

Chapter 2

Issues and Institutional Players

Issues and Institutional Players

Several recent developments, highlighted briefly below, suggest the broad range of trade/environment issues now arising. Some involve the General Agreement on Tariffs and Trade (GATT), which provides a framework of rules for most of the world's trade. Environment/trade issues also have emerged in debate about a possible North American Free Trade Agreement (NAFTA), now under negotiation between the United States and Canada, which already have a free trade agreement, and Mexico. Similar environmental issues might emerge if U.S. efforts to liberalize trade are extended to other developing countries in the Western Hemisphere. The chapter also discusses policy formulation efforts in this country and in international forums, including GATT, the Organisation for Economic Co-operation and Development (OECD), and the United Nations. (Chapter 5 further discusses institutional issues).

THE CONTEXT

Issues at GATT

In September 1991, a three-member GATT dispute resolution panel stated that a U.S. ban on imports of tuna violated GATT's rules of international trade.¹ (The panel's reasoning is analyzed in ch. 3.) The dispute arose when Mexico contested the ban, which was imposed under the U.S. Marine Mammal Protection Act. This law seeks (among other things) to limit incidental killing or serious injury to dolphins and other marine mammals due to commercial fishing operations.² The U.S. Government had put the ban into effect only after it was compelled to do so by a court order. Mexico and the United States have asked the GATT Council to postpone its consideration of the panel's report—a necessary step before the report can be adopted as an

official GATT decision—while the two countries work to settle the dispute themselves.

The issue is not settled, however. In January 1992, again under court order, the U.S. Government imposed a ban on tuna from several 'intermediary' nations that do not engage in the objected-to fishing practice themselves but might be reselling tuna caught by a nation that does.³ This has resulted in political pressure for the GAIT Council to adopt the panel's report despite the request of Mexico and the United States.⁴ Also, any of the intermediary nations could file its own complaint. In mid-March, the European Community (EC), whose member nations France and Italy were affected by the intermediary ban, requested consultations with the United States. This is the first step toward filing a formal complaint to invoke GATT's dispute resolution process.

The United States could, under GATT's current practice, block the GATT Council's adoption of the panel's report in the Mexican case and of panel reports in any subsequent cases; it also could refuse to change its law if adverse rulings were adopted by the Council and could block the imposition of any retaliatory penalties proposed to the GATT Council by the aggrieved country or countries. However, the United States would face political pressure not to resist in these ways. Amendments to GATT under consideration would remove the right to block adverse rulings, and would make ignoring a ruling potentially more costly. (See the annex to this chapter.)

Following announcement of the GATT panel's report in the tuna/dolphin case, Congress held hearings on the report's implications and on possible environmental reforms in GATT. (See app. C.) In March 1992, the Administration proposed that Congress temporarily lift the ban on a nation's tuna

¹ "United States—Restrictions on Imports of Tuna," Report of the Panel, GATT Doc. No. DS21/R, Sept. 3, 1991. The panel's report was submitted to the contesting parties on Aug. 16, 1991. The report was submitted to GATT member countries on Sept. 3, 1991 and was made public on Sept. 16, 1991 (though part of the report was published in the Sept. 6, 1991 issue of *Inside U.S. Trade*).

² The Marine Mammal Protection Act of 1972, Public Law 92-522, as amended, notably by Public Laws 100-711 and 101-627. The law is codified in part at 16 U.S.C. 1361ff. Implementing regulations are found at 50 C.F.R. Part 216; regulations on commercial fishing appear at 50 C.F.R. 216.24.

³ As discussed in "U.S. District Court Places Secondary Ban on Imports of Tuna, Tuna Products," *Inside U.S. Trade*, vol. 10, No. 5, Jan. 31, 1992, pp. 13-14. This article includes text of court orders, dated Jan. 9 and Jan. 27, 1991, in the case of *Earth Island Institute v. Mosbacher, Secretary of Commerce*, in the U.S. District Court for the Northern District of California.

⁴ See, e.g., "EC Will Push for Adoption of GATT Panel Report on Tuna-Dolphin Dispute," *Inside U.S. Trade*, vol. 10, No. 6, Feb. 7, 1992, p. 21; Johu Maggs, "EC Will Protest US Tuna Embargo Against 20 Nations," *The Journal of Commerce*, Feb. 4, 1992, p. 3A.

if it committed to a 5-year moratorium starting March 1, 1994 on any dolphin kills, and to reduction in the absolute number of dolphin kills in the interim (though no reduction targets would be set). The Administration reported that Mexico and Venezuela were prepared to make such commitments.⁵

The potential for conflict between trade measures used in national environmental policies and GATT might increase soon. Wide-ranging changes to many aspects of GATT are being debated in the Uruguay Round.⁶ Proposed changes include more attention to nontariff barriers, as well as expansion of GATT discipline for agriculture and introduction of GATT rules into areas not previously covered (such as intellectual property and services).⁷ These discussions, which began in 1986, have stalled several times and a successful conclusion is not a certainty. However, environment was not a substantial consideration in drafting proposed changes, and the effect of some changes under discussion in early 1992 could be to *increase the conflicts* between GATT and environmental measures (see discussion later in this chapter and chs. 3 and 4).

The relationship between GATT and international environmental agreements is another concern. According to GATT, trade measures are included in 17 multilateral environmental agreements. These agreements deal with such problems as stratospheric ozone depletion, endangered species, and hazardous waste. (As shown in table 2-1, the greatest number have to do with conservation of plant and animal species.) There is the likelihood of more multilateral environmental agreements in the future, although these will not necessarily have trade provisions. For example, there has been speculation that trade measures might eventually be made part of a future international agreement to limit greenhouse gas emissions that may contribute to global warming. Such an agreement might contain provisions that tax imports of products based on greenhouse gas emissions accompanying their manufacture, or altogether ban imports of some products from nonsignatories;

Table 2-1—Multilateral Environmental Agreements by Subject, 1933-90 (number of agreements)

	Total	With trade provisions
Marine pollution	41	0
Marine fishing and whaling	25	0
Protection of fauna and flora	19	10
Nuclear and air pollution	13	1
Antarctica	6	0
Phytosanitary regulation	5	4
Locust control	4	0
Boundary waters	4	0
Animal cruelty	3	1
Hazardous wastes	1	1
Other	6	0
Total	127	17

SOURCE: General Agreement on Tariffs and Trade, 1992.

if such provisions were adopted, they too might be challenged under GATT. At present, however, discussions about a possible framework agreement for global warming stop short of such measures.

Several issues have emerged concerning the use of trade provisions in multilateral environmental agreements. One is their consistency with GATT. Although various GATT statements seem to favor multilateral action with respect to the environment, the trade provisions in international environmental agreements have no special status in GATT. There is thus a possibility that someday a GATT member will successfully challenge a trade measure taken by another GATT member pursuant to a multilateral agreement. Also, the possibility of GATT conflicts might discourage inclusion of trade provisions that could make environmental agreements more effective or enforceable. From both an environmental viewpoint and from a trade viewpoint, there is a need to find ways to minimize frictions between these two concerns, both of which are important for world welfare. (Chapter 3 discusses some factors that might be considered, using as illustration the Montreal Protocol on Substances That Deplete the Ozone Layer.⁸ The Protocol commits signatories to phase out the use of substances, such as certain chlo-

⁵Statement of Curtis Bohlen, Assistant Secretary of State for Oceans, International Environmental, and Scientific Affairs, testimony at hearings before the House Committee on Merchant Marine and Fisheries, Mar. 18, 1992.

