



CLIMATE CHANGE, TRADE AND COMPETITIVENESS
IS A COLLISION INEVITABLE?

MULTILATERAL INSTITUTIONS AND THE CLIMATE COMMONS

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(DRAFT 1)

Over the period 2000-2008, the U.S. has maintained a largely hostile posture toward multilateralism. This period is now near an end and a fresh start can be imagined in which U.S. leadership and multilateralism return. One of the most pressing challenges relates to global climate change and atmospheric carbon emissions. This issue is emblematic of a wide range of environmental challenges that are transboundary in nature, in which sovereign nations must coordinate effective interventions with one another. In shorthand, we may call them issues of global commons, of which the climate commons may be the most urgent. This paper is organized in five parts. First is a brief review of the trade-environment nexus and the rationale for global environmental rules that can co-exist with trade regimes. Second is a specific proposal for a Global Environment Organization (GEO), a major responsibility of which would be to coordinate responses to climate change. Third is an appraisal of the implementation of a GEO. Fourth is special consideration of the role of developing countries. A final section offers conclusions.

I - INTRODUCTION

Over the period 2000-2008, the U.S. has maintained a largely hostile posture toward multilateralism, ranging from military adventurism to rejection of international norms for human rights and climate change. Its support for the Doha Round has been mainly lip service, made less than credible for developing countries by a failure to live up to global commitments to foreign assistance (the Millennium Challenge) and protectionist and retrograde 2008 agricultural legislation. If this experience has shown anything, it is that renouncing its traditional role as a constructive multilateral leader (dating to 1945) has been a disaster for U.S. foreign policy and the esteem in which the U.S. is held, which now borders on contempt in many capitals.

This desultory period is now near an end and a fresh start can be imagined in which U.S. leadership and multilateralism returns. One of the most pressing challenges relates to global climate change and atmosphere carbon emissions. This issue is emblematic of a wide range of environmental challenges that are transboundary in nature, in which sovereign nations must coordinate effective interventions with one another. In shorthand, we may call them issues of global commons, of which the climate commons may be the most urgent.

My argument is that designing new multilateral institutions in response to these challenges is imperative. Fortunately, while these institutions would be new, their rationale and even their structure can be guided by experience with multilateral trade and commercial transactions, notably the World Trade Organization (WTO) and General Agreement on Trade and Tariffs (GATT) system.¹ Just as the GATT/WTO emerged from the post-war conferences as a rule-based response to global commercial interdependence, so multilateral responses to environmental challenges reflect a growing recognition of nations' ecological interdependence, and a need for rules to coordinate responses to these global challenges.

The paper is organized in five parts. First is a brief review of the trade-environment nexus and the rationale for global environmental rules that can co-exist with trade regimes. Second is a specific proposal for a Global Environment Organization (GEO), a major responsibility of which would be to coordinate responses to climate change. Third is an

¹ The present analysis relies on Runge (2001), and reminds one of the Oxford tutor who, commenting on his student's essay, noted: "Much of what you say is good and new; unfortunately, what is good is not new, and what is new is not good." One hopes that while not new, the arguments here are still good. C. Ford Runge, "A Global Environment Organization (GEO) and the World Trading System." *Journal of World Trade* 35(4): 399-426, 2001.

appraisal of the implementation of a GEO. Fourth is special consideration of the role of developing countries. A final section offers conclusions.

II - THE TRADE-ENVIRONMENT NEXUS

In the last decade, strident criticisms have been leveled at the WTO, International Monetary Fund (IMF) and World Bank, described as faceless international bureaucracies with programs harmful to the environment.² Although hostile to multilateral institutions, these criticisms raise the obvious question: if not *these* institutions, then what others?³ While many criticisms of the global economy and global institutions may have merit, it is hard to think of a future in which trade and global institutions, or issues of the natural environment, will play little or no part. Accordingly, the task is to *redefine* objectives in a global economy, and to *restructure* institutions to meet these objectives.

Such global restructuring is necessary today at an international level, much as in the 1780s, the weaknesses of the Articles of Confederation in the United States were increasingly apparent at the national level. Madison, Hamilton and Jay (writing as “Publius” in *The Federalist*) recognized the need to persuade others that the nation would not endure without substantial institutional innovations. A central element in this school of thought was that free and unfettered commerce should be encouraged between states, coordinated by bodies which derived their authority from the consent of the same states and ecology as well as economy are at stake. The concept defended here has similar features although the states are nations.

