
A Constructive Compromise?

The American trade policymaking system faces a new and serious challenge, not from old-style protectionists but from groups concerned about trade's impact on their priority policy values. The NAFTA debate strengthened and educated a new, vocal constituency skeptical of the benefits of globalization. Institutional labor, long wary of trade's effects on wages and job security, found new allies among liberal/left advocacy groups, Ross Perot's third-party organization, and branches of the environmental community. They have been drawn together by concern over the social and environmental effects of global economic integration.

The trade policy establishment has yet to find a satisfactory way of accommodating these concerns. Over the past decade political and trade institutions have consistently underestimated the depth of the underlying structural problems posed by the addition of formerly peripheral issues—most prominently labor and the environment—to the trade agenda. Moreover, their efforts to overcome the divisions have been marked by political ineptitude and lack of focus.

Attacks on globalization often manifest a high ratio of heat to light. Cause activists tend to employ a "take-no-prisoners" rhetorical style, demonizing their presumed adversaries. Their one-sided passion, even demagoguery, alienates mainstream members of the trade policy community, including many who sympathize with these groups' underlying objectives. Nonetheless, their influence grows, at least in part because the mainstream lacks credible approaches to the issues they raise. These issues—particularly labor and the environment—reflect broader concerns about the balance between trade and other social values that trade institu-

tions are poorly equipped to address. In their specific trade-related programs, labor and environmental groups independently press their own goals. But they are united in asserting that fast-track legislation as proposed does not deal adequately with trade's effects on their interests. Since globalization is here to stay, we can expect an intensification of these effects, and of efforts to address them through national and international action.

It is hard on normative grounds to object to these arguments. If one backs core labor standards or environmental improvements at home, why should one's government not pursue these goals internationally? And if trade is expanding and having a broader impact on other values, why should trade negotiations be immune from having to address these issues? But though efforts to reform trade procedures may be legitimate, the means their advocates have chosen to achieve their objectives often seem counterproductive. Moreover, efforts to bring social issues onto the trade-negotiating agenda meet strong resistance from many other nations, especially those in the developing world.

To these barriers to constructive compromise must be added one more: the deep distrust that exists and persists between the two camps. In previous chapters we enumerated ways that labor and environmental advocates find trade policy institutions and advocates unsympathetic. Similarly, members of the trade and business community question whether the critics are serious about compromise or interested only in perpetuating the stalemate and playing to their constituencies. In the words of one influential former member of Congress, they have not earned a "place at the table" if they are not willing, in the end, "to play their cards" and make a deal. Important elements of the opposition coalition clearly meet this description—Public Citizen,¹ for example, and probably the AFL-CIO as well.

Yet the importance of the trade agenda *and* the importance of the "trade and . . ." issues make us reject the notion that this is a zero-sum game not amenable to compromise. Moreover, both sides have a real interest in compromise. Not only do multinational firms favor trade-negotiating authority, but they also have an interest in higher overseas labor and environmental standards because they are, on average, less exploitative than their typical competitors. As for the "new issue" advocates, they cannot employ the trade leverage they say they value if there are no trade negotiations. We need to develop an innovative approach to trade

1. In a frank communication to supporters, Public Citizen leaders expressed their ambivalence about coming forward with any positive proposal. "We are not in a political position to be fully precise about what we want," they noted, in part because "we agree with most of you that the very concept of fast track is inherently unacceptable" (Memo to Trade Organizers and Activists from Lori Wallach and Mike Dolan re: "Safeguarding Our Fast Track Victory and Preparing for Round II," 17 December 1997, processed).

liberalization that responds to the new forces at play, one that can be employed at a time—2001 perhaps—when the short-term circumstances are favorable. This chapter lays out elements of such an approach. It begins with a summary of the current situation and three “possible futures” for trade-liberalization policy. It then suggests steps, procedural and substantive, to make the most promising of these futures a reality.

Competing Worldviews

The argument over trade is a surrogate for a broader, more fundamental debate over globalization, and those on opposing sides base their views on profoundly different sets of assumptions. One useful step toward compromise is to illuminate these differences, make them explicit, acknowledge their importance, and accept that on both sides they include beliefs and value judgments not easily amenable to compromise.

