

## The Under-Examined Trade-Environment *Linkage*: Domestic Politics and WTO Disputes

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Jagdish Bhagwati has been an intellectual leader in many ways. Perhaps less known is the way in which he has consistently examined and exposed the political economy of the trade-environment and trade-social policy debate as it has been shaped in the United States and Europe.<sup>2</sup> This essay condenses prior work of mine concerning trade-environment issues which has benefited from and run parallel to Jagdish's work.

While scores of northern commentators criticize the non-transparency of the World Trade Organization (WTO) in their examination of trade-environment issues, they often ignore the linkage between domestic politics in powerful states and international trade measures. Consciously or unconsciously, they blur this crucial *linkage* that divides WTO members and exacerbates conflicts and scuttles them to the WTO in the first place. Yet it is this underlying domestic-international, two-level game<sup>3</sup> that also needs to be made more *transparent*, since its examination demonstrates that it is this nexus more than the WTO's lack of transparency that results in trade-environment conflicts.

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<sup>2</sup> See e.g. Jagdish Bhagwati, *In Defense of Globalization* (2004), at 135-161; Jagdish Bhagwati, *Trade Liberalisation and "Fair Trade" Demands: Addressing the Environmental and Labour Standards Issues*, in *A Stream of Windows* 247 (Jagdish Bhagwati ed., 1998); and Jagdish Bhagwati, *The Agenda of the WTO, in Challenges to the New World Trade Organization* (P. van Dijk & G. Faber eds., 1996). See also Jagdish Bhagwati, *Free Trade Today* (2002).

<sup>3</sup> On two-level game analysis in international relations, see Robert Putman, *Diplomacy and Domestic Politics: The Logic of Two-level Games*, 42 *Int'l Org.* 427 (1988); and *Double-Edged Diplomacy: International Bargaining and Domestic Politics* (Peter B. Evans et al. eds., 1993). For an application to the WTO, see Gregory Shaffer, *The WTO Under Challenge*, *supra note...*

This essay makes two central points about debates over the WTO's treatment of trade-environment matters. First, the U.S. public is relatively government-averse and foreigner-wary. It is thus far less likely to support financing of domestic and international programs that directly address environmental concerns than to support trade restrictions against foreign imports. Trade restrictions against foreign imports impose costs on domestic constituents, but these costs are less *transparent* than the costs of positive environmental programs. Domestic politicians and the mass public therefore respond more favorably to calls for trade restrictions against unrepresented foreigners. Many WTO critics employ the rhetoric of fighting "multinational corporations,"<sup>4</sup> but the sanctions that they advocate can harm the poor in developing countries who are not consulted about them. Positive assistance programs, on the other hand, are both more efficient and equitable. Yet whatever political party is in control, domestic political processes prefer to shift costs through trade restrictions onto foreigners who, in a world of asymmetric power, tend to come from poorer, smaller countries. The result is North-South, trade-environment policy controversies brought before the WTO on account of the United States' imposition of unilateral trade restrictions against developing country imports, as opposed to negotiated package agreements involving financial and technical assistance.<sup>5</sup>

Second, *domestic* deregulatory policies within the United States, whether concerning social policy or environmental protection, can encourage further backlash against the WTO and the *international* trade liberalization policies that it facilitates. Although it is primarily these domestic policies that will be problematic, U.S. political processes more easily focus on trade liberalization as the culprit. To attempt to counter this backlash, trade-liberals could work with environmental advocates to address their concerns through specific domestic and international environmental programs. This policy response, however, is constrained by U.S. domestic politics for the reasons just stated. Thus, should the United States continue to push for trade liberalization

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<sup>4</sup> See, e.g., Lori Wallach & Michelle Sforza, *Whose World Trade Organization? Corporate Globalization and the Erosion of Democracy* ix (1999) (where the Preface by Ralph Nader refers to "an autocratic system of international governance that favors corporate interests").

<sup>5</sup> Package agreements could, of course, be combined with monitoring and, eventually, trade restrictions, whether through market boycotts, adverse labeling, tariffs, or import bans.

policies without more coherently addressing domestic and international environmental concerns, it can trigger further backlash against the international trading regime.

