

Chapter 1

Overview and Summary

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The potential for conflict between environmental concerns and international trade is increasing. The past two decades have seen a proliferation of national environmental laws and international environmental agreements along with a rapid expansion of international trade and investment. For the most part, the two regimes—environmental protection and international trade—have developed independently. Many of the rules for trade were put in place before the environment was widely viewed as a matter for global concern. A number of environmental laws and agreements, including some of the most far-reaching, might conflict with current trade rules.

As environmental problems have mounted, so have demands for action at both the international and national levels. When the General Agreement on Tariffs and Trade (GATT)—the major international agreement governing trade—was formed in the late 1940s, few countries had significant environmental laws and comparatively few global, bilateral, or regional environmental agreements were in force. Today, Federal and State environmental laws and regulations in the United States alone could fill several bookshelves; several other advanced economies also have strong environmental protection laws. By 1990, the number of international environmental agreements had mushroomed to over 150. Nearly half were adopted after 1979.¹

There is also an increased volume of trade and investment flows among nations, along with concern about environmental impacts from these flows. Since 1950, according to one estimate, trade in manufactured goods has increased nearly twentyfold, or two-and-one-half times faster than world output as a whole.² This increase happened alongside successive rounds of trade negotiations aimed at liberalizing international trade. The current Uruguay Round of GATT discussions has not focused on environmental issues. Yet many of the key areas

for negotiations—e.g., agriculture and dispute resolution—have environmental ramifications.

The environmental implications of efforts to liberalize trade are poorly understood, and efforts by governments and international bodies to determine how different trade patterns and policies affect the environment are still in their infancy. Generalizations about whether the net environmental effects from liberalizing trade will be positive or negative are usually too simplistic to be much use for policymaking. The actual effects depend on the specific context, including different nations' capabilities to implement effective environmental protection regimes. Countries vary greatly in this regard.

The trade community is concerned about the trade impacts of measures taken in the name of the environment. These measures include both domestic environmental regulations, which can have side effects on trade, and explicit trade restrictions taken in the name of environmental concerns. Whether intentionally or not, some such measures have the potential to restrict trade more than is necessary to achieve environmental goals. In some cases, the disruption of trade also might be out of proportion to the environmental benefit.

Competitiveness also enters into the equation. Countries with strong environmental standards might view the absence of comparable regulations in other countries as a de facto subsidy, since less-regulated firms may bear fewer compliance costs. The United States, Japan, and several European countries have strong environmental standards compared with most of the rest of the world. Some assert that lack of comparable standards might warrant trade measures such as countervailing duties. Several bills and resolutions introduced in the 102d Congress aim to address these competitive impacts.

¹ U.S. Congress, General Accounting Office, *International Environment: International Agreements Are Not Well Monitored*, GAO/RCED-92-43 (Gaithersburg, MD: U.S. General Accounting Office, January 1992). The GAO analysis was based on data from the U.S. International Trade Commission.

² As cited in Labor-Industry Coalition for International Trade, *The Uruguay Round: Will It Be a Good Deal for U.S. Manufacturing?* (Washington, DC: June 1990).

Until recently, institutions dealing with international trade and with the environment have acted mostly in isolation and ignorance of each other. The growing potential for trade/environment conflicts suggests that this isolation is no longer appropriate. But policymakers are only now grappling with what it would mean to more closely coordinate trade and environmental policies.

Some environmentalists fear that U.S. trade officials are not sufficiently attuned to environmental issues to safeguard U.S. environmental standards and objectives in trade negotiations. There is also concern that the trade provisions in some widely accepted international environmental agreements might be found inconsistent with GATT if challenged. Such agreements address problems as diverse as depletion of the stratospheric ozone layer, extinction of plant and animal species, and transportation of hazardous wastes. The number of international agreements and the pace of national actions can be expected to grow. For example, the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992 may consider framework agreements for biodiversity and climate change. It could also result in nonbinding measures on topics as diverse as forest management, ocean pollution, and toxic and hazardous chemicals. Some of these could be the basis for further negotiations for possible conventions that might have trade provisions.

