
Trade and Environment: The Search for Global Consensus

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It is no surprise that the clash between trade and environmental objectives is a highlight of this conference regarding the challenges of globalization and preparation for the 2002 Johannesburg World Summit on Sustainable Development. This is so because the trade and environment debate dramatizes the effort to reconcile contending interests and priorities in a globalizing world.

The task of sorting out the relationship between economic development and environmental protection was a challenge for many individual countries during the twentieth century. A similar task now awaits us on a global scale.

In recommending new steps that are needed, I will make three points: We need to reform the rules; we need to reform the institutions; and we need to create the conditions for consensus. I will emphasize here that we will make little progress on the first two goals without progress on the third. This need has been recognized in both Southern and Northern countries, but it bears further emphasis. For example, the South African NGO Caucus has suggested that the World Summit must respond to priority concerns of the South such as the issues of global equity, poverty, and consumption.¹ The National Wildlife Federation has called for a drive to “find the common ground that unites the interests of the industrialized world with those of the developing world” because “international cooperation is necessary to solve international problems.”²

I have been asked, for this conference, to discuss the relationship of trade and multilateral environmental agreements (MEA's) as well as institutional reforms that might address trade and environment conflicts. This is a good place to start because it helps us focus on how the international community legislates or makes rules regarding the environment and how environmental goals can be taken into account in trade decisions and policy. It also leads us to an additional, important question. We know that within individual countries the legislative and judicial process provides a way to develop consensus on the reconciling of environmental and development goals. The question is whether the process for creating and implementing international agreements is also capable of doing this.

While not lacking interest in environmental protection, countries with urgent economic needs may place priority on development at home and access to markets abroad and may look warily on MEA's, or proposals for institutional reform, as excluding their concerns. Strong arguments support the idea that, in the long run, development that is not sustainable development will be self-defeating. The question is whether the international community is capable of creating and supporting rules and institutions that can protect the environment and foster development at the same time. If this is to happen, international agreements and institutions must be viewed as the instruments of an inclusive global

consensus. Examination of experience in addressing the relationship between trade and the environment helps suggest how we might begin to achieve that result.

I. Reform the Rules

For those who follow the trade and environment debate, the subject of the rules is probably the most familiar ground. In general, discussion has focused on two kinds of problems: lack of uniformity of environmental law among nations and fragmentation of international decision making on trade and on the environment.

Lack of uniform environmental laws among nations has led some to fear that trade liberalization will lead to a "race to the bottom," in which countries with weak environmental laws will become pollution havens. Others have said that if environmental rules were too stringent, they might dampen growth in developing countries. In an attempt to strike a balance, the authors of the North American Free Trade Agreement (NAFTA) obligated each country to enforce its own environmental laws and not to weaken them in an attempt to attract investment. Similar provisions have been included in an agreement between the United States and Jordan. However, the current Administration in the United States seems uncertain or perhaps opposed to Congress approving the Jordan agreement with these provisions and to including such provisions in a free trade agreement for the entire Western hemisphere which is under negotiation.

A second kind of rule reform which has been sought would require greater deference by trade tribunals such as the World Trade Organization (WTO) and NAFTA to environmental standards established by individual nations or in MEA's. This aspect of the debate was made famous when international trade arbitrators ruled that technical rules designed to open markets to trade could override the efforts of the United States to protect endangered marine animals such as dolphins. While many environmentalists feared that trade rules would demolish environmental safeguards, many in developing countries feared that regulations supposedly intended for environmental protection might actually be disguised protectionist barriers designed to keep Southern competition out of Northern markets. Of course, most exclusion from Northern markets could be alleviated by removing old fashioned trade barriers that are unrelated to environmental regulation, a point to which we will return.

It is sometimes argued that environmental issues should be kept out of trade disputes and dealt with in MEA's. Of course, if no MEA exists on a given subject, the question of whether the environmental law of an individual nation is at odds with trade rules may be unavoidable. Where it is possible, however, to reach global consensus on environmental standards, this could be a way of reducing the controversy surrounding trade rules. That will be the case, however, only if trade institutions afford deference to MEA's.