### **The Predominant Focus on Trade-Environment Linkages: Should WTO Rules Facilitate Trade Restrictions on Environmental Grounds?**

*North-South Perspectives on Trade Restrictions on Environmental Grounds.* The WTO became a household name not because of the almost half century of multilateral trade negotiations leading to its current state, nor because of its multiple daily committee meetings in Geneva, but because of the dramatic anti-WTO protests and riots in Seattle, Washington, in November 1999 at the WTO's third Ministerial Meeting highlighting trade-social policy conflicts.<sup>6</sup> The two central claims of the protestors were, first, that the WTO system favors large corporate interests at the expense of workers, consumers, the environment and developing countries, and second, that it is a closed, trade-biased, anti-democratic institution. Critics link these substantive and procedural claims, declaring that it is the non-transparent procedures of the WTO that lead to pro-corporate, neoliberal outcomes.

The preferred remedy of many of these critics is trade restrictions on environmental grounds. I call this the *northern perspective* because it is almost solely a demand of northern/western nations and their constituents.<sup>7</sup> This does not in itself signify that the demand for trade restrictions is correct or incorrect, but the situation's political economy needs to be recognized. Although developing country critics of the WTO demand fewer WTO constraints on their abilities to implement social and development policies, they largely oppose trade restrictions on environmental grounds, particularly where they would be implemented through a unilateral determination by the United States.<sup>8</sup> On the other hand, northern protestors, northern academics,

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<sup>6</sup> As an Asheville, North Carolina, newspaper reported, "Before this week, you might have thought the WTO was a wrestling organization seen on a cable channel you don't get." Mark Barrett, *Trade Anger Reverberates; Issues Impact WNC*, Asheville Citizen-Times, Dec. 2, 1999, at A1.

<sup>7</sup> The terms "northern" and "western" are used interchangeably in this essay to distinguish developed country positions from those of the developing world. This, of course, does not mean that all constituencies around the globe can be divided on this basis, but the political economy of the situation is clear to any careful observer.

<sup>8</sup> See, e.g., *Third World Intellectuals and NGOs Statement Against Linkage (TWIN-SAL)*, *Economiquity* 2 (Nov. 1999) (the newsletter of the Indian organization CUTS Centre for International Trade, Economics and Environment, listing 99 third world intellectuals and NGOs as signatories, and declaring "our unambiguous

and often northern leaders and the northern media, call for WTO authorization of unilaterally determined trade restrictions without any significant complementary financial assistance. Well before the Seattle concatenations, reams of U.S. law review articles addressed how WTO rules should be modified or interpreted to accommodate trade restrictions imposed on environmental grounds. In response to the Seattle mayhem, the U.S. media supported some of the protesters' demands. The New York Times' lead editorial concluded that WTO dispute settlement panels "should bend over backward to side with the environmental advocates when the cause is just and not a disguised form of protectionism,"<sup>9</sup> ignoring developing country claims that the cause is *not* just if no financial assistance is provided to them, and that self-interested producers are always in league with well-meaning environmental activists when it comes to bans on the importation of developing countries' competitive products.

National representatives before the WTO may adopt trade liberal or social policy rhetoric when advancing arguments in WTO negotiations. This does not mean that they are trade liberals or social activists. Rather, as shown by this author's detailed study on state positions within the WTO on trade-environment matters, state representatives primarily react to domestic constituent pressures.<sup>10</sup> Although developing country nongovernmental organizations (NGOs) may be harsh critics of their governments at home, they have largely supported them internationally in opposing developed country NGO demands for WTO accommodation of U.S. trade restrictions.<sup>11</sup>

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opposition to Linkage of Labour and Environmental Standards to WTO and to trade treaties. We also wish to disabuse the media and the governments in the developed countries of the notion that those who oppose Linkage are corporate interests and malign governments." They propose that environmental issues be handled in environmental agencies, such as the United Nations Environmental Programme); *Joint NGO Statement on Issues and Proposals for the WTO Ministerial Conference*, 8-11, available at <<http://www.twinside.org.sg/title/issue-cn.htm>> (last visited May 10, 2001) (signed by 34 NGOs from developing countries, including Bangladesh, Brazil, Colombia, Dominican Republic, Ghana, Guyana, India, Indonesia, Kenya, Malaysia, Mexico, Nepal, Philippines, South Africa, Thailand, Uruguay, and Zimbabwe; stating "The environment should not be made use of as an issue for protectionism by the powerful for that would unfairly shift the adjustment cost to the weaker countries and people . . . . There should be no recourse to unilateral trade actions for any purpose.").