Some in the trade community fear that environmental activists, along with other interest groups, could combine to make completion of the Uruguay Round GATT negotiations problematic, as well as threaten the adoption of a North American Free Trade Agreement (NAFTA) now under negotiation with Mexico and Canada.³ Environmental issues emerged as a congressional concern soon after the

Administration announced that it would seek fast track authority to negotiate NAFTA. In return for this authority, the Administration made a commitment to deal with environmental issues, mostly in separate ("parallel track") discussions with Mexico. The extent of progress made in addressing environmental issues continues to be a major congressional concern about the negotiations.⁴

So far, GATT has only been asked to resolve a few disputes about whether particular environmental measures (or closely related measures) violate its norms of liberal trade. (See app. A for details of these disputes.) But this number might increase as more environmental actions are implemented. As discussed in chapters 3 to 5, GATT is not now well-equipped to weigh the broader issues that sometimes underlie such trade disputes. Making GATT more sensitive to environmental concerns, while retaining its ability to prevent nations from erecting trade barriers in the name of environment, will be an important challenge for policymakers.

The principles of liberal trade remain important in today's world. If the Uruguay Round fails, with GATT's members unable to agree on a set of amendments, GATT would be weakened, possibly severely.⁵ Other trading arrangements (such as regional trading blocks) might become the dominant norm. Even so, international institutions (even if perhaps regionally based) would still be needed to facilitate trade. These institutions would face trade/environment issues similar to those now involving GATT.⁶ Thus, although this paper focuses on GATT, the issues will remain relevant whatever the outcome of the Uruguay Round. There will be a continued need to address environmental issues as they relate to trade, and many of the responses will have the potential for trade/environment conflicts of the sort discussed in this paper.

³In this regard, a recent report on trade and environment by the GATT Secretariat pointed to a "serious risk of environmental issues and concerns being exploited by protectionists for their own benefit" and expressed concern about "efforts of protectionist groups to draw environmental groups into implicit or explicit alliances." GATT Secretariat "Trade and the Environment" (advance copy, released Feb. 12, 1992), p. 5. This analysis will be published by the GATT Secretariat as part of its annual report. (The GATT Secretariat cannot speak for its members, so this report is not an official statement of GATT policy.)

⁴Steps taken by the Administration include appointment of environmental representatives to several trade advisory committees, preparation of a review of U.S.-Mexico environmental issues, and cooperation with Mexico on border environmental problems, including a proposed doubling of U.S. funds for border projects in Fiscal year 1993.

⁵As this report went to press, GATT parties were still considering draft final negotiating text for completing the Uruguay Round. Initial expectations for conclusion of the Round by mid-April 1992 were not realized, in part because of disagreement over agriculture.

⁶Indeed, the same types of conflicts have already surfaced for trade among members of the European Community (EC) (box 2-A). The EC has a regional trading regime that supplants GATT for trade among EC members.

⁷See app. B. See also Susan Fletcher and Mary Tiemann, "Environment and Trade," IB92006, Congressional Research Service Issue Brief (updated regularly).

SUMMARY AND FINDINGS

Many bills and resolutions introduced in the 102d Congress deal with the interactions between trade policy and environmental policy in one way or another.⁷ Trade/environment interactions are now being addressed by the executive branch as well. This paper provides background information and analysis that may be useful as Congress begins to consider trade and environmental questions; it focuses primarily on multilateral issues pertinent to GATT, although some treatment is given to NAFTA-related questions. The questions and issues considered here comprise only some of the complex interactions between trade and the environment.⁸

Certain distinctions that recur in various places in this paper are worth keeping in mind. These include distinctions between processes and products; between regulating conduct at home and seeking to influence conduct abroad; between pollution (or other environmental degradation) that stays within the polluting country, and pollution (or degradation) of a transborder or global nature; between unilateral and multilateral action; between the perspectives of developed countries and developing ones (the "North-South" split); and between use of positive inducements such as financial and technical assistance and increased market access, and negative inducements such as trade sanctions.