MEA's sometimes contain trade restrictions. For example, trade restrictions with respect to non-parties are designed to prevent free riders and create incentives to join the agreement. As with the concern regarding the environmental laws of individual nations, many environmentalists fear that the trade measures used to enforce such global accords as those dealing with chemicals that deplete the ozone layer, traffic in endangered species, and transportation of hazardous wastes could be struck down for violating trade rules administered by the WTO. Here are two possible examples: A country acts in compliance with an environmental agreement by distinguishing among imported products based on whether they were produced in an environmentally friendly manner. Second, a country blocks trade in a product under an environmental agreement providing that products traded by countries that are not members of the agreement can be treated differently from those of members. In both cases, conduct under the environmental agreement might be challenged under WTO rules for discriminating between like products of two WTO member countries.

In some of its early decisions, WTO panels seemed to take the view that when the WTO considers trade rule challenges to environmental laws it will not take into account environmental agreements and will read environmental exceptions under its own rules very narrowly. This produced serious concern about the viability of environmental agreements and serious doubts about the WTO.³ Resolution of this problem seems important for several reasons. Certainty and predictability for those who must comply with both trade law and MEA's is one. Another is to facilitate the use of MEA's to protect the global environment. A related point is that the success of MEA's should lessen the need or desire for individual nations to take unilateral action and therefore reduce trade frictions stemming from disputes about such action.

A variety of solutions to the potential lack of deference to MEA's have been suggested. Several of the suggestions target the WTO's understanding of its own rules. For example, in discussions within the WTO's Committee on Trade and Environment (CTE), Switzerland has suggested an interpretive decision should establish a principle of deference, with objective criteria for determining MEAs to which the WTO should defer. This could include a requirement for close consultation with the relevant MEA secretariat or other expert environmental body. Canada and Iceland, supporting the Swiss call for a policy statement, stressed that clarification should not be left to case-by-case decision in the WTO. The European Union has suggested that conflict between parties to an MEA should be resolved within the MEA. When there is a non-party WTO challenge to an MEA trade measure, the EU proposes consideration of reversing the burden of proof. Similar to the "criteria" approach, but even more explicit, is that of NAFTA, which lists specific MEA's that are recognized under the trade agreement.

The parties to MEA's can also attempt to specify an agreement's relationship to the WTO. The authors of one comment find conciliatory language in the Cartagena Protocol on Biosafety coupled with what they believe is a more flex-

ible approach at the WTO as heralding the possibility of reconciliation of trade and environmental agreements.⁴ Others might view this result as leaving too much to future case-by-case decision or simply as creating confusion.

In one sense, these various suggestions reflect a fairly routine experience when a court or tribunal is faced with a decision in which more than one law or treaty applies. Under U.S. domestic law, the court searches for the intent of the legislature with respect to which rule applies. Various canons of interpretation come into play, such as which rule is general and which specific or which was enacted most recently. We also have rules regarding deference by courts to bodies with specialized expertise.

Roughly comparable rules exist at the international level with respect to interpretation of treaties, but they do not work as smoothly. At the global level we do not have one institution like a court that has a clear mandate and the recognized legitimacy to weigh competing trade and environmental objectives. Moreover, when the public dislikes the way a court does the balancing, a domestic legislature can step in and tell the court how to do it. We have nothing comparable on the international level. Instead we have multilateral negotiations which meet to establish trade agreements and separate, *ad hoc* negotiations to establish environmental agreements.

No one suggests that domestic judicial and legislative institutions can be replicated on a global scale. But the comparison with our domestic institutions helps clarify the problem with which we are struggling. It suggests that simply fine tuning the WTO rules has inherent limitations.

II. Reform the Institutions

A variety of reforms to overcome the institutional gaps at the global level have been suggested which could address the tensions in the relationship between trade expansion and environmental protection. As already suggested, this could be done by creating more linkages and dialogue between trade institutions and environmental institutions, so that all relevant factors are considered. And it could be done by creating more consensus on standards, with respect to the environment, to which trade institutions would defer. As we will see, preliminary steps have been taken along these lines, but they have encountered practical difficulties and sometimes objections on grounds of fairness.