Arguments for freer trade make sense within the utilitarian normative framework of neoclassical welfare economics. First, competitive markets enhance economic efficiency. Second, improved economic efficiency in turn lifts the level of aggregate material well-being, thereby maximizing the social welfare function given current constraints. Third, liberalized trade contributes to this advance by reducing inefficiencies in domestic and international markets. Fourth, “invisible hand” incentives that are built into more efficient international markets expand business opportunities, make lower-priced, higher-quality products available to consumers, and increase both the demand for labor and the productivity of labor worldwide.

Although efficiency is the primary goal, this framework does not ignore equity issues. As the global economy becomes more efficient, more wealth is created. This wealth can then be distributed according to social norms mediated by political processes in each country. Different societies will choose to do so according to rules that vary with their histories, cultures, and levels of development, but experience suggests that increased wealth available for distribution will, over the long term, benefit those at the bottom of the social order as well as those at the top.

Under this set of assumptions, the equity argument associated with trade among nations is actually stronger than that for competitive markets within national boundaries. By definition, any exchange freely entered into with complete information at hand must benefit both parties. Analogously, benefits will accrue to all nations that specialize and trade in those goods and services for which they have comparative advantage. Distributional issues remain within nations, as described above, but according to widely accepted economic theory, the citizens of each trading nation benefit in the aggregate.

In contrast, arguments for maintaining restrictions on trade make sense within a framework of assumptions based on social contract, the importance of community, and stewardship obligations with regard to nature and future generations. Under this set of assumptions, social and environmental concerns outweigh economic efficiency as the primary criteria by which progress should be assessed. Increased aggregate wealth does not always make up for exacerbated distributional inequities or environmental degradation. As efficiency improvements expand a society's total material wealth—as measured by conventional economic indicators—those who gain could compensate those who lose; but when they do not—and usually they do not—social costs often outweigh social benefits.

Within this framework, trade must be approached warily. Even if the comparative advantage argument is accepted—that noncoercive exchange expands each participating nation's aggregate material wealth—trade may still result in unacceptable dislocations to labor markets, communities, cultural traditions, social cohesiveness, and the ecological envelope that contains all human activities. If comparative advantage does not hold, and instead absolute advantage applies, then while trade may increase global aggregate material wealth, individual nations may be net losers. Advocates of this view hold that rapid capital flows unrestrained by national boundaries lead to this result.²

Within the normative framework underlying trade skepticism, the efficiency imperative loses authority. Voices of those with limited or nonexistent power to bid in markets—workers, the poor, future generations, other species—are accorded greater weight, and the mantra of competitiveness and maximized social surplus as justification for sacrifices of the displaced is unconvincing.

These characterizations of the two sets of assumptions are oversimplified, of course, and incomplete. Moreover, the messy, self-interested, mundane, and often Byzantine struggle of routine politics often obscures or distorts underlying distinctions. Agreement on any practical trade policy initiative is impossible, however, if each side looks at the other's positions only through the lens of its own set of assumptions. Ideas and positions expressed in political debates are contextual: they have meaning within particular value systems. From alternative perspectives based on other sets of assumptions, they may seem groundless, simplistic, or naïve. Negotiating a compromise on future US trade policy would be facilitated enormously by mutual recognition of the broad validity and integrity of opposing positions within their respective normative milieux.

2. This controversial argument is highlighted in the work of Herman E. Daly. See Daly, *Beyond Growth: The Economics of Sustainable Development* (Boston: Beacon Press, 1996), and Daly and John B. Cobb Jr., *For the Common Good: Redirecting the Economy toward Community, the Environment, and a Sustainable Future* (Boston: Beacon Press, 1989).

Compatible Goals, Tension over Means

We take this point a step further by asserting that the two positions, although different in important ways, are far from mutually exclusive in all respects. Where there is overlap, there is room for cooperation and compromise. Typically, however, differences rather than similarities are emphasized in the political arena. We argue that if parties to the debate clearly articulate their broad goals and hopes for the future, substantial areas of fundamental agreement will appear, and demonization or dismissal of those opposed to one's own point of view may recede.

For example, free traders envision a materially prosperous world of open economic activity with all associated social benefits, including, among other things, political freedom, elimination of the scourges of malnutrition and preventable diseases, and greater opportunities for personal expression and fulfillment. Trade skeptics picture a sustainable future where workers are justly compensated for their labor, where cultural and biological diversity are protected and treasured, and where the environment—local and global—is restored to health.

