
Trade and the Environment

Unlike labor union representatives, environmentalists are new kids on the trade policy block. During the 1970s and 1980s American “greens” focused their attention on domestic legislation, winning a series of battles to enact and subsequently strengthen the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Endangered Species Act, and a host of related environmental laws. The emergence of NAFTA, however, drew the attention of a broad range of environmental organizations. So did the tuna-dolphin case, in which Mexico won a GATT ruling that found a US ban on the import of tuna caught in ways that harmed dolphins to be in violation of GATT rules. To a significant degree, they have remained important trade policy players since.

Unlike labor unions, most of which have taken a firm and consistently critical stance on trade, the organizations making up the environmental community are diverse in their concerns and public positions. Their ideologies cover a wide spectrum, from moderate to radical. Some environmental NGOs are politically active and have broad and eclectic agendas; others keep a lower profile and focus more narrowly on specific issues—for example, habitat protection, efficient resource use, environmental regulation, or environmental law. Some are large international organizations firmly entrenched in the global establishment that collaborate frequently with official national and multilateral development agencies; others are small local groups closely tied to their grassroots support.

These variations in style, structure, and political behavior often reflect contrasting worldviews. Some see technological and economic progress

as positive agents that can be effectively harnessed in the fight for environmental protection. Others believe that continued industrialization and economic expansion are fundamentally destructive and incompatible with long-term ecological integrity.

Given this range of attitudes and institutional cultures, it is not surprising that environmental groups respond differently to trade policy issues. Some organizations join the political debate; others stay on the sidelines. Among active groups, some express their views behind the scenes; others call press conferences, lobby policymakers, and work to influence public opinion. Some organizations are willing to support efforts to liberalize trade arrangements if this support can generate leverage for environmental improvement measures; other groups oppose free trade agreements on principle. Moreover, attitudes of environmental groups toward trade are dynamic; as the political context shifts, organizations revise their positions and adjust their levels of activism.

The commitment of environmental groups to trade issues, though growing, is not as firm as that of labor, however. The conceptual link between environmentalism and trade has not been firmly established, among either elected officials or the general public. Even the environmental groups most active on trade, the Sierra Club for example, acknowledge the relatively modest interest in the subject among their members.

Environmental Arguments for and against Liberalized Trade

For environmentalists, attitudes toward trade rest on foundations derived from economic, ecological, ethical, and political theory. Once erected, these positions are shaped by current events and by the shifting political context, but they cannot be understood without reference to their underlying principles. It may be a fair criticism that the arguments outlined below often are neither expressly articulated nor empirically tested, but the same can be said for premises supporting the positions of other parties to the debate.

The antitrade position held implicitly or explicitly by many environmentalists includes five related strands. Three are circumstantial, based on how markets and institutions are perceived to operate, and hence could plausibly be addressed by government policy. Two are fundamental.

First among the circumstantial arguments is the widespread view that market failures provide perverse economic incentives that promote and encourage practices leading to unacceptable environmental degradation. Second is the idea that international economic competition drives down regulatory standards. Third is the perception that multilateral trade institutions consistently favor economic over environmental goals.

The first fundamental argument is the view that even if markets get prices right—by fully internalizing social and ecological costs associated with environmental damage—continuous growth in the scale of the global macroeconomy is unsustainable. Second, and perhaps most basic, is the belief that unrestrained economic growth and ever-expanding resource use defile the spiritual and aesthetic integrity of the natural world and accentuate dualistic notions in which the nonhuman universe has instrumental value only.¹

These arguments can be extended and integrated as follows. The “invisible hand” operating in global markets—aided and abetted by free trade—cannot be trusted to value the environment appropriately. Since prices consistently fail to reflect the full costs of pollution, resource depletion, and ecological degradation, distorted valuations drive inefficient overexploitation of ecological sources and sinks. Perverse market incentives lead to overuse of open-access or common-pool resources and rapid depletion of privately owned renewable resources that reproduce more slowly than the rate of interest. Furthermore, national accounting conventions foster unsustainable practices by listing as income proceeds from the liquidation of natural capital.