⁶Revisions to GATT's general rules and specific schedules are considered in negotiating "rounds." The Uruguay Round, named for the site of its initial meeting, started in 1986 and is ongoing.

⁷GATT's rules and the concepts of nontariff barriers are discussed in the GATT section below and in the annex to this chapter.

⁸The Montreal Protocol was signed in September 1987 and was amended by the London Revisions in June 1990. The Montreal Protocol is based on the March 1985 Vienna Convention for the Protection of the Ozone Layer. The Protocol, discussed in greater detail in ch. 3, entered into force on Jan. 9, 1989. As of mid-March 1992, the London revisions were not yet in force as only 19 of the needed 20 countries had ratified it. The revisions will be in force 90 days after the notification of the 20th ratification.

rofluorocarbons and halons, that deplete the Earth's ozone layer. Measures are in effect to limit trade in such substances. Also, Protocol signatories are studying the feasibility of a ban applied to nonmember countries against imports of products made with a process using such chemicals.)⁹

The North American Free Trade Agreement

Another contentious trade/environment interaction is the negotiating process underway for a North American Free Trade Agreement among Mexico, Canada, and the United States. Free trade would likely increase economic activity in Mexico and in the border area of the United States; unless adequate environmental safeguards are put in place, the additional growth could exacerbate the border region's already serious environmental problems. Concern also exists that U.S. trade negotiators might agree to provisions that would weaken U.S. environmental standards.

These concerns led Congress to caution the Administration that it needed to address environmental issues (as well as labor issues) while negotiating a NAFTA. The Administration, in seeking a congressional extension of "fast track negotiating authority" in May 1991, pledged to maintain the integrity of the U.S. regulatory process and to work cooperatively with Mexico to promote environmental improvements.¹⁰ Under this arrangement, most environmental issues are under discussion on a "parallel" track separate from the trade negotiation itself. Some in Congress remain concerned whether the environment is receiving enough priority, however, and there have been hearings and further cautionary communications to the Administration about the need to adequately address U. S.-Mexico environmental issues.¹¹

The Administration's view is that freer trade and investment will generate the resources Mexico

needs for environmental protection. Since 1988, Mexico has had a law that promises relatively strong environmental protection. However, the country has limited resources for enforcement, and only recently began to take much action against violators. In February 1992, the U.S. Environmental Protection Agency (EPA) and its Mexican counterpart, SEDUE, together issued a border environmental plan,¹² and the White House released an interagency review of U.S.-Mexico environmental issues coordinated by the U.S. Trade Representative (USTR).¹³ Mexico has indicated plans to spend \$466 million to improve the border environment in the next 3 years; President Bush's proposed border cleanup effort for fiscal year 1993 is \$201 million. These sums far exceed what was previously available, although the U.S. contribution, relative to gross national product (GNP), is proportionately much less than Mexico's.¹⁴

Competitiveness Concerns

Questions about Mexico's commitment to environmental protection have taken on added importance because of the possibility that freer trade between the United States and Mexico might prompt some U.S. firms in industries with high environmental compliance costs to move operations to Mexico, directly costing U.S. jobs. Over the years, Mexico's border area has attracted many U.S. firms, drawn by duty-free export processing zones, low labor costs, and close proximity to U.S. markets. Some of these so called "maquiladora" factories may have relocated partly to escape higher U.S. environmental regulations. (See app. E.) Another concern is that firms manufacturing in the United States could suffer a competitive disadvantage from imports manufactured by firms in Mexico facing lower environmental costs. Environmental regulations as a factor in location decisions and trade and competitiveness in general (not limited to the U.S.-Mexico context) are discussed in appendix E;

⁹ *Ibid.*, Article 4, paragraph 4 *bis*. The first determination of feasibility of such a ban (for substances listed in the Montreal Protocol prior to its amendment by the London Convention) is to be made by Jan. 1, 1994.

¹⁰ "Response of the Administration to Issues Raised in Connection With the Negotiation of a North American Free Trade Agreement," transmitted to the Congress by the President on May 1, 1991, table 4, pp. 9-10.

¹¹ The House Committee on Small Business, Subcommittee on Regulation, Business Opportunities, and Energy held hearings on Sept. 30, 1991.

¹² Integrated Environmental Plan for the Mexico-U.S. Border Area (First Stage, 1992-1994), February 1992. A draft version of this plan was issued Aug. 1, 1991, followed by joint hearings held by EPA and SEDUE on both sides of the border.

¹³ USTR coordinated an interagency task force review of U.S.-Mexico environmental issues. A draft review was issued October 1991; a final review was released by the White House on Feb. 25, 1992.

¹⁴ *On source suggests that U.S. funding on the level of \$400 million per year might be needed. See U.S. Mexico Free Trade Reporter*, Jan. 27, 1992, p. 7; some border area organizations reportedly seek a U.S. contribution several times this size. See "Down Mexico Way," *The Economist*, Apr. 18, 1992, p. 4.

factors affecting location of U.S. firms in Mexico will be discussed in greater detail in another OTA study, expected to be issued in the summer of 1992, on U.S. trade, technology, and investment with Mexico.

The NAFTA discussions are unusual in that free trade is being proposed between a developed country and a developing country that share a common border. The United States and Mexico have only limited adjustment mechanisms in place to address problems arising from their different environmental, labor, and social policies and commitments. This contrasts strongly with the European Community (EC), where full economic integration between the very wealthy nations of northern Europe and the less wealthy EC member states has been preceded by years of efforts to adjust for differences among national policies. EC-wide rules aim to require all members to meet certain minimum environmental standards, although implementation has been spotty. (See box 2-A.) While NAFTA's goals stop well short of economic integration, the differences between U.S. and Mexican policies are generally more pronounced than those between the wealthy and less wealthy countries of the European Community.

Such adjustment issues and concerns also apply to U.S. trade with other developing nations, particularly as framework agreements for further trade discussions are signed between the United States and the developing countries of Latin America.¹⁵ In general, there is concern that weaker environmental regimes abroad can give firms manufacturing abroad a cost advantage over firms manufacturing in the United States. Past studies, many conducted with data from the 1970s, do not provide definitive conclusions, in part because the costs and benefits of environmental regulation are difficult to accurately measure. On the whole, these studies suggest that U.S. environmental regulation has not contributed in a major way to relocation of U.S. industry overseas or to the deterioration of the U.S. trade posture. However, for a few sectors with high environmental compliance costs, the effects may be greater and

contribute to worsened trade and investment performance. Few if any of these studies assumed free trade agreements between the United States and other nations. Moreover, U.S. environmental standards are in many cases higher today than they were a decade or more ago, and the competitive climate is tougher. (See ch. 4 and app. E for a discussion of the impact of environmental regulations on trade and competitiveness.)