Certainly most trade advocates have no desire to breathe foul air, drink poisoned water, thin the protective ozone layer, or for that matter live in a world without sea turtles, dolphins, and natural tropical rain forests. Nor do the majority of trade skeptics wish to forgo the benefits of modern technological advancements and expanded material well-being or deny them to the impoverished in developing countries. A future that realized the best of what both sides imagine would be better than a state of affairs based on either alone. If this is true, then a consensus already exists, at least at a general level. Both sides support in principle a US trade policy that promotes the high goals and hopeful vision of a prosperous, healthy, sustainable future for all human beings, nested within vibrant and complex natural ecosystems. In the words of a member of Congress influential on trade issues who places particular emphasis on the labor side, "Our common goal must be *greater* integration of global markets in ways that promote growth and opportunity for our workers and farmers and businesses."³

There remain, however, differences about the weighting of these broadly accepted goals, and perhaps even more over how much direct government intervention is desirable and productive in advancing them. Positions on these issues tend to divide along partisan lines. In the past, the trade-liberalizing regime, both domestically and internationally, has prospered when it managed to sidestep them. The failure of the proposed

3. Testimony of Representative Sander M. Levin (D-MI), ranking minority member of the House Subcommittee on Trade, at its hearing of 11 February 1999.

International Trade Organization in the 1940s was a lesson in what could happen if the regime took these issues on.⁴ Now, however, it cannot avoid them: they have in fact polarized the US trade debate.

Three Possible Futures

Advocates of labor and environmental concerns have mobilized against the fast-track authority available to every president from Gerald Ford onward. Aided by the resistance of business and conservative groups to compromise, they have succeeded in blocking its enactment. They will continue to be important players in the altered trade policy game. Hence, over the next 5 to 10 years, we face three possible futures.

The first is *continuing stalemate*. In the near term, this is certainly the most likely prospect. The division between the two camps is deep, and it is reinforced by partisan animosities in the House of Representatives. Currently no political leader is making a strong effort to mute or bridge them. Moreover, the top trade policy priority of multinational business interests is not fast track but legislation supporting Chinese accession to the WTO (if remaining US-Chinese economic and other differences can be resolved). It is possible that trade-minded senators will put forward a compromise fast-track bill, or that President Clinton will make one more serious try in the run-up to the Seattle WTO ministerial conference. But neither seems likely, and success seems even less likely, since the political problem remains in the House. Despite the president's apparent interest in the matter, the standoff with Congress is likely to continue.⁵

The United States has already absorbed costs from this stalemate—costs to specific trade interests as other nations negotiate deals without or around us, and costs to our broader economic leadership in the world and the Western Hemisphere. But these costs have thus far been marginal and manageable. Trade continues to expand; the WTO continues to enforce existing accords; the US economy continues its remarkable run.

4. William Diebold Jr., "The End of the ITO," in *Essays in International Finance* (Princeton, NJ: Princeton University Press, 1952).

5. As noted earlier, the president continues to emphasize trade in his speeches. Fast track and related trade matters were highlighted in the January 1999 State of the Union address. In remarks at the University of Chicago in June 1999, Clinton focused on the need to develop a "global economy with a human face" by balancing "free trade and fair trade" ("Remarks by the President at University of Chicago Convocation Ceremonies," 12 June 1999 (<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1999/6/15/12.text.1>)). He specifically endorsed the idea that trade agreements should promote labor rights and environmental standards. He repeated these themes at an address to an ILO conference in Geneva, also in June ("Remarks by the President to the International Labor Organization Conference," 16 June 1999 (<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1999/6/17/8.text.1>)).

Over time, however, the costs will mount. While a fundamental reversal of trade openness seems unlikely, the trade regime needs maintenance nationally and globally. At home, we have a new generation of congressional representatives with little experience with either the logic or the rules of trade policy, and hence little personal commitment to the specific policies embedded in domestic legislation and international agreements. This lack of commitment, combined with a taste for partisan maneuvering, explains the two-to-one House vote for steel quotas earlier this year more than does any serious resurgence of protectionism. But the more trade policy becomes a partisan plaything, the more difficult it will be to reset it on a forward course.

Internationally, the WTO regime needs both expansion to new issues and attention to emerging problems in its generally successful dispute settlement mechanism. Regionally, continued US economic leadership in the Western Hemisphere is linked to the projected Free Trade Area of the Americas (FTAA), and in the Pacific arena to implementing the free trade commitment of the Asia Pacific Economic Cooperation (APEC) forum. The lack of trade-negotiating authority undercuts the United States in all these arenas.