International trade, by obscuring natural ecological limits, compounds the adverse effects of these recognized market failures. Trade allows nations in effect to “import” carrying capacity—thereby masking unsustainable practices—and facilitates the spread of destructive nonnative species. Moreover, international trade regimes embodied in the WTO subvert hard-won environmental laws in progressive nations and encourage the regulatory race to the bottom among developing nations competing for direct investment. Finally, the argument goes, international trade is inextricably linked to global economic growth, which—if full social and environmental costs are accounted for—may already have passed the point beyond which marginal benefits exceed marginal costs. In this view, those to whom externalized costs ultimately accrue—future generations and current, marginalized residents of poor nations supplying cheap labor and resources—are in effect subsidizing local and global environmental destruction.

Environmentalists opposed to free trade typically distrust official institutions, believing them to be dominated by business interests. In specific

1. Various authors articulate the arguments mentioned in this section. See, for example, Peter G. Brown, *Restoring the Public Trust: A Fresh Vision for Progressive Government in America* (Boston: Beacon Press, 1994); Robert Costanza et al., *An Introduction to Ecological Economics* (Boca Raton, FL: St. Lucie Press, 1997); Herman E. Daly, *Beyond Growth: The Economics of Sustainable Development* (Boston: Beacon Press, 1996); Daniel C. Esty, *Greening the GATT: Trade, Environment, and the Future* (Washington: Institute for International Economics, 1994); and Daniel C. Esty, “Economic Integration and the Environment,” in *The Global Environment: Institutions, Law, and Policy*, ed. Norman J. Vig and Regina S. Axelrod (Washington: CQ Press, 1999), 190–207.

criticisms of procedures built into the WTO and GATT, they note a profound bias in favor of economic over social and environmental concerns and a disturbing, undemocratic lack of openness and accountability.²

Environmental groups that support liberalized trade in principle are less outspoken than opposition groups, particularly in the post-NAFTA political climate. They are also less dogmatic, however, and more open to conventions of political give-and-take. Despite disappointments with NAFTA and the WTO (discussed in detail below), they may be willing to support trade initiatives if they can win substantive concessions on environmental standards in return.

Organizations justify this stance on four grounds—three economic, and one political.³ The first protrade economic argument that moderate environmental NGOs find compelling is based on evidence indicating that willingness to pay for environmental amenities increases with per capita income. As countries approach middle-income levels, citizens become more concerned with environmental quality; governments stiffen and more consistently enforce environmental regulations; air and water quality rebounds; deforestation slows; and biodiversity protection rises on national agendas. These organizations would argue, therefore, that since international trade contributes to global economic advancement, trade agreements warrant cautious support because in the long run they may contribute to mitigating ecological degradation by enhancing environmental consciousness worldwide.

Efficiency in resource use underlies the second environmental argument favoring broader trade arrangements. As nations liberalize economic policies to conform to international norms, inefficient practices that contribute to market failures may be reduced. For example, many nations have historically applied subsidies in the energy and extractive sectors. These policies exacerbate environmental problems both at the local and the global level. International trade agreements pressure governments to lift these subsidies. This leads in turn to prices that more accurately reflect production costs. In an example of this type of distortion, quotas on sugar

2. Interestingly, while free traders have defended closed procedures as necessary to limit the distorting impact of business interests, environmental critics see this opaqueness as benefiting business at their expense. For a discussion of NGOs and the WTO, see Daniel C. Esty, "Non-governmental Organizations at the World Trade Organization," *Journal of International Economic Law* 1 (1998): 123-47.