Some bills introduced in the 102d Congress propose to negate any competitive advantage from other countries' weaker standards by levying countervailing duties or other taxes on products imported in these circumstances.¹⁶

Competitiveness concerns also surfaced in the 1990 amendments to the Clean Air Act. Congress directed the President, by May 15, 1992, to:

identify and evaluat[e] the economic effects of [the differences between U.S. and foreign] air quality standards and controls, [and to propose a] strategy for addressing such economic effects through trade consultations and negotiations. [The strategy] shall include recommended options (such as the harmonization of standards and trade adjustment measures) for reducing or eliminating competitive disadvantages caused by differences in standards and controls.¹⁷

Other Issues

Still other trade/environment or closely related issues have come to the fore. Domestic health, safety, and environmental regulations are sometimes challenged as unduly impeding trade. Examples (described in ch. 4 and app. A) are a Danish requirement for return of beer and soft drink bottles that appears to put foreign vendors at a disadvantage, and a ban by the EC on imports of U.S. beef from cattle given certain hormones (see app. A). Also, domestic laws regarding "ecolabeling," or labeling of products with information on how much their production, use, and/or disposal affects the environment, are sometimes challenged as unduly impeding imports. In the GATT tuna/dolphin case, Mexico

¹⁵ Bilateral or multilateral agreements have been signed with 14 Central or South American countries by the end of 1991, in conjunction with President Bush's Enterprise for the Americas Initiative. The Initiative proposes a U.S. strategy for helping Latin American countries deal with their economic problems through measures for debt reduction, trade liberalization and investment incentives. Part of the proposal seeks authorization from Congress to permit interest payments on reduced debt obligations to be used for environmental and natural resource purposes.

¹⁶ S. 984 would treat lesser foreign pollution controls on manufacturers as a subsidy, so that the U.S. laws on countervailing duties would apply. S. 1965 would impose import fees on goods made abroad by processes that do not meet U.S. water pollution control standards. See app. B for more discussion.

¹⁷ Public Law 101-549, sec. 811(b). As discussed in app. E, the 1972 Federal Water Pollution Control Act Amendments had similar requirements.

also challenged the United States' Dolphin Protection Consumer Information Act,¹⁸ which regulates the use of the term "dolphin-safe" on tuna fish cans. In this instance, GATT's dispute resolution panel reported that it found the law to be consistent with GATT.¹⁹

Although not addressed in detail in this background paper, there are many other important trade and environment issues under discussion in various contexts. Some international environmental agreements are *themselves* trade agreements. For example, the Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes and Their Disposal, signed in March 1989 and expected to come into effect in mid-1992, would require informed consent from destination and transit countries. Although the United States has signed the convention, formal consent by the U.S. Senate has yet to occur. This has led to concern that U.S. negotiators will not be at the table when rules for implementing the agreement are worked out. Another example of an environmental trade agreement is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which entered into force in 1975. There is continuing discussion about what species should be covered by the convention, as well as what protected status should be given.

INSTITUTIONAL PLAYERS

There appears to be growing recognition that trade and environmental policy, which until recently had been made in isolation of each other, must to some extent be made together, or at least coordinated. In the United States, the EC, and some other countries, trade/environment disputes and issues are now receiving more attention. Interaction between the U.S. trade community (trade officials and the private sector) and the environmental community (environmental officials and environmental advocacy organizations) is more common than before. However, progress has been slow, partly because the issues are complex, and many viewpoints exist. At least a dozen Federal departments and agencies have responsibilities relevant to trade and environmental policies.

At the international level (see table 2-2), the Organisation for Economic Co-operation and Development so far has made the most systematic effort to address interactions between trade and environmental issues, beginning with the 1972 publication of guiding principles concerning trade and environment (discussed below). Its present discussions are aimed at producing a new set of guiding principles, if possible in time for approval at OECD's June 1993 Ministerial meeting. OECD's process has involved *both the trade agencies and the environment agencies* of its member states to a degree unmatched by other international bodies. However, it has limited capacity to set and enforce policy among its members, which consist of 24 countries from the developed world, and the EC. Moreover, the developing world has no representation in OECD (although Mexico and three Eastern European countries have been observing the trade and environment meetings). Still, new OECD principles, if judged sound by developing countries, could be used as a basis for amending GATT and for new institutional approaches to reconcile trade and environment concerns. (Developing country issues are discussed further in ch. 3.)

GATT, which has both developing and developed countries as members, has been slow to take up environmental questions. Not surprisingly, GATT's perspective on trade/environment questions tends to focus on the effects of environmental regulations on trade. Developing countries are wary that disguised protectionism (protectionism justified on environmental grounds) could be the end result if some environmental issues are taken up at GATT. GATT officials have alluded to the upcoming United Nations Conference on Environment and Development (UNCED) as an appropriate venue for addressing environmental priorities. Trade/environment interactions are pertinent to several issues on the agenda for UNCED.

Several other international agencies, including the World Bank and the United Nations Conference on Trade and Development, have been examining environment and trade interactions. A number of nongovernmental organizations (NGOs) including environmental organizations and business groups are actively addressing trade/environment issues. Among business organizations, the International

¹⁸Public Law 101-627, sec. 901, codified in part at 16 U.S.C.1685.

¹⁹"United States—Restrictions on Imports of Tuna," Report of the Panel, *op. cit.*, paragraphs 5.41-5.44.

Box 2-A—The European Community and Trade/Environment Issues

The European Community (EC) so far has needed to address trade/environment interactions more directly than the rest of the world. For trade among EC member countries, the EC's Treaty of Rome and subsequent legislation and regulation supplant and go further than GATT in promoting liberal trade. The EC, as a customs union, has a common external tariff, has eliminated tariffs among its members, and has reduced nontariff barriers. To complete unification of its internal market, the EC is harmonizing health, safety, and environmental regulations so as to reduce competitive imbalances among EC countries and to keep regulations from acting as trade barriers. One result has been more EC-wide environmental regulation.

While the EC has been an innovator in resolving conflicts in trade, industry, and environmental policy, its approaches often are not easy to transfer to groups of nations that act more independently, or where the differences in development and national wealth are much greater. However, the EC's progress suggests that other countries might benefit from more coordinated efforts and a stronger institutional framework to deal with trade/environment interactions.

The Development of EC Environmental Regulation

In the early 1970s, the EC launched an "environmental action programme" that paved the way for future environmental initiatives. Since 1973, four environmental action plans have been adopted; the fifth is being drafted. The EC attempts to regulate water, air, chemicals, site safety, environmental assessments, waste, and wildlife.¹

The 1987 Single European Act marked another milestone in the evolution of the EC's role in environmental protection.² The EC now works to harmonize regulations to meet environmental objectives as well as to eliminate technical barriers to trade. The act states that the EC has the power to make environmental laws when environmental protection can be achieved better through EC-wide action than through individual country action. Although the EC Council of Ministers agreed in 1990 to create a European Environment Agency (EEA), the agency has yet to be set up.³ Initially EEA will collect data and may assist in the monitoring of compliance.

A major environmental achievement of the Maastricht Summit (a December 1991 meeting aimed at promoting close political union within the EC) was agreement for a Cohesion Fund. Other EC funds are slated to provide \$1.44 billion between 1989 and 1993 for environmental projects in less developed regions.⁴ The Cohesion Fund, which is supposed to be established before the end of 1993, will provide more help to the EC's poorer members (Ireland, Greece, Portugal, and Spain) for environmental and infrastructural improvements. Details of the fund still have to be negotiated. The Maastricht Summit also made it harder for countries to veto EC-wide environmental regulation in some cases, but not in as many as the Environmental Commissioner had hoped for.⁵

General EC Environmental Regulation

The EC has adopted nearly 300 directives and regulations specifically concerned with the environment.⁶ The EC has also taken the lead in considering measures to reduce greenhouse gas emissions. The EC Commission informally proposed to the Council of Ministers that legislation be drafted to limit carbon dioxide emissions by various means, including an energy tax worth the equivalent of \$10 per barrel of oil by the year 2000.⁷ Half of the tax would be a general levy on energy generation; the other half would be a tax on fuel's carbon content. Such a tax could put energy-intensive EC industries at a substantial disadvantage relative to foreign competitors. To address this problem, the Commission proposed to partially or totally exempt energy-intensive industries from the tax; so far, it has not proposed levying an equivalent tax on imports as an alternative. The Council of Ministers has asked the Commission to prepare draft legislation.