The second possible future is *enactment, by a narrow majority, of fast-track trade authority along the lines of the legislation considered in 1997 and 1998*. This would keep the new labor and environmental issues at the margin, if not exclude them entirely. This outcome seems unlikely. A strong Republican victory in 2000 might increase its chances, but if only two-thirds of House Republicans are supportive (as in the 1994 Uruguay Round vote and 1998 fast-track vote), a significant number of Democratic votes would be required. Yet this approach, pressed by a new Republican president, might drive even more Democrats into the anti-fast-track camp.

But assuming it was achieved in, say, 2001, the prospects for trade policy would remain rather bleak, for it would be founded on a narrow, vulnerable, and partisan consensus. Trade policy would begin to resemble arms control policy during the Cold War, subject to wrenching shifts whenever one party replaced the other. Also, approval of trade agreements negotiated under fast track would be a close-run thing at best.

The third possible future is *a compromise that addresses labor and environmental concerns and broadens the support coalition*. This is surely the most promising, substantively and politically, if it can in some fashion be made attainable. It would not require resolution of all substantive differences between the two camps, either domestically or internationally. But it would need to contain something real and important for both of them, such that they would see their interests advanced by supporting it. And “they” does not have to be everyone in both camps: organized labor in particular seems unlikely in the near term to endorse any plausible compromise formula. But if it provided important benefits for workers

and avenues for attaining more, it might mute labor opposition and attract some labor friends seeking a balanced basis for backing trade expansion.

What follows is an effort to set forth plausible elements of a compromise. It begins with declaratory policy, then moves to concrete steps that might be taken, outside the trade policy sphere as well as within it. It requires clarity on ends and some flexibility on means.

A National Commitment to Enhanced Labor and Environmental Standards

The first element of a trade compromise would be a broad national commitment, declared and reiterated, to enhanced labor and environmental standards at home and abroad, as an important US policy goal and a central part of our global vision, right up there with free-market economics, open trade, democracy, and peace. This would *not* be a commitment to pursue these standards primarily through trade negotiations, but it would be a commitment to pursue them seriously and persistently.

Underlying this commitment should be a recognition that US inaction at the international level may bring about an erosion of existing national labor and environmental standards and the broader social compact Americans have constructed, painfully at times, through the 20th century. Globalization poses a challenge to communities and the balancing of values comparable in form (though probably less fierce in fact) to the nationalization of the US economy in the late 19th century.

This commitment should be pursued through a variety of means. In fact, for reasons set forth later in this chapter, it is likely to be pursued most effectively through non-trade policy channels at home and abroad. But the trade community and trade negotiations need to facilitate, not impede, protection and enhancement of labor and environmental standards.

Steps to Reinforce the Social Compact at Home

An important element of the compromise must be domestic policy measures that reinforce the social compact in the face of pressures from globalization and broader technological change. Included would be:

Worker opportunity programs. We need a serious national effort to equip workers to cope with, and to gain from, the rapid economic change driven by trade *and* technology. This involves both the strengthening of conventional education, as President Clinton has stressed, and the buttressing of institutions to reeducate and reequip those who are displaced, a policy sphere in which Clinton's leadership has been less strong.

The agenda also includes portability of fringe benefits—health insurance, pensions, and so on—as frequent job change becomes the norm.

Health and safety regulation. As larger shares of what we consume originate abroad, we need to be certain that our processes to ensure food safety, for example, are visibly and effectively retargeted to address sources of potential problems. GATT Article XX authorizes the application of health and safety measures to imported products, provided it is not done in a way that burdens imports unfairly in relation to domestic products.⁶

Ongoing review of biotechnology products. Furthermore, we need to match the revolutionary developments in food production with active review procedures to safeguard environmental and societal values, addressing in the process complex ethical issues and trade-offs. When possible, such review should be carried out in cooperation with other nations, but in any case it must be done.

This short list, and the brevity of the presentation, should not be read as reflecting a low priority for this set of measures. They are in fact high-priority items, but they are peripheral to the trade policy focus of this study.

Making the Trade Regime More Labor/Environment-Friendly

Directly relevant to trade policy, by contrast, is the need to address and, as appropriate, rectify those aspects of the trade regime and trade legislation that impede the achievement of labor and environmental goals.