Several themes also recur. First, relatively little is known about some important topics, including the effect of trade on environment, and the effect of environmental measures on trade and on competitiveness. Second, addressing problems arising from interaction of trade and environment will require more cooperation between developed and developing nations, between advocates and policymakers for trade and those for environment, and between international institutions with trade, development

and environmental responsibilities. Third, for environmental problems not directly caused by trade, trade restrictions alone are seldom the preferred solution, though if carefully crafted they can at times play a useful role in a broader strategy. Finally, while interactions between environment and trade now receive more attention, environmental issues and regulations comprise only a portion of the trade and competitiveness picture in which U.S. companies operate; other areas are of equal or greater importance, as discussed in detail in several other OTA reports.⁹

OTA has assumed in this paper that the United States, as a matter of policy, will continue to maintain strong policies to protect the domestic environment and will be concerned about many global environmental issues. It also assumes that the United States will continue its historically strong commitment to the goal of liberal trade (trade that is as free as possible), and will seek to avoid competitive disadvantage for U.S. industry. Achieving all of these goals, which at times may appear to conflict, will be a challenge. The paper also assumes that GATT or its objectives will continue to be seen as relevant to the contemporary trading system. Findings from the paper are summarized below, with references to chapters and appendices for further discussion.

1. International Environmental Agreements and the Trading System (see ch. 3):

At least 17 international environmental agreements have trade provisions, according to GATT.¹⁰ There soon may be *more* international environmental agreements, due to UNCED and other discussions, although these will not necessarily have trade provisions. It is possible that trade restrictions imposed by an individual country pursuant to an international environmental agreement might some-

⁸ Issues not addressed in much detail in this paper include, among others, international trade in hazardous wastes, tropical timber, endangered species, and domestically banned or hazardous substances; ecolabeling and certification of a product's environmental characteristics or history; and requirements for product packaging and disposal. While this paper at times discusses such issues for purposes of illustration, in depth discussion of specific issues, environmental agreements or national laws with trade provisions is beyond this paper's scope.

⁹ See, e.g., U.S. Congress, Office of Technology Assessment, *Competing Economies: America, Europe and the Pacific Rim*, OTA-ITE-498 (Washington DC: U.S. Government Printing Office, October 1991), and *Making Things Better: Competing in Manufacturing*, OTA-ITE-444 (Washington, DC: U.S. Government Printing Office, February 1990).

¹⁰ GATT Secretariat, *op. cit.* As used in this paper, the terms "trade measure" and "trade provision" are used interchangeably to denote any explicit restriction on trade. (This does not include trade effects of domestic regulations.) "Trade sanction" is a punitive trade measure designed to coerce a change in another country's behavior.

day be found to violate GATT.¹¹ Also, fear of GATT conflict might induce nations to leave potentially useful trade provisions out of agreements. More broadly, independently of whether they violate GATT's particular rules, trade provisions of environmental agreements have the potential not only to protect the environment but also to hinder trade. Thus, there is a need to consider how best to accommodate both environmental interests and the interest of promoting liberal trade that GATT represents.

GATT's Secretariat has urged countries to pursue multilateral agreements on the environment and to resist the urge to employ unilateral trade measures.¹² The Secretariat maintains that "GATT" rules could never block adoption of environmental policies which have broad support in the world community."¹³ The reason: GATT members could grant a waiver or exception to GATT rules in the event of a conflict. Even so, GATT does not give special status to such international agreements, and such a waiver could be far from automatic.

