation associated with the NAFTA may serve as one example of the kind of linkages needed between the recommendations of UNCED and possible rule changes in the GATT/WTO in order to bridge the North-South divide on trade-environment issues.

Conclusion

Although considerable progress has been made in clarifying the legal, economic, and other issues related to trade and the environment, developing countries remain deeply wary of the legitimacy of the so-called "greening" of trade rules in isolation of the commitments by the North to provide tangible assistance to the South through additional financing, technology transfer, and increased commitments to overseas development assistance.

Quite clearly, this casting of the current debate in terms of a North-South division needs to be overcome. The challenge is to begin identifying new approaches, such as an analysis of an environmental GSP for developing countries; more active participation by the Global Environment Facility in trade-environment issues, particularly as they relate to incremental cost gaps associated with standards harmonization for some sectors in which higher standards accrue higher operating costs, such as the chemicals sector; efforts recently announced by UNCTAD and UNEP to encourage the mutual recognition of national eco-labelling schemes through the elaboration of environmental standards equivalence measures; and the recent proposal by the outgoing Ambassador of the European Commission to direct 0.25% of totals from tariffs to a global environmental fund, in addition to other proposals.

The larger challenge, however, lies not in finding new monies to address the familiar problems of pollution abatement and development acceleration, but rather how to find new approaches to build sustainable trade policies. Although easily said, this remains enormously difficult to

49. Work by UNCTAD and UNEP on the mutual recognition of national eco-labels is intended to promote mutual recognition of different labels adopted by developed and developing countries.

50. In May 1994, the UNCTAD and UNEP secretariats prepared a joint work plan for submission to the Commission on Sustainable Development identifying ten issues related to the trade-environment linkage. The secretariats will cooperatively address these issues in an effort to facilitate their implementation into the policies and work programs of both national governments and international organizations concerned with sustainable development. The ten issues are: internalization; environmental standards; emerging trends in environmental policy-making; eco-labelling and certification; the role of science; indicators of sustainable development; multilateral environmental agreements; additional financing and technology transfer; positive incentives to build compatibility between trade and environment; and capacity building. Trade, Environment and Development, supra note 3.

51. Some commentators believe sustainable trade policies will evolve as nations and producers respond to the demand for environmentally sound goods and services by developing new technologies, products, and sustainable practices or be surpassed in the global economic market. See generally Moore & Miller, supra note 25.
achieve, given the uncertainty of quantifying sustainable development. At the heart of the sustainable development debate is the need to shift the debate from an "environmental-protection-versus-development" context to one that examines the "win-win" economic and environmental benefits of sustainable development. The contribution of *Principles on Trade and Sustainable Development*, drawn together by the International Institute on Sustainable Development, and the analytic work of the OECD Secretariat on trade-environment links, to name just two sources of work, represent important steps forward in this direction.