3. Support for the economic arguments that trade may be good for the environment can be found in, for example, Esty, *Greening the GATT*; Paul R. Krugman, *Pop Internationalism* (Cambridge, MA: MIT Press, 1996); Tom Tietenberg, *Environmental and Natural Resource Economics*, 4th ed. (New York: HarperCollins, 1996); World Bank, *World Development Report 1992* (New York: Oxford University Press, 1992); and Daniel C. Esty, "Trade and Environment Mix," *Journal of Commerce* 7 (November 1997): 6A.

imports have caused cane production to spread in the Florida Everglades, on land that would be better preserved in its natural state.⁴

The third economic argument is the converse of the race-to-the-bottom idea promoted by antitrade theorists. In this interpretation, collateral effects of free trade may actually promote stricter environmental standards. This can occur in two ways. First, companies operating under stringent regulations in industrialized economies have incentives to develop less wasteful production methods, to apply the most advanced pollution-control technologies, and to take other steps to reduce environmental damage. These innovations may generate competitive advantages for these firms as they find cost savings in new manufacturing efficiencies. Second, as companies expand from developed to developing countries, they may carry their technologically advanced and cleaner processes with them, thereby reducing environmental damage both directly, as they outcompete dirtier local plants, and indirectly, by facilitating long-term North-South technology transfers.

The political argument that favors support for liberalized trade from the environmental community rests on the notion that constructive engagement with government decisionmakers ultimately leads both to a more environmentally friendly US trade posture and to greater access and influence in other areas of environmental policymaking. Over time they see their support as providing leverage to include green provisions in trade legislation. Environmentalists willing to consider supporting trade liberalization typically are more likely to give government institutions the benefit of the doubt and to believe that they can win legitimate concessions in exchange for political support. If the fast-track process is appropriately restructured, they argue, future trade negotiations can be used to promote rather than undermine global environmental standards.

Environmental NGOs' Positions on NAFTA and Fast Track

The NAFTA debate of the early 1990s exposed deep political and ideological divisions within the environmental movement over trade policy.⁵ Leaders struggled with difficult choices, and feelings ran high. Opponents accused supporters of selling out; supporters accused opponents of

4. A current project of the Nature Conservancy aims to counteract this pressure.

5. Discussion of NAFTA politics within the environmental community can be found in John J. Audley, *Green Politics and Global Trade: NAFTA and the Future of Environmental Politics* (Washington: Georgetown University Press, 1997); Frederick W. Mayer, *Interpreting NAFTA: The Science and Art of Political Analysis* (New York: Columbia University Press, 1998); Esty, *Greening the GATT*; and Durwood Zaelke et al., eds., *Trade and the Environment: Law, Economics, and Policy* (Washington: Island Press, 1993).

sabotaging opportunities to make significant gains for environmental protection.

Cracks appeared along the philosophical fault lines described in the preceding section. Moderate groups, although initially suspicious of cooperating with the Republican Bush administration, were more comfortable with Washington insider politics and did not in principle believe that economic and environmental goals were irreconcilable. Leaders of these organizations were willing to offer support for NAFTA in a quid pro quo exchange. This camp included the World Wildlife Fund (WWF), the National Wildlife Federation (NWF), the National Audubon Society (NAS), the Environmental Defense Fund (EDF), and the Natural Resources Defense Council (NRDC).

William Reilly, administrator of the Environmental Protection Agency (EPA) under President Bush, initiated the rapprochement between these groups and the White House. As a former president of WWF, Reilly had immediate credibility and strong personal connections with NGO leaders. He believed the NAFTA debate provided political opportunities to spur action on issues of concern to environmentalists and was able to convince some of his former colleagues to join the effort.

Other environmental groups strongly opposed NAFTA. These organizations distrusted government, did not accept the link between economic growth and environmental protection, and saw trade policy as a tool of the business community to promote globalization and deregulation. Opposition groups typically came from a tradition of environmental activism (emphasizing the intrinsic value of nature) rather than one of environmental policymaking (emphasizing instrumental valuation, scientific management, and multiple use). They tended to be grassroots-driven and particularly prone to use causes such as NAFTA to mobilize and expand their membership base. The branch of the movement opposed to trade expansion, including Friends of the Earth, the Sierra Club, and Greenpeace, has a deep antiestablishment bias and tends to see cooperation as co-optation. These groups, in alliance with Public Citizen, a social-activist organization founded by Ralph Nader and funded, in important part, by organized labor, formed the Citizen's Trade Campaign (CTC) to coordinate efforts to defeat NAFTA.⁶ They were unpersuaded by the Bush administration's arguments in favor of free trade through 1992, and the change in party control of the White House after the elections that November did little to soften their opposition.

