



THE GATT REPORT ON TRADE AND ENVIRONMENT

A Critique by the World Wide Fund for Nature

Introduction

The recently published GATT Report entitled "Trade and Environment" reaches the broad conclusions that expanding trade can help solve environmental problems, and that GATT rules do not need to be amended for environmental purposes. WWF maintains that the expansion of trade will contribute to environmental protection and sustainable development, only if certain preconditions are met. Furthermore, it will be necessary to amend the GATT, and in some cases circumvent its provisions and/or procedures, to successfully integrate trade and environmental policies.

This WWF critique focuses on assertions made in the GATT Report, the flawed logic which underpins them, and its omission or under-emphasis of key environmental concerns. The critique shows why the GATT's analysis fails to balance trade and environmental policies in a way that will deliver sustainable development. Policy changes and mechanisms necessary to achieve such a balance are also briefly outlined.

A more detailed examination of the shortcomings of the GATT with regard to the environment may be found in WWF's Discussion Paper entitled "The GATT, Environmental Protection and Sustainable Development". The discussion paper also provides detailed preliminary recommendations on the necessary reform of the GATT.

Expanding Trade and the Environment

The GATT Report states that there is no reason to assume that growth of per capita income, boosted by increased market access and expanding trade, "necessarily, or even on average, damages the environment". However, so long as the price of traded goods does not reflect their full cost in terms of environmental damage and consumption of natural resources, expansion of trade will damage the environment. At present, the full environmental cost is not incorporated ("internalized") in the vast majority of traded goods.

The report goes on to claim that, by generating wealth, increased trade helps provide the finance necessary for pollution control and remedial clean-up. This statement contains one dubious assumption, and ignores the question of the relative costs of remedying as opposed to preventing environmental damage.

The dubious assumption is that a sufficient proportion of the wealth created by an expansion of trade will trickle down to solve associated environmental problems. As there exists no automatic mechanism to guide these financial flows, this is by no means always the case. If it was, the tenfold expansion in world trade that we have seen since GATT rules were first promulgated, would surely have left the world's environment in a far better state. This is demonstrably not the case.

The statement also ignores the fact that it is generally far easier, and less expensive, to prevent rather than to cure environmental damage. The implicit assumption in the GATT Report, is that expansion of trade and generation of wealth can go on as before if some of this wealth is diverted to rectifying the consequent environmental damage afterwards. This clearly offers no solution to those forms of environmental damage that are irreversible. Even in cases where the environmental damage is reversible, it almost invariably costs more money to rectify it than to prevent it in the first place.

The only way to ensure adequate and cost-effective financial investment in environmental protection measures, is to fully "internalize" the environmental costs of production and trade in goods. Much of the responsibility for doing this rests with individual national governments, when setting their domestic environmental and economic policies. However, this does not absolve GATT, or for that matter any other multilateral institution, of a similar responsibility when setting policies and rules that have environmental as well as economic implications.

GATT rules must be amended to create a regulatory framework for international trade that encourages "internalization" of environmental costs. Otherwise, GATT will inevitably conflict with unilateral and multilateral policies, legislation and agreements designed to protect the environment. This can be illustrated by reference to other points made in the GATT Report, and the recent GATT Dispute Panel ruling on the US tuna embargo.

GATT and Unilateral Environmental Measures

The GATT Report espouses a simplistic but attractive rule to determine GATT's relationship with environment-related trade measures. In crude terms the rule is: multilateral good, unilateral bad. If applied within a policy sector this rule is broadly tenable - negotiated multilateral solutions to transboundary policy problems are best. However, the GATT Report distorts and devalues this argument by applying it across policy sectors in a way which arbitrarily gives pre-eminence to one policy objective - trade liberalization. In effect the report says: GATT's multilateral trade rules are good, whereas any unilateral environmental policies requiring supportive trade measures are bad.

This GATT Report fails to take account of the following factors, rendering its analysis invalid.

(i) Inadequacy of GATT's environmental provisions

The multilateral trade rules contained within the GATT make a wholly inadequate allowance for the need to protect the environment and manage natural resources sustainably. The articles of the GATT which supposedly take account of this need, Articles XX(b) and XX(g), are framed as exemptions to GATT rules. These exemptions can only be gained under stringent conditions. These further enhance the pre-eminence that GATT law gives trade liberalization over environmental protection.

The recent GATT Dispute Panel's ruling on the US embargo of non-dolphin safe tuna imports further weakens these environmental exemptions. The full implications are drawn out in the next section of this critique on "Competitiveness and the Environment". Suffice to say here that the GATT Report attempts to mask the inadequacy of GATT's environmental provisions, behind the virtue of its multilateralism. WWF maintains that the existence of a multilateral agreement on trade provides no rationale in itself, for overturning effective and necessary unilateral environmental measures. There remains a need for an open and equitable multilateral mechanism to ensure that environmental concerns are not used to disguise trade measures which are protectionist.