At the outset, it should be said that moving forward with institutional reforms does not mean that the rules should be frozen. Rule reform and institutional reform can move forward together. For example, it has been suggested that the WTO Appellate Body decision in the recent Asbestos case reveals progress on the crucial issue of whether the WTO will defer to legitimate environmental safeguards and can distinguish between legitimate environmental regulations and those that are merely disguised protectionist barriers. The authors suggest

that in the absence of effective political leadership to mediate between contending interests, the WTO Appellate Body is performing an important balancing role.⁵

If there is progress in some of the decisions of the WTO, this could be reflected in clarifying rules or policy statements to ensure consistency. Beyond that, however, further improvement through institutional reform is possible. Incremental steps have been suggested, such as improved transparency and accountability at the WTO and a stronger directive for it to cooperate with international environmental institutions and seek legal guidance by reference to international environmental agreements and other environmental standards.

Larger institutional steps toward integration of trade and environmental objectives have been taken. Although still often weak and fragmentary, so far these steps appear to be stronger at the regional than at the global level. These regional experiments might be viewed as dealing both with the issue of a more balanced inclusion of environmental considerations in trade and other economic decisions and also with development of greater consensus on environmental standards.

Perhaps the best example of this is the European Union, which is grappling with the problem of whether free trade is compatible with different environmental standards among member nations. In the EU enlargement process, new member countries from the east will be required to comply with existing community environmental law, but a sometimes difficult discussion is under way as to how quickly this can be accomplished and with what sources of funding, an issue to which we will return.⁶ NAFTA is a less ambitious version of this. However, steps have been taken to mitigate the environmental degradation that might result from a surge in trade related development, with aspirations for raised and, perhaps when and where possible, common standards.

At a global level, various proposals for reform of environmental governance have been offered. These might also be thought of as addressing the need for decision-making that includes both developmental and environmental values and the need to strengthen the consensus on standards for sustainable development. Thus proponents of more coordinated global institutions have talked about the idea, raised earlier, that a body with environmental expertise is needed as a counter weight or adviser to the WTO. Another concern they have raised relates to the current lack of coordination among multiple environmental treaties and secretariats. Beyond the need for administrative convenience, it is argued that no single state can solve transboundary environmental problems alone, and that without some form of coordination, polluters get away with showing the costs of pollution off on those on whom the pollution falls. Professor Daniel Esty has argued that the U.S. was a prime mover in frustrating institutional reform at Rio because it benefitted from such cost shifting but that now "[e]cological interdependence is inescapable. . . . To gain control over our environmental destiny, we must cooperate and coordinate with others."⁷

These concerns have led to proposals ranging from incremental improvement in coordination among the secretariats of MEA's to creation of a World Environmental Organization (WEO) or a World Environment and Development Organization (WEDO).⁸ It has been suggested that by providing a forum for consensus building and dispute settlement on the environment, as well as expert advice to the WTO, a WEO could reduce pressure on the WTO to become entangled in environmental issues and could reduce trade and environment frictions generally.⁹

These proposals, however, have received decidedly mixed reviews. If the WTO were thought to be unduly deferential to commercial interests what would ensure a different result in a WEO created by the same nations? How would jurisdictional conflicts between the WTO and a WEO be resolved? Pros and cons regarding institutional reform have been raised by developing countries. Some are concerned that stronger global environmental institutions would simply strengthen the ability of these institutions to trump Southern interests with a Northern environmental agenda.¹⁰ At the same time, the Environmental Minister of South Africa recently said, "The present proliferation of structures, agreements, programs and conferences simply results in an inadequate participation on the part of developing countries. The dispersed and fragmented nature of the system makes it fundamentally undemocratic. . . There is a need, without being over-ambitious, to strive towards a kind of a one-stop institutional arrangement—to some extent a greater degree of centralization."¹¹

From this brief summary of proposals for institutional reform, it is evident that the problem of frictions between trade and environmental rules leads to broader issues. We have focused on two points: whether a decision structure exists that decides trade and other economic issues while taking environmental considerations appropriately into account and whether rules and institutions facilitate the creation of a consensus on environmental standards.¹² As we discuss the possible institutional reforms to achieve these objectives, we see that there are challenges of both effectiveness and legitimacy. It is sometimes assumed that proposals for increased efficiency will carry the day because efficiency is by itself a good thing. But this is not so if the result is seen as unfair. How can we achieve more effective governance for sustainability that has legitimacy throughout the community of nations?