NAFTA abstainers among environmental groups included the Nature Conservancy and Defenders of Wildlife. These two groups participated in meetings with officials of the Bush and Clinton administrations as well

6. See Mayer, *Interpreting NAFTA*.

as with representatives of supporter organizations but, to avoid political damage, ultimately took no public position.

After NAFTA took effect in January 1994, environmentalists were able both to evaluate the effectiveness of environmental side agreements and to assess returns to political capital expended. On both counts, mainstream groups that had publicly supported the agreement were disappointed, and opposition groups saw their predictions confirmed.⁷

For example, the North American Development Bank and the Border Environment Cooperation Commission, which were established in the NAFTA implementing legislation to win the support of fence-sitting representatives, were supposed to provide subsidized funding for cleaning up environmental damage caused by industrialization along the US-Mexican frontier. But these institutions remained underfunded and mired in bureaucratic inefficiency. Also, the North American Commission on Environmental Cooperation (CEC), which was established to implement and monitor compliance with NAFTA's environmental side agreements, has not led to strengthened Mexican enforcement of its existing environmental regulations.

These failures can be attributed to several causes. First, expectations for institutions established under the side agreements were unrealistically optimistic from the outset. The Clinton administration and pro-NAFTA environmental NGOs oversold the package to improve the agreement's chances for ratification. Second, once the political battle had been won, the administration did little to ensure that even the weak powers actually vested in CEC were employed to generate environmental benefits. Third, previously pro-NAFTA NGOs failed to pressure their erstwhile allies in the White House to deliver on commitments embedded in the agreement. Consequently, antitrade environmental groups were able to make a strong case that NAFTA failed to deliver on its promises.⁸

Equally disturbing to environmentalists was that the groups that had supported NAFTA did not reap the expected political benefits. In the summer of 1994 US Trade Representative Mickey Kantor did offer a proposal for fast-track renewal that included general wording on the environment (as discussed in chapter 1). But he quickly retreated from this language, which pro-NAFTA environmentalists saw as modest at best, in the face of opposition from business groups and conservative Republicans. That fall, the strength of Republican gains in midterm elections swung the legislative balance of power further in favor of business

7. For example, opposition groups associated themselves with the joint report by Public Citizen and the Economic Policy Institute, *The Failed Experiment: NAFTA at Three Years*, cited in chapters 1 and 2.

8. The record of the CEC is discussed in Esty, "Economic Integration and the Environment."

interests and undercut the administration's ability to write environmental standards into any fast-track renewal bill.

As a result of post-NAFTA disappointments, environmental opposition to trade liberalization in general and fast track in particular has broadened and hardened since 1994. Groups that fought against the agreement have become more outspoken; those that supported NAFTA have either withdrawn from the debate entirely or retreated to rebuild alliances with opposition groups from whom they were alienated in 1992 and 1993. No environmental NGO was willing to speak publicly in favor of the fast-track reauthorization proposals of 1997 and 1998, and the range of opposing organizations widened.

A survey of positions on fast track held by groups that supported NAFTA in 1993 indicates that WWF has since shifted to a policy of insider opposition to fast-track reauthorization; EDF, NRDC, and NAS no longer participate in trade policy debates; and NWF has rejoined the active opposition—in fact, NWF representatives have given public testimony urging defeat of recent fast-track bills.⁹

Environmentalists across the spectrum are skeptical of government trade institutions. This represents no change for opposition groups; but for organizations that previously cooperated with USTR, it reflects their post-NAFTA disillusionment. Channels remain open between the executive branch and moderate NGOs, but the working relationship cultivated in the early 1990s has largely broken down.

Environmental groups, of course, also lobby Congress. Their main ties are with liberals, but the political reach of environmentalism has broadened in the past 10 years. House Republicans who came to power after the 1994 midterm election soon discovered that the majority of their constituents would not tolerate significant backsliding on green issues. Even some factions of the religious right, citing the Old Testament story of Noah's ark to support the argument that human beings must act as stewards of God's creation, urged conservative lawmakers to soften strident antienvironmental positions.