<sup>9</sup> *Messages for the W.T.O.*, <BI>N.Y. Times<D>, Dec. 2, 1999, at A30.

<sup>10</sup> Shaffer, *WTO Under Challenge*, supra note 1, at 68-74, 81-83.

<sup>11</sup> *Id.* For example, in respect of the shrimp-turtle dispute between India and the United States, the Center for Science and Environment (CSE), an Indian environmental NGO, criticized the Indian government for not insisting "that all trawlers catching shrimp must use a turtle excluder device." The CSE maintains, "trust the government of India and its arms like the ministry of environment and forests to sit idle while the turtle massacre goes on. . . . The government of India is probably the most hypocritical government of the Earth." Yet in the same

Even though the primary aim of the WTO is to facilitate the negotiation of liberalized trade policies, state representatives typically take *mercantilist* positions within it. As mercantilists, they strive to expand national exports, limit foreign imports, and in this way, satisfy both their exporting and non-exporting producer interests.<sup>12</sup> Given mercantilist intergovernmental bargaining in the WTO, developing countries are concerned that, in practice, the United States and EU would impose trade restrictions on environmental grounds to satisfy domestic producer interests. In both the controversial tuna-dolphin and shrimp-turtle cases, although environmentalists may have had idealist ends, domestic producer interests used environmental concerns to mask self-serving motives. Indeed, in the shrimp-turtle case, it was conservative Gulf Coast representatives in the U.S. Congress who were the sole sponsors of the relevant legislation. They sponsored it only after the state of Louisiana and its shrimping industry failed to block application of a similar domestic regulation before U.S. federal courts. U.S. environmental groups then allied with the Gulf Coast shrimping industry to sue the U.S. government before U.S. courts to enjoin it to implement the import ban on South and Southeast Asian shrimp.<sup>13</sup>

Developing country representatives may rhetorically employ a trade liberal rationale for not adopting a WTO social clause. Yet their primary concern is how such clause would operate in practice. They fear that it would be constructed and used by developed countries to restrict developing country imports, and not vice versa, thereby worsening existing biases against them.<sup>14</sup>

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publication, the CSE confirmed that it “has consistently opposed the use of trade sanctions to conserve the global environment because of the simple reason that only economically powerful nations can impose effective trade sanctions against less economically powerful nations.” Anil Agarwal, *Turtles Shrimp and a Ban*, Down to Earth, June 15, 1998, at 4. *See also*, *Trade Control is Not a Fair Instrument*, Down to Earth, Aug. 15, 1992, at 4 (referring to how “trade and human rights are being used today as sticks to beat the South”); and BS Chimni, “WTO and Environment: Legitimation of Unilateral Trade Sanctions,” *Economic and Political Weekly*, at 133, 137-8, Jan. 12, 2002 (writing in response to the WTO shrimp-turtle case, “it brings about a situation whereby the powerful north can use unilateral trade measures to coerce the poor south to accept bilateral or multilateral environmental arrangements, but not accept constraints on itself when it does not suit its interests”); and B.S. Chimni, “WTO and Environment: Shrimp-Turtle and EC-Hormone Cases,” *35 Economic and Political Weekly*, 1752 (May 13, 2000).

<sup>12</sup> Shaffer, *WTO Under Challenge*, supra note 1, at 30-35, 52.

<sup>13</sup> *See* Shaffer, *Power, Governance and the WTO*, supra note 1; and Gregory Shaffer, *Trade and Environment: Options for Resolving the WTO Shrimp-Turtle Case*, 15 Int'l Trade Rep. (BNA) 294, 295 (Feb. 18, 1998).

<sup>14</sup> *See, e.g.*, Bhagwati, *Stream of Windows*, at 262-263 (noting that, in light of the power politics of international trade negotiations, the social clause would likely be constructed so that there would not be challenges to U.S. regulations and business practices concerning union organization and the treatment of migrant workers).

They fear that the integration of environmental mandates into the WTO could be used predominantly by the big powers to appease domestic constituencies by blocking developing country imports, without any compensation to developing countries. Developing country NGOs often have very different priorities than their developed country counterparts. Yet even where developing country NGOs have identical ideals, they have experienced in a more direct manner how power politics in international economic relations affects their application. While it is appropriate for developing countries to enact social standards, it is not apparent to them why this should be imposed and enforced by an international trade regime or through unilateral action by the United States. Many of them assert that such measures are coercive and undemocratic because they interfere with developing country policymaking choices to advance developing country-determined priorities.<sup>15</sup> It is the law-in-action of international economic relations that they distrust.