EC environmental regulation has tended to be harmonized at relatively stringent levels.⁸ Also, members may regulate at a more stringent level than is established at the EC level, but not lower.⁹ Higher levels of regulation in individual nations are permitted as long as they are taken for noneconomic, environmental reasons. For regulation of polluting processes (rather than of products), the regulation's motivation is usually not an issue. Countries with weak regulations have been given time to adjust their standards upward to the harmonized level and are provided with technical assistance. The Council will grant some nations temporary exceptions or financial support from the Cohesion Fund.

Even with assistance it has been difficult to implement EC-wide regulations. EC members have been slow to implement, or have even ignored, EC directives¹⁰. Part of the explanation may be the limited experience some EC members have with environmental regulation. Also, it can be difficult to change existing national laws to conform with EC requirements. The EC has limited enforcement mechanisms other than public pressure. The Commission tries to persuade transgressors to comply. It can bring a case to European Court of Justice (ECJ). But these mechanisms are not always adequate.

Harmonization of Product Regulations and Standards

The EC has focused much attention on the harmonization of product standards, many of them related to environmental protection. One reason for this is that product regulations can be abused to create barriers to imports.

Prior to 1985, the EC attempted to harmonize technical regulations for products at a very specific and detailed level. It sometimes took several years to work out disagreements between countries about a single product regulation. By the time a regulation was passed, it could be obsolete. The EC now focuses on broader performance standards. This approach ensures a certain level of environmental protection, imposes similar costs on all manufacturers within the EC, and prevents different national requirements from impeding trade.

Where national regulations still differ, the EC is grappling with the question of how to handle regulations with more adverse effect on trade than is justified (see ch. 3). If a member country suspects that environmental policies are a guise for protectionism, it can ask the Commission to investigate. If the Commission cannot negotiate a solution, the dispute can be brought to the European Court of Justice.

ECJ may decide that the country is imposing an unjustified technical barrier to trade, and require the country to permit foreign imports. However, the Court may decide in a given case that the burden put on trade is justified by the national regulation's contribution to environmental goals. In this case the country could reject nonconforming products. This happened with the Danish bottle bill, where the Court upheld the requirement under Danish law that beer and soft drinks be sold in returnable containers, even though that requirement restricted trade (see app. A). ECJ will likely see more such cases.

In cases where different regulations produce a trade dispute, the EC may decide to regulate the product at the EC level and take action to harmonize regulations. In some cases the EC appears to be trying to adopt the stronger standard EC-wide. For example, after Germany promulgated national laws regarding packaging that raised concerns over possible barriers to trade, the EC is now drafting EC-wide packaging rules.¹¹

¹ For an overview of EC environmental policy formulation, adoption, and implementation see Cameron Keyes, *The European Community and Environmental Policy: An Introduction for Americans* (Baltimore, MD: World Wildlife Fund Publications 1991).

² Nigel Haigh and Konrad von Moltke, "The European Community: Environmental Force," *EPA Journal*, vol. 16, No. 4, July/August, 1990.

³ The United Kingdom, whose turn it will be to assume Presidency of the EC in the later half of 1992, As Promised to make the launching of the new agency a priority. *International Environment Reporter*, "Creation of EC Environment Agency Given Top Priority by U.K. Minister," Jan. 29, 1992, p. 32.

⁴ Office for Official publications of the European Communities, "Environmental Policy in the European Community," 4th Ed., March 1990, p. 25. These funds are primarily channeled through the EC's structural funds: the European Social Fund, the European Agricultural Fund, and the European Regional Development Fund.

⁵ "EC Commissioner Says Maastricht Summit Fell Short in Environmental Policy Areas," *International Environment Reporter*, Dec. 18, 1991, p. 670.

⁶ Keyes, *The European Community—Environmental Policy*, op. cit.

⁷ "A Community Strategy to Limit Carbon Dioxide Emissions and To Improve Energy Efficiency," sec(91)1744 final, released Oct. 14, 1991.

⁸ Charles S. Pearson and Robert Repetto, "Reconciling Trade and the Environment: The Next Steps," paper prepared for the Trade and Environment Committee of the Environmental Protection Agency's National Advisory Council on Environmental Policy and Technology, December 1991, pp. 11-12.

⁹ The Council of the European Communities, *The Single European Act*, op. cit., Title VII, Article 130 T, 1986.

¹⁰ As of early 1990 the European Commission had identified 303 cases in which member nations had incorrectly or incompletely implemented EC environmental directives. Hilary F. French, "The EC: Environmental Proving Ground," *World Watch*, November/December, 1991, pp. 26-33. See also Environmental Commissioner Ripa di Meana in 1990, as quoted in Keyes, *The European Community and Environmental Policy*, op. cit., p. 7.

¹¹ "Final Draft Being Readied of Plan to Curb Packaging Waste, Officials Say," *International Environmental Reporter*, vol. 15, No. 3, Feb. 12, 1992, p. 73.

Table 2-2 -Selected International Organizations Concerned With Trade, Development, and Environmental Matters

<p>General Agreement on Tariffs and Trade (GATT)</p> <ul style="list-style-type: none"> Uruguay Round negotiations Working Group on Environmental Measures and International Trade Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances GAIT Secretariat <p>Organisation for Economic Co-operation and Development (OECD)</p> <ul style="list-style-type: none"> Joint sessions of Trade and Environment Committees Joint work by Trade and Environment Directorates <p>United Nations (UN)</p> <ul style="list-style-type: none"> United Nations Environment Program (UNEP) United Nations Development Program (UNDP) United Nations Industrial Development Organization (UNIDO) United Nations Conference on Trade and Development (UNCTAD) United Nations Conference on Environment and Development (UNCED)
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World Bank

SOURCE: Office of Technology Assessment, 1992.

Chamber of Commerce has articulated eight policy principles for addressing trade and environment questions.²⁰ Another organization, the Business Council for Sustainable Development, is working to articulate industry perspectives as a contribution to UNCED.

The following pages describe the status of trade and environment activities at GATT, OECD, and the United Nations. U.S. executive branch efforts to formulate policy on trade and environmental issues are also highlighted. (The EC's experience and perspective are discussed in box 2-A.)

*General Agreement on Tariffs and Trade*²¹

Established in 1947, GATT provides a framework of rules for international trade among over 100 member nations that account for the great majority of world trade. GATT's purpose is to promote liberal trade (trade as free as possible) as a means to promote economic growth. According to the theory of comparative advantage, trade benefits all participating nations because it permits each nation to

specialize in what it can do better relative to its neighbors. While this theory has many qualifications in practice, its basic message is considered sound, and trade is credited partly for the world's economic growth since World War II.²²

The acronym "GATT" denotes both an international agreement and an international institution. As an institution, GATT is weak. For example, its dispute resolution powers are limited (see the annex to this chapter). Also, GATT's text did not explicitly create an international organization. Instead of providing for a general assembly or standing committees, it merely refers to the 'contracting parties' acting in concert. A stronger institution, called the International Trade Organization (ITO), was proposed under United Nations auspices in 1946. But Congress did not approve the proposal, and other countries declined to form an ITO without the United States. Instead, the weaker, less inclusive GATT, initially intended as a temporary transition to an ITO, has been in effect for 45 years.²³ Nevertheless, GATT has achieved a great deal.