The potential for conflict with GATT could depend in part on the type of trade restrictions. Two types of trade restrictions should be distinguished. The first is restrictions based on the nature of a product itself, such as restrictions on refrigerators that contain chlorofluorocarbons (CFCs) that when released deplete the ozone layer. GATT tends to permit such import restrictions when matched by the same restrictions on domestic goods (e.g., a ban on all imported and domestic refrigerators containing CFCs). The second type of restriction is based on how a product is made, such as restrictions on computer chips made using CFCs as a solvent. One of the more prominent international agreements—the Montreal Protocol on Substances That Deplete the Ozone Layer—calls for a determination by January 1994 of the feasibility of using this latter

type of restriction. If a challenge were brought, GATT would be less likely to accept such process related import restrictions, even if matched by a similar restriction on domestic production processes (e.g., a ban on the use of all domestic and imported computer chips made using CFCs as a solvent). For some environmental purposes, both types of restriction can be important.

Given the potential for conflict, it would be desirable to review current and proposed environmental agreements with an eye toward GATT problems. This is one of the tasks to be taken up by the recently convened GATT Group on Environmental Measures and International Trade. Potential problems might be avoided by modifications in agreements' trade provisions or by GATT waivers or amendments.¹⁴ Such changes could be agreed on by consultations between GATT and the parties to an agreement. Similar consultations between negotiators of upcoming international agreements and GATT might help to stave off future conflicts. To aid consultations concerning existing and future trade measures in international agreements, it could help to develop some guidelines for the use of trade measures for environmental purposes.¹⁵ While each case would have unique considerations, such guidelines could provide a useful frame of reference.

2. Use of Unilateral Trade Provisions in National Environmental Policies (see ch. 3):

Some countries, including the United States, occasionally have employed trade provisions in environmental laws to encourage other countries to adopt similar practices, and/or to ameliorate the negative environmental effect if other countries do not adopt similar policies (e.g., the U.S. Maxine Mammal Protection Act—see below). Such provisions may be seen as attempts to apply domestic law 'extraterritorially,' in that they seek to *protect the*

¹¹Such a ruling could come after one GATT member challenged a trade restriction used by a second GATT member pursuant to the environmental agreement. If the first country were not a party to the environmental agreement, then it would not apply between the two countries, leaving GATT as the operative law. If the first country were a party to the environmental agreement, then there would be a question as to which law—GATT or the environmental agreement—prevailed. While the general rule is that the agreement made later in time would take precedence, the decision as to which law governs can be complex.

The effect of a ruling against a country imposing the trade restrictions would be hard to predict. Undercurrent GATT procedures, countries would be asked to adjust their national laws or, if they refused, to compensate the complainant but countries cannot be forced to comply. Current GATT dispute resolution procedures and proposed amendments are discussed in the annex to ch. 2; ways to change GATT to give international agreements special status are discussed in ch. 5.

¹² Ibid., p. 4.

¹³ Ibid., p. 6.

¹⁴ The procedures for GATT waivers and amendments are discussed in ch. 5.

¹⁵ Possible institutional arrangements for negotiation on particular cases and general guidelines are discussed in ch. 5.

environment, or to impose domestic norms on or otherwise influence conduct, beyond the national borders (either in other countries or in international territory).

Whatever their desirability from an environmental viewpoint, these measures can come into conflict with GATT. This is partly because, as noted in finding 1 above, import restrictions based on the process for making a product seem problematic under GATT.

An example is a dispute between the United States and Mexico over U.S. tuna imports. To protect dolphin, the Marine Mammal Protection Act called for banning certain tuna imports when the incidental killing of dolphin by a country's tuna fleet exceeded certain limits. After Mexico complained, a GATT dispute resolution panel reported that the U.S. ban violated GATT.¹⁶ Subsequently, the GATT Secretariat made a strong statement against unilateralism: "In principle, it is not possible under GATT's rules to make access to one's own market dependent on the domestic environmental policies or practices of the exporting country."¹⁷ However, there may be times in which a country believes unilateral trade measures are justified for environmental reasons. (The possible need to modify GATT's procedures for deciding trade disputes involving environmental concerns is discussed in item 6 below.)