III. Create the Conditions for Consensus

It is sometimes simplistically and mistakenly suggested that industrialized countries want to maintain high environmental standards and developing countries do not. To reference only one current example, we know that industrialized nations have contributed most to emissions of fossil fuels that threaten the earth's climate and yet some industrialized nations, especially the United States, have been reluctant to take action. At the same time, U.N. Secretary General Annan

has pointed out that it is those living in hot climates, near sea level, who cannot afford to relocate, who are most threatened by global warming. It is also estimated that eighty percent of diseases in developing countries are caused by unsafe water and poor sanitation, resulting in over five million deaths annually.¹³ The new President of Mexico has declared a "crusade" to address the problems of water and deforestation.

If there is no simple North-South split with respect to the desire for environmental protection, what are the obstacles to consensus? Studies of transitional and developing countries show that weak implementation of global environmental treaties are often not due to a lack of will but to a lack of administrative structures and resources.¹⁴ Yet the commitments of industrialized countries made a decade ago at Rio to provide funding for sustainable development have fallen sadly short, as have the ambitious environmental plans of that conference.¹⁵ It is often argued that official development assistance is either not the answer or is wasted in the absence of improved local governance and law reform. But while private investment has become increasingly important, it is concentrated in only a few developing countries. Official development assistance thus remains essential, argues Joseph Stiglitz, former Chief Economist at the World Bank, and the cuts in such funding have culminated "just as evidence of the effectiveness of aid is mounting." Coupled with local reforms, foreign assistance can promote economic growth and make the reforms lasting.¹⁶

Inaction on the global environment is due, however, to more than just a lack of money. If we look at situations where preliminary efforts are being made to transfer the resources necessary to support sustainable development in transition countries and the South, perhaps we can find clues to what is lacking elsewhere.

A careful study of international cooperation on environmental protection suggested a complex of factors that makes for effective programs involving resource transfers. The case studies involved such instances as the Montreal Protocol dealing with phase out of chemicals harmful to the ozone layer, debt for nature swaps, the Global Environmental Facility, and aid to Eastern Europe. The authors found that for programs to be effective, there must be concern to protect the environment on the part of both funders and recipients. There must be administrative and technical capacity, both in the donors and recipients, to put the funds to good use. There must be an ability to solve contracting problems, in the sense that all parties must have confidence that expectations regarding action to safeguard the environment and the availability of funds to do so will be fulfilled. The authors identified a key source of ineffectiveness as coordination failures, a "time-honored" problem of development assistance. The lessons of the study might well be summed up in the authors' statement that to work, institutions for environmental aid must "create incentives for cooperation; otherwise, they will merely become sites for repetitive and costly political struggle."¹⁷

This suggests why, however well intentioned, large but vague promises of progress on the environment and commitments to financial assistance have fallen so far short. There has to be a closer match between the interests of all the parties and confidence all around that it is plausible that if each acts, so will others. Two important kinds of situations where these circumstances might exist come to mind.

First is the case of an MEA such as the Montreal Protocol. The agreed upon action is focused on a particular problem and funding and technology transfer is focused on that problem. Donors know that the funds will be used to address the problem and recipients have incentives for action, both in financial support and in the opportunity for technological advance. Also, in the case of chemicals harmful to the ozone, concern could be readily mobilized in donor countries because the chemicals were used in consumer products.¹⁸ Finally, the Montreal Protocol contains the trade restriction with non-parties that present the potential collision with trade rules. The trade restriction was intended to prevent free riding on the efforts of the parties, to encourage participation in the MEA, and to discourage relocation of production to non-member nations. In the evolution of the agreement, both the trade restriction and the funding were important. China and India made clear they would not join without the funding, which was then included and participation by others increased rapidly. As participation becomes universal, the importance of the trade restrictions dwindles.¹⁹

A second situation where the necessary incentives for cooperation might exist is that of regional integration, such as NAFTA or the enlargement of the European Union.²⁰ In joining the EU, the candidate countries of Eastern Europe must comply with EU environmental law. It has been pointed out that this presents "a massive problem" because of the high levels of pollution allowed under the former communist governments. It has been estimated that the cost of the transition could be three to five percent of GDP over twenty years. Sometimes difficult negotiations are under way regarding the sources of funding and the implications for economic development funds for poorer, current EU member countries. On the one hand, there is concern that the candidate countries will improve their environmental performance only slowly, weakening the overall drive for the environment in Europe. On the other hand, even a slow improvement in the east is an improvement, and potentially a net improvement for the entire region.²¹

What can we learn from these examples with respect to the possibilities for improving global governance to deal with the trade and development and environment problems? The lessons are that integration of environmental and economic objectives is possible, but success depends on finding ways to develop consensus on the standards of sustainable development.