²⁰ The Commission on International Trade Policy, Policy and Programme Department, "International Trade and the Environment: Principles for Policy and Implementation" Document No. 103/160 Rev., Oct. 3, 1991 (adopted by the 67th Session of the International Chamber of Commerce Executive Committee, Oct. 1, 1991). The proposed guidelines call for basing environmental regulations on "sound science" and "adequate understanding of environmental conditions," use of performance standards, and use of market-oriented measures to encourage innovation. Among other things, the guidelines also call for nondiscriminatory national enforcement of regulations, and mechanisms to resolve disputes arising from environmental regulations.

²¹ GATT's structure and operation are described in John H. Jackson, *The World Trading System: Law and Policy of International Relations* (Cambridge, MA: MIT Press, 1989).

²² For further discussion of the theory of comparative advantage, qualifications and refinements to that theory, and implications for public policy, See 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), pp. 118-124.

²³ GATT's history is described in Jackson, *op. cit.*, pp. 27-57. GATT's institutional weaknesses and approaches for fixing them are discussed in John H. Jackson, *Restructuring the GATT System* (New York, NY: Council on Foreign Relations Press, 1990).

Under GATT'S discipline,²⁴ import tariffs (or taxes levied on imports) have been lowered through several rounds of tariff reductions.²⁵ Use of quotas (restrictions on the amount of a particular good that could be imported or exported) has been curtailed in principle, although there are some exceptions. Other kinds of "nontariff barriers" have been harder to address, in part because they often involve regulations that serve legitimate nontrade functions such as environmental protection, health, and safety.²⁶

Many Uruguay Round participants realize that GATT needs to address its effect on environment as well as the impact of environmental policy for trade. In particular, the tuna/dolphin case resulting from the Marine Mammal Protection Act has highlighted the fact that certain GATT provisions could conflict with measures taken for environmental protection. Some GATT provisions pertinent to environmental concerns are described in the annex to this chapter. Some who believe it impractical or unwise to inject environmental discussions into the heavily burdened Uruguay Round have stated that environment should be a top priority of a post-Uruguay GATT.

GATT has taken some steps, however. The GATT Council (the body of member countries' permanent representatives) debated trade/environment issues in May 1991. According to the GATT Secretariat's description of the debate,²⁷ the members agreed on several points (e.g., GATT's proper role was to promote liberal trade and not to set environmental policy or standards; international environmental agreements were the best way to address international environmental problems; trade measures should be used only as necessary and not as a substitute for direct environmental policies; and "trade measures will not, in general, pose practical

difficulties under the GATT as long as they reflect the necessary degree²⁸ of multilateral consensus'). The GATT Secretariat also reported disagreement over such questions as whether GATT should adopt a policy (such as the Polluter Pays Principle²⁹) that environmental costs should be internalized; how GATT should treat issues concerning processes and production methods; how GATT should address possible conflicts with trade measures in environmental agreements; and whether GATT's rules properly balance trade and environmental interests.

GATT has activated its Group on Environmental Measures and International Trade, at the instigation of the European Free Trade Association. This working group was created in 1971, shortly before the first United Nations conference on the environment in Stockholm, but was never convened until the fall of 1991. It is considering:

- trade provisions contained in existing multilateral environmental agreements (e.g., the Montreal Protocol, CITES, and the Basel Convention) vis-a-vis GATT principles and provisions;
- multilateral transparency (i.e., openness and predictability) of national environmental regulations likely to have trade effects; and
- trade effects of new packaging and labeling requirements aimed at protecting the environment.³⁰

Another GATT group has been working on the export of domestically prohibited goods and other hazardous substances.³¹ The chairman of the group has presented the proposed text of a draft Decision on Products Banned or Severely Restricted in the

²⁴ GATT provides an important check on individual nations' behavior. Sometimes a nation could benefit itself at Other nations' expense by erecting trade barriers, especially barriers to the importation of goods. Barriers erected by one nation could provoke retaliatory barriers by other nations, making all nations worse off than they would be without the barriers. (GATT does not now cover services, but amendments under consideration in the Uruguay Round would change that.)

²⁵ Jackson, *The World Trading System*, op. cit., p. 53.

²⁶ Examples of nontariff barriers in other countries, and U.S. attempts to remove them, are given in *Competing Economies*, op. cit., pp. 125-138.

²⁷ GATT Secretariat, "GATT Activity on Trade and the Environment" mimeo, n.d., n.p.

²⁸ This could refer to GATT's waiver process, which allows waivers of GATT requirements if approved by a majority of GATT members and two-thirds of those voting.

²⁹ The Polluter Pays Principle is discussed in the section of this chapter on the Organisation for Economic Co-operation and Development.

³⁰ Richard Eglin, Counselor, Technical Barriers to Trade and Environment Division, GATT Secretariat, personal communication, Mar. 2, 1992; see also Focus (GATT Newsletter), No. 85, October 1991, p. 1.

³¹ This group was setup in July 1989, following several years of discussions in GATT's regular work program. Efforts by several developing countries to include the subject in the Uruguay Round discussions did not carry. For a description, see General Agreement on Tariffs and Trade, *Trade and the Environment: Factual Note by the GATT Secretariat* (Geneva: General Agreement on Tariffs and Trade, February 1992).

Domestic Market.³² The proposed text would establish notification procedures for export of all products domestically banned or severely restricted because of a determination that the product would have a serious, direct danger to human, animal or plant life or the environment in its territory. While the text has been generally accepted by most members, the working group has yet to complete its task, as one member, the United States, has suggested modifications to the draft text. The United States wants to put certain products outside the scope of the decision, and also wants the instrument to be a code (to be acceded to by individual countries, see the annex to this chapter) rather than a decision applying to all contracting parties.³³

In February, 1992, the GATT Secretariat (which cannot speak for GATT's membership) released a trade and environment analysis put forth for consideration by UNCED.³⁴

The report offers several suggestions for making environmental policy consistent with GATT. It suggests that it is "no longer possible for a country to create an appropriate environmental policy entirely on its own." It calls for "multilateral rules to guide countries in formulating their own environmental policies and in responding to domestic complaints about the impact of their own and other countries' policies on international competitiveness. It also indicates that a dispute settlement procedure is needed to back up the rules (if current procedures are not adequate). However, the report stops short of suggesting a specific institution to perform this function.

The GATT report also strongly decried unilateral use of trade sanctions by individual countries to "dictate changes in environmental policies of other nations. Instead, it says, a multilateral solution

should be sought. The GATT report has less to say about the possibility that trade provisions of an international environmental agreement like the Montreal Protocol might be found inconsistent with GATT. It does note, however:

[F]rom an institutional standpoint, there is a need for a careful examination of existing rules to be certain they do not hinder multilateral efforts to deal with environmental problems.

The report also notes that broad-based multilateral agreements could have enough support to get a GATT waiver (requiring two-thirds of those voting and a majority of the total GATT membership).