Whether the U.S. Government should use trade measures or discussions to influence environmental behavior abroad has become a controversial issue in Congress. Several bills and resolutions have been introduced proposing negotiations to make GATT compatible with U.S. laws designed to protect the environment (or to influence environmental behavior) outside U.S. borders. (See app. B.) It would be possible to change GATT's rules (ch. 5) to be more accommodating to trade provisions in national environmental policies. However, such changes could open the door for more restrictions on trade than warranted by environmental objectives alone. To achieve a balance of interests, changes might include general guidelines for the use of unilateral trade measures for environmental purposes; while each dispute would still be resolved individually on

its own merits, the guidelines could be given some weight. Unilateral trade measures, if permitted by GATT, might be used against as well as by the United States. One example might be limits on greenhouse gas emissions. Several countries have quantitative goals to reduce greenhouse gas emissions; the United States does not.

3. Trade Barriers Arising From Domestic Regulations (see ch. 4):

Domestically oriented regulations, seeking to affect what happens only within the national borders, can act as barriers to trade. (A well-known example is a Danish beer and soft drink container law with return-for-reuse requirements that appear to favor domestic companies. See app. A.) These barriers can be reduced if different countries' regulations can be made similar, or "harmonized." However, while harmonization is often a worthwhile goal, countries' differing needs can sometimes make harmonization infeasible or undesirable (see box 2-A and ch. 3).

Some nonbinding suggestions to help countries address the international economic aspects of environmental policies have been available since 1972, through the Organisation for Economic Cooperation and Development. Among other things, the guidelines encourage OECD members (which consist of 24 industrial countries and the EC) to apply environmental measures to products in ways consistent with GATT's principles of national treatment and nondiscrimination (see ch. 2 and annex to ch. 2). As part of a broader examination of trade and environment interactions, OECD members are currently reviewing these principles for possible updating or revision.

The previously mentioned GATT working group on environmental measures and trade is examining the transparency of environmental regulations that are likely to have trade effects, and is also examining the trade effects of environmentally motivated regulations regarding packaging and labeling. To date, domestically oriented regulations have received only modest scrutiny in GATT. Certain changes proposed in the Uruguay Round could alter

¹⁶ The panel's report has not been taken up by the full GATT Council for adoption as an official GATT decision. Even if adopted, the GATT decision would not supersede U.S. law. The case is discussed further in chs. 2 and 3; the GATT dispute resolution process and its relation to U.S. law is discussed in the annex to ch. 2.

¹⁷ GATT Secretariat, *op. cit.*, p. 10. The GATT Secretariat does not have the authority to interpret GATT law or to determine GATT's policies; that can be done only by GATT's member countries acting together.

that, raising a new potential for conflict between GATT and national environmental laws. As in finding 2 above, GATT's procedures for resolving disputes over particular regulations might need adjustment. (See finding 6 below.)

4. The Question of Competitive Impacts (see ch. 4 and app. E):

Concern about competitive effects has been a recurring issue in debates about strengthening U.S. environmental laws. One concern is that countries with weaker standards might gain a competitive advantage. The perception of competitive impacts can also lead to domestic pressures to go slow in implementing laws. Competitiveness concerns partly underlie some recent proposals in Congress calling on U.S. trade officials to negotiate with other countries to raise their standards, or to treat lower environmental standards as a form of subsidy against which countervailing duties might be used.