Some environmentalists see benefits from the battles over NAFTA and fast track. The movement is more unified and more politically sophisticated than it was in the recent past, they argue, and has returned to its core values. From the point of view of trade advocates, however, the humiliating retreat required of accommodationist environmental organizations will make it substantially more difficult to generate support for trade legislation in the future, whether offered by Democratic or Republican administrations.

9. For example, NWF Vice President for Federal and International Affairs Stephen J. Shimberg testified against fast track before the Trade Subcommittee of the House Ways and Means Committee, 30 September 1997.

The Multilateral Agreement on Investment (MAI)

Environmental and related groups critical of NAFTA gained further political credibility through their aggressive campaign against the proposed Multilateral Agreement on Investment (MAI) developed from 1995 to 1997 under the auspices of the Organization for Economic Cooperation and Development (OECD). The aim of the MAI was to complement the global trade regime by establishing common international rules for how national governments would deal with foreign direct investment; one model was the investment provisions contained in NAFTA's Chapter 11. Particularly important for its drafters were principles such as national treatment of enterprises funded with foreign capital, the right to compensation in case of governmental expropriation, and the freedom to move capital freely across national borders.¹⁰

To the astonishment of its drafters, the MAI became the target of a virulent campaign by an Internet-linked coalition of NGOs, with Public Citizen and a group called the Preamble Center playing lead roles. Conjuring up visions of a secret government-business plot to ravage the earth and exploit vulnerable workers in developing nations, Public Citizen published the hitherto confidential draft MAI on its Web site in early 1997 and urged activists to move against it.¹¹ Environmental groups joined in a critique.¹² For some on the left, foreign investment itself was evil and inherently predatory. A broader group saw the problem as lack of balance, with such language on investor rights as to allow challenges of reasonable state regulatory actions promoting environmental or other societal goals. Friends of the Earth cited specific instances—particularly in logging, mining, and biotechnology—in which deregulation driven by the MAI would lead to excessive pollution and ecological degradation that would be harmful to both human beings and the environment.¹³ Concern about a tilt in investors' favor was not limited to NGOs: Edward M. Graham, who favors such a codification of international investment rules, saw the

10. For details, see "The MAI Negotiating Text," Directorate for Financial, Fiscal, and Enterprise Affairs, OECD (<http://www.oecd.org/daf/cmisi/mai/negtext.htm>) (24 April 1998).

11. "Everything You Wanted to Know about the Multilateral Agreement on Investment (MAI) . . . But Didn't Know to Ask," Public Citizen (<http://www.citizen.org/pctrade/MAI/What%20is/maievery.htm>).

12. "Environmental Organizations Call on Administration to Protect Environment, Not Just Investors, in International Negotiations," press release, 13 February 1997; signatories include Friends of the Earth, Sierra Club, Defenders of Wildlife, Greenpeace, NWF, and WWF. For stronger rhetoric, see Mark Vallianatos with Andrea Durbin, "License to Loot: The MAI and How to Stop It" (Washington: Friends of the Earth, 1998).

13. Vallianatos and Durbin, "License to Loot," 14-21.

wording of the MAI draft as inappropriately providing “supernational” treatment, meaning “treatment that is more favorable to a foreign investor than a similarly situated domestic investor.”¹⁴

In any case, the NGO campaign quickly put MAI proponents on the defensive. For a Clinton administration fighting an uphill battle for trade negotiating authority, this was one burden it did not wish to bear, and by the fall of 1997 the administration was assuring members of Congress that fast-track procedures would *not* cover the MAI. Instead the MAI would likely be submitted as a treaty for Senate approval, following the model of bilateral investment treaties.¹⁵ Thereafter the negotiations lost momentum—they failed to meet the spring 1998 target for a completed agreement, and the agreement was effectively shelved in December 1998 when OECD issued a statement noting, “Negotiations on the MAI are no longer taking place.”¹⁶