Environmental Issues and the Dunkel Draft

Although environment has not been a focus, the Uruguay Round contains measures that could affect the environment. In the years since the Round began, major changes to GATT were proposed and debated, but by late 1991 negotiations were at an impasse. To break this impasse, GATT's Director General Arthur Dunkel submitted a 'draft final' set of amendments for consideration (called the Dunkel draft) in December 1991.³⁵ In January, 1992 GATT's members agreed to use the Dunkel draft as a framework for negotiations.

The Dunkel draft, if adopted, would address some patterns of production and trade in ways that could be environmentally preferable to the current regime. For example, the draft would limit the use of agricultural subsidies, which contribute to overuse of pesticides and other activities that tend to cause environmental problems in some developed countries (see ch. 3).³⁶ The draft would also exempt certain subsidies for land conservation and agricultural R&D (including environmental R&D related to agriculture).³⁷

³² (4) Nigeria Aims to Break Deadlock in Domestically-prohibited Products Talks", *Inside U.S. Trade*, Aug. 16, 1991. This article contains the chair's report, dated July 2, 1991, which includes the proposed text and the United States' proposed modifications.

³³ *Ibid.*

³⁴ GATT Secretariat, "Trade and Environment," advance copy, released Feb. 12, 1992. The analysis will be published as part of the GATT Secretariat's annual report *International Trade*.

³⁵ GATT Trade Negotiations committee, "Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations," GATT Document MTN.TNC/W/FA, Dec. 20, 1991 [hereinafter, "Dunkel draft"]. The name "Dunkel draft" is somewhat a misnomer because the draft's provisions had to a very large extent been negotiated and agreed to by GATT parties before the impasse.

³⁶ See Dunkel draft, p. L. 20 (paragraph 8). However, as discussed in ch. 3, it is difficult to generalize about the environmental effects of particular trade flows, and particular changes in trade rules; in the case mentioned above, one would also have to take into account practices of developing countries.

³⁷ Dunkel &~, pp. L. 20 (paragraph 8), L. 28, L. 13 (paragraphs 1, 2(i), L. 17 (paragraph 10).

Other aspects of the Dunkel draft have prompted concern in environmental quarters.³⁸ For example, the draft does not attempt to address GATT's potential to prohibit trade restrictions based on processes used abroad; such trade restrictions might at times be necessary or desirable to achieve environmental goals (see ch. 3), but, if challenged, might be found to violate the current GATT. Nor would the draft establish routine channels for communication and participation by environmental groups and other NGOs (see ch. 5 and the annex to this chapter). Also, some of the draft's provisions might be interpreted at times to require a heavy burden of proof in order to justify a country's technical regulations, including health, safety, and environmental regulations (see ch. 4).

GATT's dispute resolution process would be strengthened. This would substantially enhance GATT's ability to achieve its goals of liberal trade. However, it might magnify the problems mentioned above by making it harder for nations to stave off adverse GATT rulings if their environmental laws are challenged and potentially more costly to disregard such rulings once made (see the annex to this chapter).

The Dunkel draft would transform GATT into a Multilateral Trading Organization (MTO), giving it an institutional presence more comparable to the International Trade Organization proposed in 1946. This would not necessarily have any particular effect on the environment. However, some environmental groups feel that environmental concerns ought to be addressed when sweeping changes, an expanded agenda, and a stronger institutional footing for

GATT are proposed. Some environmental groups object that the preamble to the agreement establishing an MTO does not clearly state the goal of sustainable development,³⁹ and that the agreement mentions the need for GATT to cooperate with the International Monetary Fund and the World Bank but not specifically with any international environmental organizations.⁴⁰

It does not appear that these various provisions or omissions were intended or expected to exacerbate existing environmental concerns. However, for reasons such as those given above, U.S. environmental groups have mounted opposition to the Dunkel text.⁴¹ GATT's apparent inattention to environmental issues since 1972 may have added to the difficulty of successfully concluding the Uruguay Round.

The Organisation for Economic Co-operation and Development

OECD does not have the authority to change GATT or other trade and environmental agreements, but it does offer a forum for industrialized countries to discuss the issues. The 24 industrialized countries that comprise OECD together account for three-fourths of world trade.

In 1991, OECD initiated a series of member state discussions on trade and environmental issues. These discussions are unusual as they are jointly supported by two OECD directorates, the Trade Directorate and the Environment Directorate, and member country trade and environmental agencies are meeting to develop national positions. This process, in theory, could produce guidelines for

³⁸ This paper does not discuss all pertinent Dunkel draft's provisions in this regard. Additional provisions are discussed in Steve Charnovitz, "Trade Negotiations and the Environment," *International Environmental Reporter*, vol. 15, No. 5, Mar. 11, 1992, pp. 144-148 (Bureau of National Affairs, Washington DC).

³⁹ The preamble refers to four goals. Three relate to economic growth with no mention of the environment: "raising standards of living," "ensuring full employment and a large and steadily growing volume of real income and effective demand," and "expanding the production and trade in goods and services." The fourth which might be interpreted to imply a goal of sustainable development is "developing the optimal use of the resources of the world at sustainable levels." Dunkel draft, Annex IV, p. 91. The concept of sustainable development is discussed in ch. 3.

⁴⁰ Dunkel draft, Annex IV, p. 93, Article III, paragraph 6. Article IV would permit the MTO to consult and cooperate with "intergovernmental bodies and agencies [with] related responsibilities" and with "non-governmental organizations concerned with matters within the scope of the MTO."

⁴¹ "Environmental Groups Urge Congress, Administration To Reject Draft GATT Text," *Inside U.S. Trade*, vol. 10, No. 3, Jan. 17, 1992, pp. 11-13 (contains full text of a letter signed by 28 environmental and consumer groups); Jay D. Hair, President, National Wildlife Federation, letter to Carla A. Hills, U.S. Trade Representative, Jan. 8, 1992; Justin Ward, Senior Resource Specialist, and Al Meyerhoff, Senior Attorney, Natural Resources Defense Council, letter to Carla A. Hills, U.S. Trade Representative, Jan. 13, 1992; Community Nutrition Institute, "Memorandum on Health and Environmental Protection Standards Incorporated in the Dunkel Text of the Uruguay Round Negotiations To Revise the General Agreement on Tariffs and Trade," Feb. 19, 1992; Lori Wallach, Staff Attorney, Public Citizen, memorandum to "Environmental, Health and Consumer Advocates" titled "The Dec. 20, 1991 Uruguay Round 'Final Act' Text Is Worse Than Expected on Environmental, Health and Consumer Issues," dated Dec. 26, 1991. Consumers Union, in discussing several provisions of the Dunkel draft, stated that it did not believe the draft would be interpreted in certain ways feared by the environmental groups; nevertheless, it stated that clarification of the text would be desirable. Mark Silbergeld, Director, Washington Office, Consumers Union, letter to Carla A. Hills, U.S. Trade Representative, Jan. 31, 1992.

application by OECD members which address both trade and environmental policy concerns. OECD is attempting to consider developing country concerns in its discussions. The absence of developing countries from OECD membership, however, is a major limitation that is unlikely to be overcome by the observer status given to Mexico and a few Eastern European countries.