### **Domestic Politics in the United States Over the Trade-Environment Nexus**

Anti-WTO protests to the contrary, the WTO can do little about the underlying trade-environment nexus until there is a change in domestic politics within the world's great economic powers. If the United States wishes to seriously address critical international environmental problems such as global warming, the United States needs to do much more than impose trade restrictions. It can implement policies to reduce greenhouse gas emissions and spur the development and use of new technologies at home that can be exported abroad. If the United States is serious about environmental problems in developing countries, it can provide financial and technical assistance to assess and implement appropriate sustainable development policies,

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Rather, the clause would likely cover child labor, which is a problem only in developing countries on account of their level of development.)

<sup>15</sup> See, e.g., comments of Vandana Shiva, Director of the Research Foundation for Science, *Technology and Natural Resource Policy, India*, in *Policing the Global Economy: Why, How and for Whom?* 105, 194 (Sadruddin Aga Khan ed., 1998) ("the principle that was the basis of the negotiation of the Rio treaty . . . was a principle of human rights, democracy, sovereignty and development. It was the right to development, which also implies the full realization of the right of peoples to self-determination, which in turn includes the exercise of their inalienable rights to full sovereignty over all their natural wealth and resources. That right to development, to me, is the key test in every dispute decision by the WTO.").

including through market-based mechanisms.<sup>16</sup> In each case, however, the United States does little because of U.S. domestic politics. Yet U.S. protestors target their disdain on the WTO and not so much on their own home government.

Environmental problems require *positive* policy responses, but the trade-environment debate in the United States has almost solely revolved around the WTO legality of *negative* trade restrictions against those least well off. Were the United States serious about assisting with environmental protection efforts abroad, it would not simply ban foreign imports, but would help fund assessments of problems and implementation of improvements. There are international institutions mandated to do this, and in particular the United Nations Development Programme, the United Nations Environmental Programme, and the Global Environment Facility. Working with and through these institutions is a more coherent way of addressing foreign environmental issues than bringing them to an international trade organization in which countries truck and barter their trading interests. Yet the United States, which is by far the wealthiest country in the world, gives only about 0.016% of its gross domestic product in foreign aid, most of it targeted to Israel and Egypt for political and security reasons.<sup>17</sup> During the 1990s, the amount of U.S. foreign aid declined an average of 8% per year, although it has increased slightly under the Bush administration.<sup>18</sup>

The massive protests of U.S. activists have tended to respond to foreign challenges of U.S. trade bans rather than U.S. environmental policies generally. The Seattle protestors, for example,

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<sup>16</sup> See, e.g., discussion of market-based mechanisms, in Jonathon Wiener, *Global Environmental Regulation: Instrument Choice in Legal Context*, 108 Yale L.J. 677 (1999).

<sup>17</sup> In 2004, the United States' foreign aid commitment was only 0.16% of its gross national product, which is one of the lowest percentages among developed nations, per <http://www.oecd.org/dataoecd/59/51/34700392.pdf>. In 2003, the United States' foreign aid commitment was only 0.15% of its gross national product, per <http://www.oecd.org/dataoecd/52/9/1893143.xls>, with Israel receiving the greatest amount of US foreign aid, per <http://www.oecd.org/dataoecd/42/30/1860571.gif>. See also Tim Weiner, *House Votes to Cut \$2 Billion From Clinton Foreign Aid Plan*, N.Y. Times, Aug. 4, 1999, at A3 (noting that the U.S. House of Representatives passed a \$12.6 billion foreign aid bill for 2000 with \$4.88 billion earmarked for Israel and Egypt); and THE STATESMAN'S YEARBOOK: THE POLITICS, CULTURE AND ECONOMIES OF THE WORLD 2001 (Barry Turner ed.) 1687 (2001) ("In terms of a percentage of GDP, the USA was the least generous major industrialized country" in granting international aid).