One needed area of action is to *give meaning to the “trade and . . .” institutions and forums that already exist*. Prominent among them are the institutions established by the NAFTA side agreements: the Commission for Labor Cooperation and the Commission for Environmental Cooperation. The near-universal perception in the labor and environmental communities is that the administration has not given these institutions, once established, more than a tiny fraction of the attention devoted to the original negotiations of the side agreements that were then used to win votes from on-the-fence representatives. Symbolic in particular has been the weakness of the North American Development Bank and the Border Environment Cooperation Commission intended to promote environmental cleanup on the US-Mexican border. It was years before the first project was funded.

It is also important to pursue opportunities for trade-labor and trade-environmental cooperation within the WTO. The former has encountered

6. Later in this chapter we discuss possible ways of broadening this GATT/WTO provision.

greater resistance than the latter, reflecting concern that the labor standards campaign was a form of poorly disguised protectionism. It is essential also to recognize that in the international arena, developing nations are often the strongest opponents of including labor and environmental standards in trade pacts. These nations often believe that addressing these issues will restrict opportunities for economic growth and allow wealthy nations to impose their values on developing-world economies and cultures. These North-South differences often put labor and environmental activists in the awkward position of appearing to criticize disadvantaged peoples with whom they like to think they act in solidarity against powerful first-world industrial interests.

It is important to continue the dialogue on both topics, but to distinguish among issues where (1) standards are fully consistent with free trade objectives, (2) standards involve trade-offs between free-market and legitimate labor/environmental objectives, and (3) standards are proxies for protectionism. It is also important for each side in international negotiations to become sensitive to the perspective of those on the other side of the table.

Within US domestic law and institutions, we need to look for ways to remove or offset biases against consideration of trade-labor and trade-environment issues on their merits. Here two measures seem appropriate.

First, future trade legislation should *permit trade-related labor and environment agreements, if reached, to be ratified and implemented through fast-track legislation*. The effective prohibition incorporated in the 1997 and 1998 bills, at the insistence of a business-Republican coalition, served as a red flag for the labor and environmental communities, consolidating their opposition and minimizing defections. There are two preferable alternatives. One is the “no mandates/no new restrictions” formula advanced in 1997 by the Democratic Leadership Council.⁷ A second, more labor-and-environment-friendly, would be to incorporate general negotiating objectives like those in US Trade Representative Mickey Kantor’s initial fast-track proposal of 1994 (and like the labor language included in the Uruguay Round authorization of 1988). The legislation should not, however, *require* that any trade agreement contain labor and environmental provisions, just as it should not require the achievement of other specific negotiating objectives.

Second, means should be sought to *more effectively represent labor and environmental perspectives within existing trade policymaking institutions in Washington*. As emphasized in chapter 4, the current structure does not handle these issues well. Two leading environmental organizations, the Sierra Club and the National Wildlife Federation, have signaled their

7. Testimony of Edith Wilson to the House Ways and Means Committee, 30 September 1997. (The title of her statement was “Fast-Track Trade Negotiating Authority in the National Interest.”)

lack of confidence in existing arrangements (and in the executive branch generally) by advancing a fast-track proposal founded on the creation of two new congressional institutions: a Special Standing Committee on International Trade, comprising leaders from both houses and both parties, and a Congressional Trade Office, with expertise in commerce, the environment, public health, labor rights, and other relevant disciplines.⁸ Such institutional reconstructive surgery may in the end prove necessary. The cost, however, would be to undercut congressional trade committees—the Senate Finance Committee, the House Ways and Means Committee—that have strong, long-standing track records in brokering trade issues and moving trade legislation. Hence it would be better to begin with a range of steps within the current framework: coreferring trade legislation to committees with labor and environmental jurisdiction; having the trade committees hold hearings on the “trade and . . .” issues, with spokespeople for these perspectives well represented; broadening the representation of labor and environmental groups on the advisory committees that monitor trade negotiations and review the results; and strengthening competence on environmental and labor matters within the USTR.

The most important step toward making the trade regime labor-and-environment-friendly, however, would be to *remove features of the current trade regime that inhibit the development of strong multilateral regimes, and the enforcement of effective multilateral rules, on labor and environmental issues.*

For real as well as symbolic reasons, trade-authorizing legislation should not prohibit agreements on labor and environmental issues. But neither is it likely that pathbreaking agreements in these spheres will be reached through trade channels. As set forth in chapter 4, demands for improvement in other nations’ labor or environmental practices, whose prime impact is on their own citizens, do not fit well within the established, my-interest-against-your-interest, mode of trade negotiations. They are opposed by many US trading partners, particularly in the third world. Furthermore, it is most unlikely that, over the long run, advocates of labor rights or environmental amelioration wish their goals to be negotiated through *trade* institutions.