OECD has periodically addressed environmental questions related to sector-specific trade (such as chemicals). In 1972, OECD published a set of "Guiding Principles Concerning the International Economic Aspects of Environmental Policies."⁴² OECD put forward four principles:

1. *Polluter Pays Principle*: If national authorities consider a regulation necessary to protect the environment, then polluters should bear the costs of satisfying that regulation. (The polluter may pass those costs on to customers.) The guideline allows exceptions, particularly for transitions, that do not greatly distort international trade and investment. As subsequently interpreted,⁴³ the departures might include government help (in exceptional circumstances) to address socio-economic problems arising from rapid implementation of stringent pollution controls. Aid to stimulate experimentation with new pollution-control technologies and development of new pollution-abatement equipment would not necessarily be incompatible with the polluter-pays principle.
2. *Harmonization Principle*: Governments should seek to harmonize environmental policies (i.e., make their regulations similar), unless valid reasons for differences exist. (Valid reasons would include differences from country to country of the environment's capacity to absorb pollution, social priorities, degrees of industrialization, and population density.)
3. *National Treatment and Nondiscrimination Principle*: Environmental measures should follow GATT's principles of national treatment and nondiscrimination, meaning that they should apply alike to domestic and foreign

products, and should not discriminate between imports from different countries, respectively.

4. *Compensating Import Levies and Export Rebates Principle*: Countries should not try to neutralize the economic effect of differences in environmental policies by means of import duties and export rebates, or equivalent measures. In other words, if producers in one country have higher costs of environmental compliance than producers in a second country, the first country's government should not try to neutralize that advantage by extra taxes on imports or by tax rebates or other subsidies on exports. (OECD stated that if the first three principles are followed, there should be no need for import levies or export rebates.)

The ongoing joint discussions supported by the Trade Directorate and Environment Directorate aim at further examination of trade/environment interactions. While it would appear that the four guiding principles are still relevant, some new areas of concern are being addressed at the meetings with the possibility that guidelines will be developed in time. Among the subjects under consideration:

- *Trade Measures in International Environmental Agreements*: Rules could be needed to guide the effective and least trade-distorting use of trade measures in the context of environmental accords made at the international level.
- *Effects of Trade Policies on the Environment*: Recommendations could be needed for increasing the environmental sensitivity of trade policies and trade agreements, and for ensuring that their environmental effects are adequately taken into account.
- *Application to the Developing Countries*: The extent to which the OECD Guiding Principles might be applied to help internalize environmental costs and mitigate potential trade problems in developing countries may need to be reviewed.

At one time, the United States hoped that recommended guidelines might be developed in time for consideration at OECD's May 1992 Ministerial meeting. While a progress report will be made at this

⁴² Recommendation adopted May 26, 1972, C(72)128. These principles were reprinted and discussed in Organisation for Economic Co-operation and Development, *The Polluter Pays Principle: Definition, Analysis, Implementation* (Paris, France: 1975).

⁴³ "The Implementation of the Polluter-Pays principle," recommendation adopted Nov. 14, 1974, C(74)223, reported in OECD, *The Polluter Pays Principle*, op. cit.

meeting, any specific guidelines will likely be delayed at least until the June 1993 Ministerial.

United Nations

The United Nations is broadly concerned with both environment and economic development. The United Nations Environment Program, United Nations Development Program, the United Nations Industrial Development Organization and the United Nations Conference on Trade and Development are major focal points for these issues; many specialized UN agencies also address specific environmental and/or development concerns. These agencies and functions may be reorganized or restructured in the near future. Possible UN restructuring in general is under consideration by the new UN Secretary General. Institutional arrangements are also expected to be a key issue at the United Nations Conference on Environment and Development, which will take place in Rio de Janeiro in June 1992.⁴⁴

UNCED is intended to provide an agenda for cooperation between the developed and developing world for addressing environmental needs within a development context. The conference will examine ways to strengthen international cooperation for environmental management and protection. A large number of issues are under consideration (see box 2-B for a partial list of topics included in UNCED's wide ranging agenda, called Agenda 21).

Trade and environment interactions are considered cross-cutting concerns, and are addressed in some individual agenda items. Delegates to the final preparatory meeting for UNCED agreed on several objectives and activities intended to make trade and environment mutually supportive.⁴⁵ The findings drew in part on a February 1992 session of UNCTAD which reviewed environment/trade interactions within the context of sustainable development. (See ch. 5 and box 5-A for further discussion.)

Much of the preparatory debate for UNCED has focused on what role the developed world should play in helping the developing countries meet their

development needs in an environmentally acceptable fashion. A particularly contentious question has been whether and how the developed countries should pay additional costs arising from environmental actions agreed to in principle at UNCED. Financial resources will continue to be the crux of key issues and discussions at the Rio de Janeiro meeting. At the third preparatory meeting in the fall of 1991, a group of developing countries, known as the Group of 77, proposed a negotiating text calling for greatly expanded aid from developed countries, through "new and additional resources" in a separate "green fund" (see box 3-B). The United States opposes this approach and favors a process in which donor countries and multilateral lenders will consider funding for projects and activities identified by individual countries. At the final preparatory meeting in March 1992, the United States appeared to soften its previous stance and stated its acceptance that "new and additional resources" would be needed for implementing UNCED agenda items.

U.S. Government Efforts To Address Trade and Environment Issues

A large number of agencies have responsibilities that touch on environment and trade interactions. (See table 2-3.) Key agencies include the Office of the U.S. Trade Representative (USTR), the Environmental Protection Agency (EPA), various agencies of the Department of Commerce, and the State Department, which is responsible for negotiating international environmental agreements. To date, however, the effort appears to be a "bottom-up" effort, with little visible guidance from Congress about the potential goals and objectives of U.S. policy. Thus, there is a possibility that U.S. positions will gel out of a largely informal and hidden interagency process.

Interagency Task Force-Since 1990, an executive branch working group has been developing information to help formulate U.S. policy, particularly for the OECD discussions.⁴⁶ The USTR chairs this group. A partial list of other agencies include

⁴⁴ UNCED was established by UN General Assembly Resolution 44/228, adopted Dec. 22, 1989. Dubbed the "Earth Summit," UNCED is timed to occur on the 20th anniversary of the 1972 Stockholm Conference on the Human Environment. For discussion, see Susan R. Fletcher, "Earth Summit Summary: United Nations Conference on Environment and Development (UNCED), Brazil 1992," Congressional Research Service Report, No. 92-374, April 1992.

⁴⁵ The general findings on environment and trade were included in Section 1, chapter 1, of Agenda 21. See Preparatory Committee for the United Nations Conference on Environment and Development *International Cooperation to Accelerate Sustainable Development in Developing Countries, and Related Domestic Policies*, A/Conf.151/PC/L.71, New York, NY: United Nations General Assembly, March 31, 1992.

⁴⁶ In addition, some agencies have responsibilities for specific trade and environmental matters.

Box 2-B—United Nations Conference on Environment and Development: Selected Agenda 21 Issues

The United Nations Conference on Environment and Development (UNCED) will take up a wide range of issues concerned with environment and sustainable development when it meets in Rio de Janeiro in June 1992. Most of these are part of Agenda 21. Specific action plans in some 29 areas that have been worked out in UNCED preparatory meetings, some of which are listed below. Separately negotiated conventions on global climate change and biological diversity may be completed in time for signature, as well.