NGOs were not the only critics of the MAI. Conservative governors and members of Congress believed that some language in the document threatened state and federal sovereignty. Governors of western states, for example, commissioned a study to determine which state laws would be undermined.¹⁷ On the federal level, conservative members of Congress argued that the MAI would overrule the Helms-Burton law, which allows the United States to impose sanctions on foreign firms doing business in Cuba. There were also nontrivial differences among the OECD nations, whose compromise might have led in the end to a watered-down agreement with limited impact: France pulled out in October, citing concern about cultural industries and other unresolved matters. But the NGO campaign clearly generated serious political problems in the United States, along with intense domestic controversy in countries such as France, Canada, and New Zealand. Graham, who found some elements of the NGO campaign akin to “hang[ing] the innocent” to “bring justice to the guilty,” concluded that “the NGOs can take credit for stopping the MAI.”¹⁸

14. “Regulatory Takings, Supernational Treatment, and the Multilateral Agreement on Investment: Issues Raised by Nongovernmental Organizations,” *Cornell International Law Journal* 31, no. 3 (1998): 603. Graham also argued that the text as drafted could allow private investor action against regulatory “takings,” state actions that reduce the value of property (e.g., regulating the uses of wetlands). This was and is a major concern of environmental organizations across the board. However, Graham saw these defects as “easily remedied within the MAI,” and found among key OECD governments “a willingness to amend the MAI to protect environmental and labor interests” (603, 613).

15. *Inside U.S. Trade*, 26 September 1997, 4.

16. “Informal Consultations on International Investment,” official OECD statement, 3 December 1998 (<http://www.citizen.org/pctrade/MAI/What%20is/oecd.htm>).

17. Western Governors’ Association, “WGA Report Details Potential for Multilateral Agreement on Investment to Override State Laws” (press release, 21 April 1997).

18. “Regulatory Takings,” 603, 613.

They were aided by the fact that the draft never generated great enthusiasm in Washington among its purported advocates and beneficiaries, either within government or in the business community.

The Tuna-Dolphin, Shrimp-Turtle and MMT Decisions

Efforts to recruit environmentalist support for liberalized trade have also been hampered by the outcomes of several recent disputes. In three high-profile cases in which trade and environmental interests were in conflict, international trade adjudicating bodies ruled, or threatened to rule, against national regulations. In each case the authorities responded to one or more of several related principles incorporated into multilateral trade regimes. GATT rules require that imported and domestically produced goods be treated equally and that foreign goods not be subject to import restrictions on the basis of “production processes and methods”—PPMs—used in their manufacture. NAFTA further requires that foreign investment be protected from expropriation. The results in the three cases testing these provisions reinforced environmentalists’ fears that unaccountable international trade bureaucrats would be in a position to undermine hard-won domestic environmental regulations.

The first of the three disputes involved the sale in US markets of tuna caught in a manner leading to the incidental killing of dolphins.¹⁹ In 1988 a US federal court ruled that the 1972 Marine Mammal Protection Act required the banning of Mexican tuna on the grounds that Mexico’s fishing fleet used a type of net in which dolphins were frequently trapped and drowned. Mexico challenged the US ban, citing GATT rules forbidding application of PPMs and requiring national treatment of imports. In 1991, in the midst of the NAFTA debate, a GATT panel ruled against the United States, causing an uproar among environmentalists. Not wishing to damage NAFTA’s chances, however, Mexico declined to press the issue, and the GATT panel’s ruling was never formally adopted.

In the second case, which had several similarities to the tuna-dolphin dispute, a WTO appeals panel ruled against the United States in the fall of 1998 in a dispute over US policies requiring shrimp marketed in the United States to be harvested using turtle-excluder devices.²⁰ The appeals panel accepted under GATT Article XX exceptions the legitimacy of US law requiring the use of equipment designed to protect sea turtles (the original panel had not), but it disapproved of US unilateralism in implementation.