<sup>18</sup> Since 2001, the official development aid amount disbursed by the United States as a percentage of its gross national product has increased from 0.11% in 2001 to 0.16% in 2004, per <http://www.globalissues.org/TradeRelated/Debt/USAid.asp>. Cf. Joseph Kahn, *The World's Bankers Try Giving Money, Not Lessons*, N.Y. Times, Oct. 1, 2000, at 4:5.

lambasted the WTO for failing to support the United States' ban on imports of South and Southeast Asian shrimp because of these countries' failure to require their shrimp trawlers to use sea turtle protection devices required in U.S. domestic regulation. However, there have been no mass protests against the United States' refusal to take domestic measures to reduce its contribution to global warming, even though the United States is responsible for over one third of all greenhouse gas emissions. Nor have there been mass protests against the United States' failure to provide financial assistance for environmental improvements in developing countries, a need documented in Agenda 21 signed at the 1992 "Earth Summit" in Rio de Janeiro. Under pressure from oil-producing interests, the U.S. Congress has refused to enact a tax on carbon emissions that would create incentives to reduce them. In response to lobbying from U.S. automobile manufacturers, Congress has relaxed fuel efficiency requirements for mini-vans and sports utility vehicles to 20.7 miles per gallon (mpg) (as opposed to 27.5 mpg for all other automobiles).<sup>19</sup> Under pressure from U.S. corporate interests, the United States has refused to ratify the United Nations Convention on Bio-diversity or the Kyoto Protocol on climate change.<sup>20</sup> Yet there have been no significant protests in the United States against these policy decisions supported by U.S. multinational corporate interests, certainly nothing comparable to the scale in Seattle. Similarly, as Bhagwati pointed out regarding the EC meat hormones case, "The uproar that followed in Europe over the ruling by the WTO's Dispute Settlement Mechanism... led to little sympathetic protest by the otherwise articulate U.S.-based NGOs.... It is hard to believe that the U.S.-based anti-WTO NGOs were not mindful of the fact that it was an issue that affected the U.S. economy; rather, it seems plausible that they had decided, perhaps unconsciously, to avoid getting into a

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<sup>19</sup> Keith Bradsher, *With Sport Utility Vehicles More Popular, Overall Automobile Fuel Economy Continues to Fall*, N.Y. Times, Oct. 5, 1999, at A22 (noting that average fuel economy has been falling ever since the 1987 and 1988 model years, with the decline having "accelerated"); and *Senate Votes for Increasing Fuel Economy Requirements (CAFÉ)*, Green Car Congress, available at [http://www.greencarcongress.com/2005/06/senate\\_votes\\_fo\\_1.html](http://www.greencarcongress.com/2005/06/senate_votes_fo_1.html) (noting that the Senate recently passed an energy bill that increases fuel economy for passenger vehicles, but rejected the Durbin Amendment, which proposed to apply the fuel economy increases to SUVs and trucks).

<sup>20</sup> See e.g., Revkin, *Cutting Greenhouse Gas*, *supra* note ...; and James Brooke, *U.S. Has a Starring Role at Rio Summit as Villain*, N.Y. Times, June 2, 1992, at A10; Barbara Crossette, *Tying Down Gulliver with those Pesky Treaties*, N.Y. Times, Aug. 8, 1999, at 4:3 (noting that the United States has also refused to ratify treaties prohibiting the use of child soldiers, banning land mines, creating a permanent international criminal court, and prohibiting nuclear weapons tests).

bruising campaign that would cost them some goodwill within the United States, where they are based.”<sup>21</sup>

The primary explanation for the U.S. political preference for trade bans is that it is much easier to complain about foreigners and use economic power to impose costs on foreigners, than to look critically at what one does at home. It is much easier to close markets to foreigners—and poor ones at that—than to protest against U.S. middle class preferences for cheap oil and treasured gas guzzling minivans and sports utility vehicles. If U.S. environmental NGOs wish to receive large contributions from the U.S. public, it is easier for them to challenge poor countries’ production processes than central aspects of American consumer culture with its negative environmental impacts. To be fair, many U.S. environmental groups have been on the forefront of demanding greater U.S. contributions toward sustainable development projects and a more aggressive domestic approach to confront global warming. However, they are less successful on these fronts because of U.S. political constraints. Although U.S. environmental NGOs may pursue altruistic environmental goals, as any political actor, they are self-interested in their own continuity and political relevance. They do what they can within a given political context to attempt to protect the oceans, the atmosphere, endangered species and their habitat. Even if northern NGOs were to take a more aggressive approach, it is unlikely they could whip up the sort of passions seen in the streets of Seattle.