A review of past research suggests that environmental regulation has not contributed in a major way to relocation of U.S. industry overseas or to significant deterioration of the U.S. trade posture. (The analysis of competitiveness effects in this paper is restricted to implications for U.S. manufacturing; the effects for agriculture, commercial fishing, or mining are not examined.) Market access and lower labor costs generally have been the most important factors in relocation. In the special case of Mexico, the border area, with its low labor costs, proximity to the United States, and duty-free export processing zones, has attracted many U.S. firms over the years. Some of these firms relocated in part because of weaker Mexican environmental regulations. If Mexico succeeds in its efforts to implement tougher standards, U.S. firms in the future will have less environmental rationale for relocation. In the meantime, environment, combined with other factors, continues as one of several location criteria.¹⁸

Most studies have found that environmental regulations generally have a small effect on U.S. manufacturing competitiveness; however, they can have a larger effect in particular sectors with high environmental compliance costs. Moreover, caution should be exercised in applying past studies to the present competitive climate. Much of this research

uses data from the 1970s, when fewer U.S. industrial sectors were under great competitive challenge from abroad. What were modest impacts 10 or 15 years ago might well be more troubling today when international competition as a whole is more intense. Also, U.S. environmental regulations are more strict now than they were. So are regulations in some other countries. These changes leave open the possibility that environmental regulations could be more of a competitive disadvantage than before. Some "leading edge" U.S. firms have turned environmental regulations from a competitive drag into an advantage, however.

To the extent that U.S. environmental standards put U.S. manufacturers at a disadvantage, different responses are possible. Trade measures such as countervailing duties could be used, but they would entail administrative problems and their effectiveness would not be guaranteed. Moreover, countervailing duties to adjust for the absence of environmental regulation in another country probably would be deemed a GATT violation if challenged. Other steps, such as support for environmental research and development or technical assistance to help manufacturers comply with regulations, might also be considered in a strategy to deal with competitive impacts.

Because of concern about competitiveness, the Congress, in its 1990 revisions to the U.S. Clean Air Act, instructed the President to report to Congress with an evaluation of competitive impacts and a strategy for addressing impacts through trade consultations and negotiations. Examples of such options included harmonization of standards and trade adjustment measures.¹⁹

5. The Case of Developing Nations (see ch. 3):

Some trade/environmental conflicts reflect the sharp differences between developed and developing countries over trade and responsibilities toward the global environment. While there are a growing number of exceptions, many developing countries see environmental protection as having to take a back seat to their plans for economic development. Although no country wishes to be seen as a pollution haven, some developing countries may be reluctant to take the lead in raising their environmental

¹⁸ Location issues will be discussed in greater detail in an OTA study on U.S.-Mexican trade, technology, and investment to be completed later in 1992.

¹⁹ Section 811 of Public Law 101-549. The report is due on May 15, 1992.

standards for fear of jeopardizing what in some cases might provide a comparative advantage or an attraction for new investment.

However, there is growing recognition in developing nations that environmental and development objectives must become more compatible if a sustainable future is to be forged. But many developing countries argue that they do not have the resources to act on their environmental problems, given more immediate problems like poverty and debt; they maintain that they need help from the developed world to finance much of their environmental activities. This question of who pays is highly controversial, and will be a central issue addressed at the United Nations Conference on Environment and Development. A number of options for assistance could be considered in addition to direct foreign aid. (See box 3-A.)

It is sometimes argued that liberalized trade and investment will produce the financial resources that developing countries might use for environmental improvements. However, this will not happen unless a country has requirements or incentives in place for effective environmental management. Active citizen interest, in a receptive political system, can also be crucial for effective environmental policies; this element is lacking in many developing countries. When countries do upgrade their environmental standards, change is likely to be slow. It takes more than a law to make environmental standards comparable; institutions and resources for enforcement must be in place. Even those countries, like the United States, with the most environmental policy experience find it can take many years before standards called for in a law are implemented.

As the United States reassesses its trade positions with respect to developing countries, environmental issues (with their associated competitiveness dimension) will enter increasingly into the debate. One issue will be how to encourage developing countries to improve standards—whether through technical and financial assistance, for example, or through threats of countervailing duties and other trade measures. Another issue is whether environmental objectives should be pursued independently, or handled in parallel track discussions (as is mostly the case with NAFTA), or as part of future trade negotiations (as called for in several resolutions introduced in the 102d Congress).