First, we know from experience that MEA's are sometimes effective, but their proliferation creates problems of coordination and linkage with trade institutions. This can be addressed through incremental steps already discussed. However, the MEA experience also shows that development of multilateral con-

sensus through a close fit between incentives and expectations is important if there is to be strong support for taking environmental factors into account in trade and other development decisions. The fragmentation of our global institutions creates the need for integration, but the will to do so will only be there if there is progress toward consensus.

Second, we have indications from regional examples that progress on integrating trade and development and environmental protection may be possible. There has been more willingness within the EU than on the global level to give community institutions the role of considering both trade and environmental values when they seem to conflict. Also, EU institutions, and to a lesser extent perhaps those under NAFTA, are more capable of creating mutual incentives to make progress simultaneously on development and the environment. This includes the presence of financing institutions that facilitate funding as part and parcel of consensus building.

However, the incentives for the candidate countries of eastern Europe to raise their environmental standards go far beyond financial assistance. They include all the benefits of membership in the EU, which range from access to the free trade area of Europe to the security benefits. Nor are those broader benefits one sided, as western Europe has many reasons to wish to expand to include the east. Accordingly, while the enlargement negotiations are intense, the relationships are perhaps more those of mutuality than conditionality. Similarly, wide ranging negotiations over an array of issues going far beyond trade are in prospect among the NAFTA countries.

By contrast, consider the situation at a global level. There is a growing belief that industrialized countries should afford greater market access to developing countries.²² But the bargaining on that issue is essentially confined to the WTO and focused narrowly on trade issues in discussions among trade ministers. At other times and places finance ministers may get together and discuss development aid. At still other times and places environmental ministers may get together and discuss the environment, but their collective voice is rarely heard at the WTO. The point is not simply that there are more issues on the table at the regional level. Additionally, there are ongoing relations of mutuality so that there are greater expectations that when a deal is struck it will mean something.

For these reasons, it is possible we will see more progress, however imperfect, on integrating trade and the environment, and more progress generally in achieving sustainable development, at the regional than at the global level.²³ This does not mean, of course, that the regional model can be translated automatically to the global level. It may be that the kind of multi-issue bargaining that is possible at the regional level is only possible because of the similarities among the parties or at least proximity, or both.

Nevertheless, it is worth considering whether one of the things that may be lacking at the global level is adequate bargaining flexibility. Discussions of a global organization that would have responsibility for sustainable development,

or at least for greater coordination, often focus on arguments of either administrative efficiency or a need to provide a counter to the WTO. But it may be that the need for consensus building mechanisms is just as important.

One commentator goes so far as to argue that a single entity should consider trade and environmental issues. The author urges that a reformed and more eclectic WTO would be a good candidate to do this because of its effective dispute settlement mechanism and its ability to develop “package deals.” He suggests that negotiators making policy trade offs in line with the views of national parliaments would yield greater legitimacy than judge-made law developed through dispute settlement bodies.²⁴ In keeping with the possibilities suggested above, this argument stresses the potential benefits of a broader legislative capacity where “package deals” are possible.²⁵ While the idea of using even a reformed WTO for this purpose would likely be met with too many objections from all sides to be viable, at the regional level we have seen some progress on linking environmental and development goals. Of course, bringing together at the global level the range of issues on the table at the regional level would probably be too unwieldy. However, an ongoing ability to discuss proposals and negotiate agreements that contain development and environmental elements as well as financing might be useful.

It is true, this can always be done on an *ad hoc* basis. The point of institutionalizing the process would be to gain the added incentives for cooperation that come from the give and take of continuing relationships and the increased predictability regarding funding present in those proposals that incorporate existing or enhanced development financing. Of course, the decision-making structure and agenda must fairly represent countries of all degrees of development. As noted earlier, experience shows that it is possible to include in the sustainable development agenda the priority concerns well stated by the South African NGO Caucus—“equity, poverty, and consumption”—but we will have to do better than we have.²⁶

IV. We Will Have to Do Better

From earth summit to earth summit, the volume and complexity of environmental law has grown, but the deterioration of the global environment has accelerated²⁷ and the gap between rich and poor has grown.