The WTO shrimp-turtle case provides a prime example of the domestic political context behind U.S. trade-environment policy choices. The U.S. legislation was easy to pass because it appealed the U.S. shrimping industry by forcing developing country shrimp trawlers to either use the same standards required in the United States or face an import ban. Legislation of this sort is more easily passed than financing serious environmental studies of the local sea turtle problems in developing countries and the most effective ways to address them. Through conditioning access to the U.S. market on the requirement of a developing country’s adoption of a U.S. regulatory framework, the United States was attempting to force developing countries to assume the costs of these U.S. Congressional priorities. While it is true that some of these costs could be passed onto U.S. consumers in the form of higher prices, developing country shrimpers would have to fund

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<sup>21</sup>Bhagwati, *In Defense of Globalization*, at 46.

the costs of meeting U.S. requirements, and developing country governments would have to fund public awareness campaigns, the monitoring of compliance, and enforcement were the programs to be effective. Moreover, although it may be important for developing countries to require the use of turtle excluder devices by shrimp trawlers, no one in the U.S. Congress ever asked whether it was the most appropriate or effective way to proceed in a developing country context. No one in the U.S. Congress looked at a study of local Asian conditions or heard any testimony as to what was the nature of the Asian sea turtle problem. No one assessed whether there might be other first order problems, such as the stealing and sale of sea turtle eggs, such that the U.S. legislation might be mis-targeted. Developing country parliaments and constituents were never consulted to see if this was in fact their social priority.<sup>22</sup> Yet it is they who have to expend resources on this U.S.-determined social priority, with less funds available for competing social programs. In the end, neither the United States, nor U.S. non-governmental organizations, have offered any serious financial assistance to allay these costs.<sup>23</sup> Although the United States and U.S. non-governmental groups claim that the costs are minimal, they ignore that local regulatory enforcement costs are significant. Without local enforcement, the regulations become merely symbolic. For example, to avoid U.S. trade restrictions on shrimp imports, the foreign country must enact the shrimping regulations desired by the United States. When the United States sends an observer about one week per year, who is accompanied by a foreign fisheries official as translator, it is relatively easy for shrimp trawlers to use TEDs that week so as to demonstrate compliance with the U.S. program. The program can become a charade. Yet it is the symbolism of trade restrictions that assumes more importance than real financial outlays and tax incentives targeted toward environmental protection.

The United States chooses trade restrictions over financial outlays even though they impose costs on U.S. residents and are not necessarily cheaper for the United States in aggregate. A ban on Asian shrimp imports results in higher priced shrimp in the U.S. market and less consumer pocket money for other goods. Although the costs are marginal per American

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<sup>22</sup>I traveled to the sea turtle nesting beaches in Thailand and the main fishing harbors and not surprisingly found the issues much more complex than contemplated by the U.S. legislation.

<sup>23</sup> The World Wildlife Fund does, however, support some local NGO efforts to protect sea turtle nesting habitats and related programs. Telephone interview with Thai NGO in Bangkok in January 2000.

consumer, they add up. This *de facto* shrimp tax, however, is far easier to pass because it is more beneficial to the U.S. shrimp industry, on the one hand, and less *transparent* to the U.S. general public, on the other.

A *de facto* shrimp tax is less transparent in two important ways than funding for environmental protection. First, the *de facto* shrimp tax does not appear on receipts when U.S. consumers buy shrimp, so they remain unaware of the tax's existence. Second, it is easier to track how targeted funds for a conservation program are being used and whether the program is cost-effective. Whereas the *de facto* shrimp tax's aggregate amount is impossible to calculate, a line item budget allocation for Asian sea turtle conservation is easily reported in the media. Although an import ban and subsidization of environmental improvement projects may have similar aims, and although both impose costs on U.S. consumers, the ban is typically chosen instead of positive financial assistance on account of the lack of *transparency* of its costs to the U.S. public.

In addition, and probably most importantly, import bans directly benefit U.S. producers, unlike financial assistance to fund environmental protection efforts abroad. U.S. producers have high per capita stakes in the outcome of Congressional policy choices. They are thus more likely than other U.S. constituents to lobby Congress and to present it with informed views on alternative policy options. The result is U.S. trade restrictions that trigger controversial disputes brought before the WTO, ensuing challenges to WTO legitimacy, and largely ineffective environmental protection because developing country governments and their constituencies are treated primarily as antagonists.