It should be noted that environmental reform in Mexico began before the current NAFTA debate. But it might not have proceeded at its present pace were it not for a perception that inadequate performance on the environment could imperil a free trade agreement with the United States. There has been an acceleration of cooperative measures taken by both the U.S. and Mexican Governments on border environmental problems, as well as increased commitments of financial resources. Some border area organizations, however, maintain that a much greater investment than currently envisioned will be needed to meet border area environmental and public health needs.

The United States is beginning to consider possible broadening of free trade discussions to other developing countries within the hemisphere, as envisioned in President Bush's Enterprise for the America's Initiative. As preparations for such discussions, more steps might be taken to assist Caribbean, Central and South American countries to develop and enforce effective environmental management measures. The relationship of such measures to other issues of greater hemispheric economic integration, such as debt and investment, would also need to be addressed. In this regard, it is worth noting that European Community economic integration, involving countries far more similar in economic characteristics, has taken many years of effort and substantial use of adjustment mechanisms to address competitive impacts (see box 2-A).

6. Trade/Environment Decisionmaking (see chs. 2 and 5):

Several international institutions could play roles in addressing trade/environment interactions. Besides GATT, these include the Organisation for Economic Co-operation and Development and various United Nations bodies. Each has its strong and weak points.

GATT as an institution has responded slowly to the unfolding dilemmas posed by the increasing convergence of trade and environmental issues. Although a working group on environmental measures and trade has existed for 20 years, it met for the first time in the fall of 1991. Environmental issues have not been directly addressed in the Uruguay Round, even though changes under consideration could have environmental implications (see ch. 2). While the thinking of the GATT Secretariat on trade and environment matters was suggested by a report

released in February 1992, this report was not based on a consensus of the member countries.²⁰ Several options exist for addressing environmental/trade issues within GATT; some, including GATT's Director General, have argued for inclusion of environmental matters in a post-Uruguay Round trade discussion. Others have proposed a GATT code on the environment, or perhaps a moratorium on rulings adverse to environmental concerns pending adoption of new procedures to handle those disputes.

To date, OECD has made the most active effort to grapple with the complex interactions between trade and environmental objectives.²¹ Even though it has very limited capacity to set and enforce policy among its members, OECD can bring a level of integration to trade/environment questions that few other bodies can. OECD's efforts are jointly supported by its environment directorate and its trade directorate, and its members' trade and environmental agencies are meeting to develop national positions. OECD has issued useful guidelines and principles on related questions in the past. But it does not have developing countries as members. Even though OECD is attempting to consider their concerns, any guidelines it issued might not be acceptable to developing countries.

There is currently no institution equivalent to GATT with respect to international environmental agreements. Nor is a single, comprehensive international agreement covering all global environmental problems likely. Yet a more coordinated approach for developing and monitoring international environmental agreements would be beneficial. According to the U.S. General Accounting Office, the administering bodies for international environmental agreements generally do not have the authority or the resources to monitor compliance.²² Thus, these bodies tend to serve as information clearinghouses rather than enforcers of agreements. Some have proposed stronger coordination mechanisms or even anew international institution to give more visibility to environmental concerns.

Indeed, the GATT working group on environmental measures and trade will look to UNCED for authoritative guidance on environmental standard setting and on environmental policy making.²³ Institutional questions will be debated at UNCED; in addition, broader reorganization of the UN is under consideration. Out of this may emerge a stronger mechanism for addressing international environmental issues.

Some efforts are underway within the U.S. Government to develop information and formulate U.S. positions on these matters with respect to GATT and OECD discussions. An interagency group, coordinated by the Office of the U.S. Trade Representative (USTR), has been meeting since 1991. Some environmental representatives have been appointed to USTR's advisory committees, and the U.S. Environmental Protection Agency has its own advisory group working on these issues.

While such activities have generated much useful information, there is a possibility that U.S. positions will emerge from a largely hidden and informal interagency process with little congressional input. Congress might undertake oversight of interagency progress in identifying possible U.S. objectives as a step toward determining whether to provide specific legislative guidance. It also might consider oversight on international environmental negotiations that have trade components.