Globalization powered by expanding international trade is spreading great economic benefits around the world, but unless the resulting economic development is sustainable development, the economic achievement will be a pyrrhic victory we will all regret.

The dilemma we face started to receive attention because of arcane trade rule interpretations, but those decisions focused attention on two important issues discussed here on which we need to make progress. First, decisions to further the goals of trade expansion and economic growth need to take into

account the goals of sustainable development. Second, we need better means to achieve consensus on principles of sustainable development. We need this because the necessary support for integrating trade and development and environmental objectives must rest on a sense that all concerned stand to benefit. Despite some significant shortcomings, our domestic institutions have the capacity, if not always the will, to address these needs. Our domestic agencies and courts can integrate economic and environmental goals. If substantial elements of the public do not like the balance struck, a consensus on an alternative can be developed in the legislature, and legislative intervention can be undertaken to provide guidance to agencies and courts. At the global level, however, our institutions are fragmentary and uncoordinated.

This discussion suggests that consensus on principles of sustainable development may depend on interaction among economic, social, and institutional changes. As we have seen, the factors that facilitate consensus are complex, but progress can be made through multilateral environmental agreements and regional cooperation. At the global level, we should consider the possibility that institutions with greater continuity and scope will provide more incentives for cooperation than continuing the *ad hoc* approach to MEA's. As the environmental minister of South Africa suggested, without being over-ambitious, we can do better.

It is said that one of the principal architects of the European Community, Jean Monnet, sought to resolve conflict among nations by showing people their common interests. To do this, he believed new institutions were needed that would remove the obstacles to realizing the existence of common interests. He was optimistic that this could be done but somewhat pessimistic because he believed that people do not recognize the necessity of changing institutions without crisis.²⁸ On the subject of sustainable development, we can only hope that the current dismal trends are sufficient crisis to produce action, or at least that our common recognition of the problems and search for solutions will increase the likelihood that we will ultimately vindicate Monnet's optimism.

Endnotes:

¹ "Towards the World Summit on Sustainable Development, Johannesburg, South Africa, 2002," A discussion paper by the South African NGO Caucus on the World Summit for Sustainable Development, Heinrich Boll Foundation, World Summit 2002 Johannesburg Papers No. 1, page 14.

² "A Conservation Agenda from the National Wildlife Federation" (Sept. 2000) page 44.

³ L. Guruswamy, "The Promise of the United Nations Convention on the Law of the Sea (UNCLOS): Justice in Trade and Environment Disputes," 25 Ecology L.Q. 189 (1998).

⁴ Eggers and Mackenzie, "The Cartagena Protocol on Biosafety," 3 Jour. of International Economic Law 525 (2000).

⁵ R. Howse and E. Tuerk, "The WTO Impact on Internal Regulation – A Case Study of the Canada-EC Asbestos Dispute" (text at note 57 and following), forthcoming in G. De Burca and J. Scott, eds., THE EU AND THE WTO: LEGAL AND CONSTITUTIONAL ASPECTS (2001).

⁶ “The European Union as an Environmental Governance System,” by R. Axelrod and N. Vig in Vig and Axelrod, eds., *THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW AND POLICY* (1999) pages 90-92.

⁷ Daniel Esty, “Stepping Up to the Global Environmental Challenge,” *VIII Fordham Environmental L. Jour.* (1996) pages 103, 112.

⁸ Extensive material on these proposals may be found at the web sites of the Global Environmental Governance Project of the Yale Center for Environmental Law and Policy www.yale.edu/gegdialogue and of the United Nations Environmental Program www.unep.org (International Environmental Governance, Working Documents).

⁹ C. Ford Runge, “A Global Environment Organization (GEO) and the World Trading System: Prospects and Problems,” January 15, 2001.

¹⁰ Agarwal, Narain, and Sharma, *GREEN POLITICS: GLOBAL ENVIRONMENTAL NEGOTIATIONS* (Center for Science and Environment 1999) Chapter 9.