In principle, therefore, negotiations on international labor and environmental issues should be conducted through non-trade policy channels and overseen by institutions at home and abroad reflecting their specific substance. Over the long term, the goal would be to build multiple parallel tracks in international negotiations, rather than attempt to craft one all-inclusive new fast-track procedure. The problem, of course, is that effective international institutions to deal separately with labor and environmental

8. Sierra Club and National Wildlife Federation, “White Paper on Environmentally Responsible Trade Negotiating Authority,” 26 April 1999.

concerns do not currently exist. First, international labor institutions are significantly weaker than the WTO. The ILO operates by business-labor-government consensus, and its conventions and declarations contain no enforcement mechanisms comparable to the threat of trade sanctions embodied in WTO dispute settlement procedures. Second, no centralized, multilateral environmental organization currently exists to fill the required role. Several major international agreements on the environment are in force, but their regulatory reach is narrow—ozone-depleting chemicals or trade in endangered species, for example. Daniel Esty has called for the establishment of a comprehensive Global Environmental Organization (GEO),⁹ but many supporters of this goal see its achievement as decades away. Therefore labor and environmental activists are likely to see the development of multiple tracks as an effort by trade advocates to shunt their concerns onto sidetracks.

Nonetheless, strengthening these separate tracks is important as part of a broader policy compromise. To implement the national commitment on enhanced labor and environmental standards called for earlier in this chapter, the US government should work assiduously to strengthen multilateral institutions and agreements in these spheres, both global and regional. As part of this effort, *it should seek, in WTO negotiations, amendments to GATT rules so as to allow the use of trade restrictions to enforce multilateral labor and environmental accords*, just as they are available (if seldom used) to enforce trade accords.¹⁰ There would need to be procedural requirements. For example, to restrict trade in a product whose production causes environmental harm, a nation might be required to cite violation of an agreement signed by the preponderance of nations producing that product, and perhaps also a multilateral finding (e.g., by a secretariat charged with overseeing that agreement) that the country whose product was to be sanctioned was in significant violation.¹¹

Such a measure gives something important to both sides in the debate. Trade skeptics get authorization of effective labor and environmental agreements written into the trade regime; trade advocates get assurances that the (almost certainly infrequent) trade restrictions that result would be seriously grounded in real labor and environmental complaints.

9. See his *Greening the GATT: Trade, Environment, and the Future* (Washington: Institute for International Economics, 1994).

10. This proposal draws on and is consistent in some respects with ideas presented in Pharis J. Harvey et al., "Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy," Discussion Draft, 28 August 1998, section II, E, 1 (<http://www.laborrights.org/ilrf.html>).

11. In developing such a proposal, care should be taken not to undercut the implicit approval the WTO appeals panel gave to national imposition of trade sanctions in the shrimp-turtle case—if they are an efficient means of addressing the problem, and if a sincere effort has been made to achieve multilateral agreement.

There are precedents for such processes within the GATT and WTO trade arrangements. GATT Article XX, without specifically mentioning the environment, allows exceptions for measures “necessary to protect human, animal or plant life or health” (Article XX[b]) or “relating to the conservation of exhaustible natural resources” (Article XX[g]).¹² Article XX also explicitly allows import restrictions “relating to the products of prison labour” (Article XX[e]). Though dispute resolution panels have interpreted the environmental language with excessive narrowness, and though the labor provision is too limited to cover the range of unacceptably exploitative working conditions, their presence in the agreement demonstrates the international community’s unwillingness to preempt all social and environmental objectives in the name of liberalized trade.

Furthermore, values and norms evolve. The language quoted above was first adopted in 1947. Yet concerns over labor standards and risks to the global environment are far greater now than 50 years ago. It is appropriate and necessary, therefore, to significantly broaden and strengthen internationally accepted precepts for acceptable behavior affecting these fundamentally important objectives.

Further Measures within the WTO Framework?

Should additional changes be sought *within the WTO framework*? Should certain trade-affecting measures be explicitly authorized therein? One promising sphere of action that may require no such sanction is product labeling. Labor and human rights activists have pressed, with some success, for producers to adhere to a code of conduct that forbids abusive child labor and to establish standard labels so that the buyer can have assurance that the standards were adhered to. Eco-labeling is similarly popular, and expanding. It has been put forward as one possible resolution of the current US-EU dispute over exports of beef raised with growth hormones. WTO rules might be developed that both explicitly recognize the legitimacy of such labeling and establish reasonable disciplines on its use.