Social and economic dimensions

- Relationship of international economic policy to sustainable development in developing countries
- Poverty, consumption patterns, demographic dynamics and sustainability
- Health issues
- *Human settlements*

Conservation and management of resources for development

- Protecting the atmosphere
- . Land-resource use
- Forest conservation and use
- Halting the spread of deserts
- Protecting mountain ecosystems
- . Meeting agricultural needs with less environmental impact
- Sustaining biological diversity
- Environmentally sound management of biotechnology
- . Safeguarding the ocean's resources
- Protecting and managing freshwater resources
- Safe use of toxic chemicals
- Reducing and controlling toxic wastes
- . Solid waste and sewage
- Safe handling and disposal of radioactive waste

Means of implementation

- Making environmentally sound technology available
- Role of science in sustainable development
- Promoting environmental awareness
- Building national capacity for sustainable development
- Regional cooperation on environment and development

Items to be integrated into agenda 21

- Financial resources and mechanisms
- . Strengthening institutions for sustainable development
- . Survey of international agreements and instruments

SOURCE: Adapted from United Nations information.

EPA (which previously cochaired the group), the State Department, the Department of Commerce, the Department of Agriculture, and the Treasury Department.⁴⁷ The USTR and EPA cochair the U.S. delegation to OECD meetings. Recently, two NGO representatives (one from business and one from environmental groups) have accompanied the U.S. delegation to some of the OECD meetings.

In 1991, the task force circulated drafts of a concept paper on the link between trade and

environmental policy. The paper considered the relationship between trade policy goals and environmental goals, the effect of environmental regulations on trade and competitiveness, the impact of trade rules and trade patterns on the environment, the use of trade measures for environmental purposes, and GATT provisions regarding such use of trade measures. In addition, several draft background papers on key issues are under preparation as U.S. contributions to the OECD discussions. These have

⁴⁷ Still other agencies include the Justice Department, the Department of Labor, the Energy Department, the Food and Drug Administration, and the International Trade Commission.

Table 2-3-Key Federal Agencies With Responsibilities Pertinent to Trade/Environment Policy

U.S. Trade Representative (USTR)
Leads interagency task force on trade/environment
Represents United States at GATT
Cochairs (with EPA) U.S. delegation to trade/environment discussions at OECD
Leads negotiations on North American Free Trade Agreement (NAFTA)
Environmental Protection Agency (EPA)
Participates in interagency trade/environment task force
Cochairs (with USTR) U.S. delegation to trade/environment discussions at OECD
Coordinates with Mexico on U.S.-Mexico border environmental matters
Participates in NAFTA working groups
Receives recommendations from the Trade and Environment Committee of the National Advisory Council for Environmental Policy and Technology
State Department
Leads U.S. delegation at most international environmental negotiations
Participates in interagency trade/environment task force
Commerce Department
Participates in interagency trade/environment task force
Has administrative units with specialized responsibility, including:
International Trade Administration
National Oceanic and Atmospheric Administration
Other departments and agencies with specific missions as relevant:
Agriculture Department
Treasury Department
Justice Department
Labor Department
Interior Department
Energy Department
Food and Drug Administration
U.S. International Trade Commission
Specialized export promotion and foreign assistance agencies:
U.S. Agency for International Development (US AID)
Export-import Bank of the United States (Eximbank)
Overseas Private Investment Corporation (OPIC)
U.S. Trade and Development Program (US TDP)

SOURCE: Office of Technology Assessment, 1992.

been circulated among the task force, although only two had been released as of March 20, 1992.⁴⁸

Activities Related to the North American Free Trade Agreement—The USTR has appointed an environmentalist to serve on the top-level Advisory Committee on Trade Policy and Negotiations as well as a total of five environmentalists to serve on five sectoral trade policy committees.⁴⁹ These committees have broader responsibility than NAFTA. USTR also coordinated the previously mentioned review of U.S.-Mexican environmental issues.

EPA also has some input into the NAFTA negotiations process, through its participation in the interagency work groups set up for NAFTA. The agency monitors meetings in all work groups, but is especially active in seven (standards, dispute resolution, investments, automotive, agriculture, energy, and land transportation).

As mentioned, U.S.-Mexican environmental issues for the most part are being addressed on a "parallel" track with the NAFTA negotiations. EPA is the lead agency for most parallel track

⁴⁸ The two released papers are called "Trade Provisions in International Environment@ Agreements," dated Feb. 7, 1992, and "Harmonization," dated Mar. 9, 1992. The dates indicated are those of submission to OECD. Each paper contains a disclaimer that it "does not necessarily represent the views of the United States Government and is subject to further review." The papers were submitted to OECD with little public debate, except that the second paper was released shortly before submittal for comment by some environmental and business groups. Nine other background papers are under preparation. They deal with such topics as "guiding principles to increase the environmental sensitivity of trade policies," "guiding principles to increase the trade sensitivity of environmental policies," "effects of environmental policies on competitiveness," and "criteria for using trade measures to achieve environmental objectives."

⁴⁹ These are the advisory committees on intergovernmental policy, services policy, investment policy, industry policy, and agricultural policy. Some environmentalists see this as slender representation given the far more extensive industry representation.

activities on the environment. It was responsible for preparation of the integrated border environmental plan in conjunction with the Mexican environment agency, SEDUE, and also played an important role in the environmental review coordinated by USTR.

Other Relevant Federal Activities—The EPA Administrator has asked the National Advisory Council for Environmental Policy and Technology (NACEPT) to make recommendations concerning the interaction of trade and environment. (Members of the Council include representatives from industry, environmental groups, and academia.) NACEPT has a Committee on Trade and Environment, with working groups on GATT, Industrialized Countries/OECD, and Western Hemisphere. The GATT group is considering worldwide issues and whether and how GATT should be amended. The Industrialized Country/OECD group is examining such issues as “sound science” as the basis for standards and the effects of environmental regulations on industrial competitiveness—issues of special concern to developed countries. The Western Hemisphere group is considering NAFTA and the possible free trade negotiations that might follow from the Enterprise for the Americas Initiative, and is particularly concerned with developing country issues. The NACEPT meetings are open to the public, thus contributing to broader public debate about these issues .50

Several agencies provide environmental assistance of different kinds to developing countries. The Agency for International Development (AID), the primary U.S. foreign assistance agency, provides substantial financial and technical support related to the environment. It is the lead agency of the Administration’s recently announced U.S.-Asia En-

vironmental Partnership (US-AEP). US-AEP involves over 20 Federal agencies and seeks to promote the use of U.S. expertise and technology for solving environmental problems in Asia. AID also supports energy efficiency projects. Several other agencies, including the Environmental Protection Agency (EPA) and the Department of Energy (DOE) provide technical and project assistance to developing and restructuring economies. DOE leads the interagency Committee on Renewable Energy Commerce and Trade while EPA is assembling a directory of U.S. environmental firms. EPA also supports the recently inaugurated U.S. Environmental Training Institute which will bring developing country business executives and officials to the United States for professional and technical training by the private sector.

Other federal programs facilitate U.S. exports of environmental technologies and services. (See app. D.) The Trade and Development Program funds project feasibility studies. The Department of Commerce provides export assistance and organizes trade shows, sometimes in cooperation with EPA and AID. The Overseas Private Investment Corporation (OPIC), the Export-Import Bank, and the Small Business Administration provide support for U.S. exporters and investors that can involve environmental projects. OPIC provides information, investment missions, project financing, and insurance programs for U.S. investors in developing, Eastern European, and former Soviet countries. In addition to its general and regional funds, a new Environment Investment Fund has been started. The Export-Import Bank provides credit and insurance for exporters of U.S. goods, including environmental goods.

some trade and environment committee plans to make its initial recommendations to the Administrator in April 1992, followed by further study leading to more detailed recommendations.