19. This story is described in Mayer, *Interpreting NAFTA*, and Esty, *Greening the GATT*.

20. Anne Swardson, “Turtle-Protection Law Overturned by WTO,” *Washington Post*, 13 October 1998, C2.

This decision further polarized the environmental and business communities. The World Wildlife Fund, for example, called the ruling “a blow to endangered sea turtles and against the development of international environmental norms and practices.”²¹ In contrast, the National Association of Manufacturers supported the ruling as an important validation of nondiscrimination on the basis of PPMs and urged the US government not to “lose sight of the national interest” in its “desire to protect the relatively narrow though not necessarily illegitimate concerns of individual interest groups.”²²

The third case involved a Canadian environmental health regulation. In 1996, to reduce airborne concentrations of manganese, a heavy metal, the Canadian Parliament passed a law banning the import and the interprovincial transport of a gasoline additive, methylcyclopenta-dienyl manganese tricarbonyl (MMT). Shortly thereafter, the compound’s sole manufacturer, US-based Ethyl Corporation, sued to have the ban overturned under NAFTA investment protection guidelines. The company also sought compensatory damages amounting to more than US\$250 million.

Canada rescinded the ban in the summer of 1998. The Canadian government, though it feared a negative outcome before the NAFTA panel, was responding more immediately to domestic pressures. Several provinces—Alberta, Nova Scotia, Saskatchewan, and Quebec—had filed a complaint under the Canadian national Agreement on Internal Trade (AIT). An AIT dispute settlement panel found that the original MMT import and interprovincial transport ban conflicted with the national government’s duty to avoid establishing barriers to trade and investment among provinces. Nevertheless, environmentalists saw the ruling as further evidence that under the rules of liberalized trade, international business interests trumped environmental and social concerns.

Potential for Environmental Support of Fast-Track Reauthorization

Some environmental groups, Friends of the Earth for example, are unlikely ever to back free trade initiatives. Moderate organizations, including WWF, may be the first to accept compromise, but even they will require significant concessions. The key for trade advocates is to frame a bill that can win the accord of groups such as the Sierra Club and NWF that are

21. David Schorr, “Statement in Response to the WTO Shrimp-Turtle Ruling,” WWF press release, 12 October 1998.

22. National Association of Manufacturers, “Comments of the National Association of Manufacturers (NAM) on the WTO Dispute Settlement Proceeding Regarding U.S. Shrimp-Turtle Laws,” 1998.

vocal in their opposition to current fast-track proposals but do not reject the idea of trade liberalization out of hand.

These two organizations in fact recently offered a proposal for a redesigned fast-track process. This initiative grew out of perceived progress at the formal “High-Level Symposium on Trade and the Environment” held in Geneva in March 1999. Representatives of environmental NGOs applauded the opportunity to be included in WTO deliberations and responded positively to expressions of concern about environmental issues from US and European Union (EU) government officials.²³ The resulting Sierra Club/NWF proposal on fast track includes several general priorities.²⁴ First, transparency and accountability must be guaranteed, both during negotiations to establish trade agreements and in the procedures employed by multilateral trade authorities charged with their oversight. Second, development of trade agreements should be modeled on domestic rather than foreign policy processes. That is, congressional committees need to retain and expand their powers to monitor and influence negotiations, thereby ensuring opportunities for public input. Third, trade agreements should be subject to environmental impact assessments, just as domestic environmental regulations are now in effect subject to trade impact assessments by international authorities. Fourth, strict and effective enforcement measures, including the possibility of trade sanctions, must be included in any new trade agreements. Finally, fast-track reauthorization itself should be coupled to explicit negotiating objectives on environmental issues.

There may ultimately be room for negotiation, of course, but any fast-track reauthorization proposal that excludes these points at the outset cannot expect to win serious consideration from the environmental community.

23. Most major US and international environmental groups were represented, including Friends of the Earth, Greenpeace, NWF, and WWF. Their contributions to the discussion are summarized in the *International Institute for Sustainable Development Report on the WTO's High-Level Symposium on Trade and Environment, 15-16 March 1999*, available at the WTO Web site (<http://www.wto.org/wto/hlms/sumhlevn.htm>).

24. Sierra Club and NWF, “White Paper on Environmentally Responsible Trade Negotiating Authority,” 26 April 1999.