More controversial would be modification of the current WTO presumption against trade restrictions based on “production processes and methods”—PPMs—when the final product itself is not materially different. There are reasons to look kindly on some such measures. For example, the harvesting of shrimp with nets that also catch endangered sea turtles imposes an environmental cost. Action to ameliorate that cost seems appropriate. Moreover, the trade regime has already violated the “no

12. Quoted in Esty, *Greening the GATT*, 47, with discussion on subsequent pages.

PPMs” principle through negotiation of agreements for the protection of intellectual property. These involve, of course, production processes as well as product content. Multilateral regulation of PPMs might be allowed on a case-by-case basis through the mechanism suggested above. Or it might be addressed through a general agreement to modify GATT/WTO rules.

A related issue, also of concern to the environmental community, is the “precautionary principle”—whether restrictions should be allowed because a product *might* be unsafe. This is particularly contentious because it implies shifting the burden of proof on safety. Currently, for example, nations claiming threats to human health from foreign products—thereby justifying trade measures under WTO rules—must prove that their claims are “based on scientific principles” and on risk assessment criteria “appropriate to the circumstances.”¹³ On this basis, the United States has won a favorable WTO ruling in its beef hormone case against the European Union. This case is particularly difficult because it pits a plausible (but not now “scientific”) health and environmental concern against the threat of a *de facto* protectionist outcome.

Invoking the precautionary principle would shift the burden of proof: producers instead would be required to prove their products safe. It is, needless to say, an issue over which differences between the commercial and environmental communities are particularly acute. The best case for it involves PPMs based on new technologies with long-term risk factors that are difficult if not impossible to assess given current knowledge. Which side has the burden of proof is decisive, because in many cases involving innovative technologies, “scientific principles” and “appropriate” risk assessment methodologies are overwhelmed by scientific uncertainty. Neither the safety nor the danger of the product or production method can be proved conclusively in the short term. In the trade dispute over agricultural biotechnology involving the United States and Europe, product labeling might be an appropriate middle course.

As similar issues arise, however, trade advocates will fear unfair product discrimination and disguised protectionism, and trade skeptics will worry about the uncontrolled spread of potentially dangerous new technology. In this context, the procedural mechanism discussed earlier could apply: if there were a multilateral agreement authorizing national governments to draw their own conclusions in cases of legitimate doubt over the safety of PPMs, then a restriction would be legitimate. If nations refused to enter such an agreement, it would not.

A final issue is whether there might be some established processes for assessment of the impact of proposed trade agreements on societal values such as labor and the environment. Specifically, it is recurrently proposed

13. Quoted in *ibid.*, 50.

that they be subject to an environmental impact assessment.¹⁴ Formal environmental impact statements (EISs) were first mandated for federally funded actions in the United States by the National Environmental Policy Act (NEPA) of 1969. This process for evaluating domestic government actions, however, was not designed to address international agreements, and the fit would not be ideal. In particular, the current timing of EIS implementation—after proposed government actions have been finalized—would impose an enormous delay at just the point when fast-track trade implementing legislation was being sent by the president to Congress.¹⁵

On the other hand, the concept of investing a high-level, objective, nonpartisan interbranch agency with responsibility for “scoping . . . potential environmental, health, and legal impacts” is promising.¹⁶ Such an institution could review proposed agreements as they are being developed and offer assessments and recommendations both to Congress and USTR as negotiations proceed. Once established, this agency could also monitor environmental effects of existing trade measures and offer periodic reports to policymakers and the general public, much as the US International Trade Commission assesses the trade impact of proposed agreements when called on by the executive or Congress. In principle, a similar mechanism could be used to “scope” the potential impact of new trade proposals on labor.

The Need for Balance and Staging

If adopted, the proposals discussed above would offer something real to the labor and environmental communities while allowing renewed pursuit of negotiations aimed at further commercial openness. They would offer a range of labor and environmental measures, domestic and international, to respond to the ongoing pressures of globalization. They would reduce if not eliminate the trade system’s bias against policy measures in related spheres. They would establish multilaterally negotiated labor and environmental agreements as coequal (in legal status) to trade agreements. They would not, of course, create the institutions necessary to develop and enforce such labor and environmental agreements, but they

14. The recent Sierra Club/National Wildlife Federation proposal for renewing fast track highlights this suggestion (“White Paper on Environmentally Responsible Trade Negotiating Authority”).