It is this *linkage* between domestic politics and international trade and environment policies that is a fundamental challenge to the WTO and other international institutions. The United States does not provide significant financial support to international environmental institutions to promote positive sustainable development measures. The United States does not take measures to reduce its own emissions which lead to a much graver environmental challenge—global warming. For domestic political reasons, U.S. activists are most successful in garnering support when they focus on trade restrictions to compel change in developing country regulatory policies as opposed to the need for greater financial assistance which more transparently taps the pocketbooks of U.S. taxpayers. It is this fundamental disconnection between international and foreign environmental needs and U.S. domestic politics which is the central trade-environment *linkage* that both confronts

the world with its severest environmental problems and the WTO with controversies that it is ill-equipped to address. Developing countries recognize American hypocrisy. But it looms low in legal analysis of the international “trade-environment linkage.”

### **Conclusion: U.S. Domestic Politics and the WTO**

This essay has taken a separate track from that of most northern commentators on trade-social policy linkages by assessing a second linkage—the domestic-international one. Simply stated, trade restrictions alone will not achieve most of the goals of anti-WTO protestors. To be effective, an international campaign to protect the environment requires positive programs by national governments and international agencies, whether or not these are implemented independently or as a complement to trade restrictions. Required initiatives include multilateral efforts to address global issues, such as climate change, protection of the ozone, and assistance to developing countries in devising effective environmental policies at the national level.

This essay shows why it is unlikely that the debate over trade sanctions in support of environmental goals will advance until there is greater evidence of political will within developed countries, and particularly within the United States, to address their own internal environmental problems and to expand their foreign economic assistance on environmental matters. Activists from northern states will not be successful in having developing countries agree to a modification (or interpretation) of WTO rules that would facilitate the imposition of trade restrictions on agreed environmental grounds unless the United States, Europe and other developed countries *also* agree to provide significant financial assistance to developing countries for implementing appropriate environmental policies. Moreover, from both equity and efficiency perspectives, developing countries and developing country constituencies should retain a significant role in shaping and adapting these policies to their local conditions so that developing country constituencies have a stake in them and the policies are appropriate for the local situation. Only then will these policies be effective.

It is unfortunate that so much of the trade-environment, trade-labor debate in the United States focuses on trade restrictions. The central explanation appears to be domestic politics within powerful states. It is simply easier to lambast the WTO than to get Congress' attention to pass legislation that transparently imposes costs on domestic constituents. To enact a carbon emissions

tax and funding for sustainable development projects abroad impose direct costs on domestic constituents in the form of taxes. When these initiatives are thwarted in the United States, it is more difficult to garner public sympathy through dramatic protests. Yet livelihoods and environmental welfare remain at risk. Activists more easily rally masses by proclaiming that the threat's cause lies in foreign (or "multinational") producers and their protector, the WTO. They focus their limited resources where they are most likely to succeed. Yet their demand for trade restrictions can become mere symbols that defuse and divert challenges away from the United States' own domestic policies.

The WTO's future development depends, in large part, not on whether it facilitates the use of trade restrictions, but rather on how trade liberalization policies are coordinated with the provision of environmental protection, domestically and internationally. Trade negotiations at the international level traditionally involve package deals based on reciprocal trade concessions. In order to sustain the welfare-enhancing, non-discriminatory goals of liberalized trade, we need to direct more attention to packages that include the advancement of environmental and social policies domestically and internationally. The question becomes: in return for further trade liberalization, what domestic, foreign and international environmental and social programs will trade liberals endorse, and how energetically will they do so? Resolution of the WTO's trade-environment blues will require collaborative initiatives of trade liberal policy networks, export-oriented commercial interests, and labor and environmental constituencies. Only then will we attain the broad-based benefits that liberalized trade makes possible, and with them, a more positive future for the WTO.

Yet whatever one's position on these environmental policy questions, there is not much that the WTO alone can do about them. While the management of green trade issues has become a great challenge for the WTO, it is a challenge that the WTO is ill-equipped to handle because of this second *linkage* to domestic politics in powerful states. This second under-analyzed, underlying linkage of domestic politics and international negotiating positions is a critical part of the explanation of the WTO's current dilemma.