(ii) Importance of unilateral environmental measures

The GATT Report's position on the need for multilateralism also exploits, intentionally or unintentionally, the general lack of effective multilateral environmental agreements. This deficiency means that unilateral measures are often the only ones available to protect the environment. This is especially the case with the "Global Commons" - the environment and natural resources beyond any country's legal jurisdiction.

It is an easy option for the GATT Report to call for multilateral environmental agreements, but one that completely ignores the importance of unilateral measures in the period prior to the establishment of such agreements. It also ignores the key role that unilateral measures have in building the political will for multilateral agreements. In effect the GATT Report says that countries should only take environmental actions with trade effects, when they can all agree upon them. This would force countries to move in "lock step" when raising environmental standards or creating wholly new environmental measures. If the GATT Report's conclusion is accepted, it would therefore retard the development of necessary environmental measures, both nationally and internationally.

(iii) Democratic accountability

The GATT Report generally ignores the need to ensure that trade ministries and officials are democratically accountable for the impacts that their decisions have on the environment. GATT rules are negotiated, implemented and enforced in Geneva through the efforts of trade officials, who in some cases appear to be unaccountable even to their own colleagues in environment ministries. The trade officials charged with responsibility for GATT affairs have no mandate or expertise to enable them to give due consideration to environmental matters. The GATT Report nevertheless maintains that the GATT rules devised and enforced by these officials, should be able to overturn key elements of environmental policies implemented by elected governments.

Competitiveness and the Environment

The world market creates economic linkages between the environments of individual countries, even where ecological links do not exist. Environmental policies have many economic implications, and these in turn can affect a country's trading position - its "competitiveness" on the world market. They also affect its competitiveness in its own domestic market, insofar

as free trade implies that this market must be open to imports.

These links generate economic pressures on governments when they take environmental measures to protect their own environment, or the Global Commons. This is because financial investments in environmental measures and/or reductions in the rate of consumption of natural resources carry a short term economic cost. This is more than repaid in the long term when sustainability is attained. In the short term, however, it can dissuade a country from taking measures to internalize environmental costs.

Countries choosing to internalize their environmental costs have only two options, in the face of competition from those which choose to externalise these costs. One is to take trade measures, in the form of import tariffs or pollution control subsidies, to "level the playing field", and restore their competitive position. The other is simply to bear the short-term economic cost that accompanies the loss of competitiveness. The country may ultimately bear a long-term environmental cost if it is forced by these economic pressures to relax environmental standards. If countries internalizing environmental costs cannot take interim trade measures to maintain competitiveness, environmentally damaging production processes will be maintained, and in some cases will replace sustainable ones, around the world.

The GATT Report deals with the competitiveness and environment issue by questioning its legitimacy, underplaying it and suggesting that it will in any case be very difficult to address. The report asserts that different environmental standards are a legitimate source of "comparative advantage" - ie that countries can compete by externalising environmental costs.

Evidence is presented which suggests that cost differences due to differing environmental standards are low, and that industries internalizing their environmental costs suffer only a temporary competitive disadvantage. However, the report does admit that there has been some cross-border relocation of industry in the past, in response to these differences. The report fails to note that these relocations involved the most pollution intensive industries. This indicates that if the competitiveness issue is not addressed, it will be the most environmentally damaging industries and production processes which will take the opportunity to become "free riders".

In seeking to underplay the competitiveness issue, the GATT Report underlines its insensitivity to the real environmental problems that can be caused by totally unrestricted trade. Two cases, recently reported in the press, serve to illustrate the scale of the problem:

- * the European Commission has delayed implementation of a carbon tax because of its implications for the competitiveness of the EC's industry (Financial Times, 25/2/92)
- * major multinational companies in the Netherlands are threatening to transfer investment abroad, if the Dutch government imposes environmental and energy levies ahead of the EC's proposed carbon tax (New Scientist, 15/2/92)

So why does the GATT Report maintain that the competitiveness issue is not really a problem for the environment? The reason appears to be that the problem cannot be addressed unless two GATT principles are rejected. The most important of these is that Contracting Parties cannot:

"discriminate between like products on the basis of the method of the production".

This principle was first elaborated in detail in a 1971 GATT Secretariat Note entitled "Industrial Pollution Control and International Trade". It was reaffirmed in the recent Dispute Panel ruling on the US tuna embargo, which if adopted by the GATT Council, will become GATT law. The implication of this is that Contracting Parties cannot apply trade measures which discriminate the same product derived from a polluting as opposed to a pollution-free process. According to GATT, it is therefore not possible to discriminate between products on the basis of the degree to which their production costs are externalized.