15. Further analysis of the poor fit between NEPA EIS procedures and negotiation of trade agreements can be found in Esty, *Greening the GATT*, 207n, 237.

16. Sierra Club and National Wildlife Federation, “White Paper on Environmentally Responsible Trade Negotiating Authority,” 5.

would give some impetus to the long-range goals of strengthening the ILO and establishing an environmental equivalent to the WTO.

But how could one pursue such an agenda in practice? How could the development and implementation of specific measures be managed so that the parties to the compromise trusted it to bring them real benefits? Labor and environmental critics will worry that once they sign on to trade legislation their goals will be shunted to one side—as with NAFTA. Trade officials and their business allies are concerned that once they let the new people into the tent, the newcomers will not play by reasonable rules: they will set forth unrealistic standards for agreements on trade-related labor and environmental measures, and mobilize against congressional approval of any pacts that do not meet these standards.

There is no perfect immediate way to address these concerns—they are rooted in the two sides' readings of recent history and in their mutual distrust. Further complicating matters is that action would be required in a range of international and domestic policy arenas, each with its own politics and its own timetable. Putting together an actual compromise package will involve hard bargaining, but it will also require leaders in the executive branch and Congress who can be central players in this bargaining, who can win the trust of the major parties, and who can work with them to reach agreed-upon goals and timetables. Although the details that we hope will emerge are beyond what can be spelled out in a short book, they could well include the following:

- initial agreement on the elements of a negotiating agenda to be pursued, in the WTO and elsewhere;
- agreement on a complementary domestic program and its rough timetable;
- provision for a midcourse review of progress and priorities, *after* Congress authorizes the negotiations but *well before* agreements are finalized, so that all players could take stock of how their interests were faring; and
- consultative groups within which leaders on both sides of the divide meet regularly, so they can get beyond one another's ideology and rhetoric to understand one another's bottom line.

The presumption would be that a presidential administration would not bring a negotiated deal back to Congress for enactment unless it had support from important leaders on both sides of the divide, just as prior US trade representatives would not complete a trade deal that lacked support or acquiescence from most major industries. The presumption would also be, however, that players on all sides were in it to make the process work, not to see it fail.

Conclusion

Successful passage of any bill to renew executive branch fast-track negotiating authority is unlikely without a workable compromise on environmental and labor standards. Such a compromise must offer enough to be appealing to a substantial proportion of persons and groups within the relevant constituencies. It need not—and almost certainly will not—win the support of all. But it will need backing from a healthy share, particularly in the environmental movement.

Constructing a compromise is likely to take time. A new political basis for trade-negotiating authority is badly needed, but the parties to the current stalemate are widely separated in principle, lacking in mutual trust, and significantly separated in their current legislative stands. The measures set forth here, however, would advance the cause of global labor and environmental standards while authorizing the negotiation of new agreements to reduce barriers to trade. The basic logic lies in combining a range of steps:

1. a national commitment to enhanced labor and environmental standards at home and abroad, pursued through
2. steps to reinforce the social compact in the United States, such as
 - a. worker opportunity programs;
 - b. health and safety regulation; and
 - c. ongoing review of biotechnology products; and
3. steps to make the WTO more friendly toward social and environmental concerns, such as
 - a. reinforcing existing trade-labor and trade-environment institutions in NAFTA and the WTO;
 - b. permitting any new trade-related labor and environmental agreements to be implemented through fast-track legislation;
 - c. exploring possible changes or extensions in WTO rules on such matters as product labeling, production processes and methods (PPMs), and labor or environmental impact statements; and, *in particular*,
 - d. negotiating, within WTO, new rules that explicitly allow the use of trade restrictions to enforce multilateral labor and environmental accords.

Within this overall framework, new trade legislation would give renewed authority to

4. negotiate the reduction of tariff and nontariff trade barriers.

Such a program would have to be implemented in carefully negotiated stages, by executive and congressional leaders who gained the trust of all parties to the compromise. When achieved, however, these goals will benefit business interests, consumers, workers, and environmentalists alike. Moreover, domestic policy founded on the dual objective of liberalized trade within socially and environmentally responsible limits would be consistent with evolving and strengthening American values—for these combine social compassion and environmental stewardship with entrepreneurship and business innovation.