Whether undertaken at the international or national level, there is clearly a need for better information and analysis of the environmental effects of different trade patterns and policies. There have been few efforts to analyze such impacts in the past. There is also a need for continuing evaluation of the trade and competitiveness impacts of environmental regulations; such evaluations could be helpful not only in identifying appropriate and inappropriate use of trade measures, but also competitive disadvantages arising from differences in national standards.

As has been mentioned, a better method to resolve trade disputes involving environmental issues is needed. Currently, a GATT dispute resolution panel

²⁰ GATT Secretariat, *op. cit.*

²¹ OECD discussions on these questions began in early 1991.

²² U.S. General Accounting Office, *op. cit.*, p. 4.

²³ Richard Eglin, Statement to the General Assembly on the Global Legislators Organization for Balanced Environment, Washington, DC, February 1992.

hears the case and writes a report, which is then submitted to the GATT Council for adoption as an official GATT decision (see ch. 2 annex). However, effective resolution of environmental disputes may require not only judgments about the application of GATT rules and disciplines, but also broader societal judgments (e.g., how to weigh the best available scientific evidence with other factors such as economic cost). Changes such as permitting testimony and argument by nongovernmental organizations and requiring environmental expertise on panels might broaden the perspective, but the judgments required could be difficult for any panel to make on its own. If (as some have proposed) new international coordinating mechanisms are set up to deal with environmental matters, the coordinating body might be authorized to work with GATT on guidelines helpful in dispute resolution; another possibility would be for GATT to work more closely with existing international scientific and environmental organizations.

GATT could also consult with such other international organizations to consider trade/environment issues before they ripen into disputes. In particular, trade provisions of proposed international environmental agreements could be discussed. Potential conflicts could be avoided by changing trade provisions, changing (or making exceptions to) GATT's rules, or both, depending on what tradeoffs seem reasonable among the environmental, economic, and other interests at stake.

Road Map to the Rest of This Paper

Chapter 2 highlights several controversies, and discusses the roles of several international bodies and the effort by the U.S. executive branch to develop positions on trade/environment issues. Chap-

ter 3 discusses the limited state of knowledge about the positive and negative environmental effects of liberalizing trade. It also examines situations in which governments have used trade measures to achieve environmental ends. The chapter further reviews the debate about the respective environmental responsibilities of the developed countries (often referred to as the "North") and the developing countries (the "South").

Chapter 4 examines the effects of environmental regulations on trade, including trade as it relates to U.S. manufacturing competitiveness. First, national environmental measures in some cases can act as trade barriers, raising the question about the appropriate limits of national regulations. The chapter discusses GATT's current approach, as well as proposed GATT amendments. Second, if one country has stricter environmental standards than a second, the first country's manufacturing firms might suffer a competitive disadvantage due to higher environmental compliance costs. It is hard to determine the extent to which U.S. firms suffer such a disadvantage; the issue is discussed briefly in chapter 4 and somewhat more fully in appendix E. On the assumption that a substantial disadvantage might exist in at least some cases, the chapter discusses the effectiveness of trade measures as a response. The appropriateness of trade measures depends in part on what alternative *domestic* means exist to help U.S. firms meet environmental requirements, so as to ameliorate any competitive disadvantage. This will be addressed more fully in the final report of this assessment. Chapter 5 discusses possible international and U.S. government approaches for coordinating trade and environmental policies.²⁴

²⁴ This background paper deals with trade in environmentally regulated products, and how environmental regulation can affect that trade. Environmental regulation also affects another kind of trade: trade in environmental goods and services (EGS), that is, technologies and services to protect the environment. Indeed, environmental regulation creates demand for EGS. Appendix D discusses the world EGS market and the U.S. industry's place in it. The final report of this assessment will examine trade in EGS in more detail.