The second principle is that GATT Contracting Parties cannot take trade measures to protect the environment or natural resources outside their legal jurisdiction. This interpretation of GATT rules is also incorporated in the Dispute Panel ruling on the US tuna embargo. The GATT Report states that where the environmental impacts stemming from production of goods are strictly domestic, the choice of whether or not to externalise these costs is also strictly domestic. According to the report, a country taking trade measures to maintain the competitiveness of an industry which has internalized its costs, is simply trying to impose its environmental judgement on another country. This is an extra-jurisdictional effect, and therefore contrary to the GATT.

To deal with the problem of competitiveness and the environment, it is necessary, in the context of internalization of environmental costs, to reject the principle of non-discrimination on the basis of production method. On the extra-jurisdictional issue, it will simply be necessary to concede that economic linkages created by trade will force countries to damage their own environment, and the global one, if GATT forbids the use of trade measures to deal with the competitiveness and environment issue. The GATT Report attempts to conceal the importance of this issue, presumably because the Contracting Parties and Secretariat do not wish to concede these points.

GATT and Multilateral Environmental Agreements

The GATT Report acknowledges that GATT regulations may conflict with the trade provisions in some multilateral environmental agreements. The report specifically mentions the Montreal Protocol, the Basel Convention and the Convention on the International Trade in Endangered Species (CITES).

The issue of whether these environmental agreements conform to the non-discrimination principle of GATT (between countries and products) is raised. No conclusion is reached but the GATT Report then goes on to suggest ways in which these environmental agreements could be modified to comply with this GATT principle.

By doing so, the GATT Report once again clearly implies that trade liberalisation, as prescribed by the GATT, should take precedence over environmental ones.

This point of view is highly questionable in terms of international legislation, according to an official UNCED research paper*. This paper points out that GATT "lacks the status of an international legislative body", because it was conceived as a contractual agreement, with no supporting, permanent organization. As such it cannot compete with the UN, or UN agencies, as the legitimate creator of international public law. All three environmental agreements cited above were created under UN auspices.

The same UNCED research paper also examines, individually, the question of legal compatibility between GATT and these environmental agreements. The paper demonstrates potentially serious conflicts between all these environmental agreements and GATT. At the present time it is impossible to predict whether or not these conflicts will occur. The GATT Report's recommendations on the modifications to environmental agreements necessary to avoid such conflicts, simply define a solution which gives precedence to trade.

Conclusion

If environmental costs are fully "internalized", trade liberalization could play an important role in securing environmentally efficient use of natural resources and in protecting our environment generally. In the interim, where costs are not fully "internalized", a mechanism is needed to balance trade and environmental objectives so as to secure sustainable development. One function of this balancing mechanism will be to guard against "protectionist" trade measures masquerading under an environmental justification. This is the fear the GATT Report seeks to instil in all policy makers. Whereas the report underplays the competitiveness issue, it overstates the "green protectionist" one. Given a transparent and equitable dispute settlement process, WWF believes that the problem of green protectionism can be resolved.

In conclusion, the GATT Report denies any responsibility for GATT, (or trade policies generally) to contribute to the solution of environmental problems. The rationale for this is that "trade measures are seldom likely to be the best way to secure environmental objectives, and, indeed, could be counter productive." This position completely ignores the need for a cross-sectoral approach in devising policies to solve the current global environmental crisis. The need for such an approach is widely recognized and embodied in the current work of many international fora, including the OECD, UNCTAD and UNCED.

*UNCED Research Paper No. 35, Relationship Between Environmental Agreements and Instruments Related to Trade and Development. Authors: J.O. Cameron, T. Mjolo-Thamaga & J.C. Robinson.

WWF maintains that trade policies clearly have an important role to play in supporting effective unilateral and multilateral environmental measures, as above. However, WWF is in broad agreement with the notion that GATT should not have any responsibility for balancing trade and environmental objectives. The agreement and is too biased towards trade objectives to achieve such a balance. The GATT Report reveals clearly the inability of the Contracting Parties to understand the full ramifications of trade rules and policy decisions for the environment.

What is required is a body other than the GATT to do this. One that is capable of over-ruling GATT's trade oriented decisions, just as GATT takes it upon itself to over-rule others' environment-oriented decisions. It must also be a body that does not primarily serve the interests of developed countries, in the way that GATT does. The negotiating and decision-making processes of this body must be open to public participation, and must incorporate fully the objective of sustainable development. The optimal balance between trade and environment will never be achieved otherwise. The necessary institutional innovations should be accompanied by a general recognition in the GATT that the objective of internalizing environmental costs can be a valid reason for taking unilateral trade measures. This requires amendment of the GATT, along the lines detailed in the WWF discussion paper.

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Related WWF publications, available on request from any WWF observer:

"The General Agreement on Tariffs and Trade, Environmental Protection and Sustainable Development", a WWF International Discussion Paper, Revised November 1991;
"South-North Terms of Trade, Environmental Protection and Sustainable Development", a WWF International Discussion Paper, February 1992.