¹¹ Statement of Mohammed Valli Moosa, Minister of Environmental Affairs and Tourism, Republic of South Africa, “Towards Earth Summit 2002” (April 2001).

¹² While the National Wildlife Federation believes that trade rules can be crafted to be compatible with legitimate environmental safeguards, we also believe that consensus building needs to go beyond fine tuning the rules to many of the institutional issues addressed in this paper. For a full discussion, see Testimony of Mark Van Putten, President & Chief Executive Officer, National Wildlife Federation before the U.S. Senate Finance Committee on the United States Trade Agenda After the Seattle WTO Ministerial, February 10, 2000.

¹³ Kofi Annan, “We the Peoples,” *The Role of the United Nations in the 21st Century* (2000) pages 16, 60; Kofi Annan, Address to Developing Countries ‘South Summit,’ April 12, 2000; Kofi Annan, Commencement Address at Stanford University, June 11, 2000. See also Peider Konz, ed., *TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT: VIEWS FROM SUB-SAHARAN AFRICA AND LATIN AMERICA* (2000).

¹⁴ Weiss and Jacobson, eds., *ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS* (1998).

¹⁵ Gary Bryner, “Agenda 21: Myth or Reality?” Chapter 8 in Vig and Axelrod.

¹⁶ Joseph Stiglitz, “An Agenda for Development in the Twenty-first Century,” Keynote Address to the Ninth Annual Bank Conference on Development Assistance, Washington, D.C., April 30, 1997.

¹⁷ Keohane and Levy, eds., *INSTITUTIONS FOR ENVIRONMENTAL AID: PITFALLS AND PROMISES* (1996) pages 8-16, 283, 334-49, 351.

¹⁸ B. Bramble and G. Porter, “Non-Governmental Organizations and the Making of US International Environmental Policy,” Chapter 12 in Hurrell and Kingsbury, eds., *THE INTERNATIONAL POLITICS OF THE ENVIRONMENT* (1992).

¹⁹ *TRADE MEASURES IN MULTILATERAL ENVIRONMENTAL AGREEMENTS* (OECD 1999) pages 80-81.

²⁰ As one authority on the construction of the European Union has noted, the history of the EU, from the Treaties of Rome on, is replete with “package deals” in which cooperation is based on mutual benefits. J. Pinder, *THE EUROPEAN UNION* (2001) page 13.

²¹ Axelrod and Vig, “The European Union as an Environmental Governance System,” above, pages 91-93.

²² James Wolfensohn, World Bank President, remarks of February 26, 2001 in London.

²³ See J. Gilbreath, “Environment and Trade: Predicting a Course for the Western Hemisphere Using the North American Experience” (May 2001) (regarding lessons from NAFTA for negotiations on a Free Trade Area of the Americas).

²⁴ M. Bronckers, "More Power to the WTO?," 4 *Jour. of International Economic Law* 41, 53, 54, 64 (2001).

²⁵ A different view is taken in an important analysis by Jacquet, Pisani-Ferry, and Strauss-Kahn, "Trade Rules and Global Governance: A Long Term Agenda," December 2000, pages 12-15. These authors urge that specialization is important to legitimacy of international institutions and that we should resist the temptation to blur the boundaries among institutions dealing with trade and other subjects. To strengthen the judicial capacity of the international system, they do suggest a new, neutral appellate body to handle disagreements between trade and environmental dispute settlement panels. However, our point above is that there are potential benefits of strengthening consensus building or legislative capabilities by facilitating trade offs and package deals across subject areas. The potential benefits from a WEO that can facilitate bargaining and package deals across environmental, commercial, and development objectives is discussed, along with some difficulties of such an undertaking, in J. Whalley and B. Zissimos, "What Could a World Environmental Organization Do?" and P. Newell, "New Environmental Architectures and the Search for Effectiveness," 1 *Global Environmental Politics* 29, 35 (2001).

²⁶ In the paper cited earlier, C. Ford Runge suggests that a viable WEO must be linked to commitments to expanded market access for developing countries, and must offer those countries differential treatment, technical assistance, and adequate representation.

²⁷ H. French, *VANISHING BORDERS* (2000) pages 15-33.

²⁸ M. Burgess, *FEDERALISM AND EUROPEAN UNION: THE BUILDING OF EUROPE, 1950-2000* (2000) pages 33-34.