Since the mid-1990s, it has been clear that the GATT/WTO is unable and largely unwilling to shoulder major environmental responsibilities in conflicts between trade and the environment. This argument has been supported by developments inside the WTO. Its concern over the use of environmental measures as trade barriers has been stung by criticisms of various WTO rulings from environmentalists, notably the “Tuna-Dolphin” and “Shrimp-Turtle” cases. Concerned that it show some response to environmental critics, the WTO General Council created a Committee on Trade and the Environment (CTE) in 1995. The CTE was set up to follow the recommendations of the Ministerial Decision on Trade

² For a critique of the Seattle trade conference debacle in the context of food security, see C. Ford Runge and Benjamin Senauer, “A Removable Feast,” *Foreign Affairs* (May-June 2000): 39-51.

³ See John Micklethwait and Adrian Wooldridge, *A Future Perfect: The Challenge and Hidden Promise of Globalization*, London: Heinemann, 2000.

and Environment adopted in 1994 in Marakesh.⁴ While defenders of the CTE claimed that it demonstrated the “greening” of the WTO, it faced a barrage of criticism after release of its heavily negotiated report to ministers in Singapore in December, 1996.⁵ It had, critics argued, failed to recommend modifications in multilateral trade rules “to enhance a positive interaction between trade and environmental measures . . .”⁶ It was precisely the unwillingness of trade ministers to redefine trade rules for environmental ends that revealed their essentially (and understandably) conservative posture. Sampson argued that the Singapore report of the CTE showed how wary trade officials were of entering into environmental policy. This suggests that those who have the appropriate environmental expertise – both nationally and internationally—should play a larger role. However, this begs the question of *how* they should play such a role.

In general, the CTE’s limited terms of reference clearly indicated an unwillingness by the WTO to venture too far into the environmental domain. As Sampson noted: “WTO members do not want a role in environmental policymaking and enforcement, nor do they take lightly changing rules that could give them this role.”⁷ In short, the members of the WTO and its secretariat in Geneva have not been enthusiastic about assuming added responsibilities for the environment. Only in those cases in which trade is explicitly affected by environmental measures is the WTO likely to become engaged.⁸ Moreover, many

⁴ See Gary P. Sampson. *Trade, Environment and the WTO: The Post-Seattle Agenda*. Overseas Development Council. Policy Essay No. 27. Washington, D.C. 2000. pp. 26-29. Shaffer (2001) emphasizes that the motivation behind the CTE was not simply pressure from groups concerned over the environmental impacts of trade but primarily fears by WTO members, especially Developing countries, over the growing number of environmental regulations with potential trade effects. From the point of view of trade ministers the latter dominated the former. See Gregory C. Shaffer, “The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO’s Treatment of Trade and Environment Matters.” *Harvard Environmental Law Journal* 25: 1 (2001). (All citations of pages are to the manuscript version).

⁵ Steve Charnovitz. “A Critical Guide to the WTO’s Report on Trade and the Environment.” *Arizona Journal of International and Comparative Law* 14: 2 (1997): 341-378.

⁶ See Gary P. Sampson. *Trade, Environment and the WTO: The Post-Seattle Agenda*. Overseas Development Council. Policy Essay No. 27. Washington, D.C. 2000. pp. 26-29. Shaffer (2001) emphasizes that the motivation behind the CTE was not simply pressure from groups concerned over the environmental impacts of trade but primarily fears by WTO members, especially Developing countries, over the growing number of environmental regulations with potential trade effects. From the point of view of trade ministers the latter dominated the former. See Gregory C. Shaffer. “The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO’s Treatment of Trade and Environment Matters.” *Harvard Environmental Law Journal* 25: 1 (2001).

⁷ Sampson, *op. cit.* note 27, p. 27-28.

⁸ Even in such cases, the WTO is wary of an explicit environmental role. In the famous Shrimp-Turtle dispute, the appellate body of the WTO ruled that U.S. should have sought an international environmental agreement

environmentalists mistrusted the capacity and willingness of WTO panels or trade ministries to give sufficient weight to environmental concerns. This leaves a substantial institutional gap both in terms of trade-related environmental measures, and transnational environmental issues posing global challenges of policy coordination, such as climate, that can only be filled by a separate body.

III - A GLOBAL ENVIRONMENT ORGANIZATION (GEO)

The idea of a GEO is not new. The late Elliot Richardson argued forcefully in the context of climate change for a permanent environmental multilateral body, whether a “beefed-up UNEP” (United Nations Environment Programme) or an entity patterned on the WTO, noting that “it may not make a crucial difference whether an old agency is given new duties or a new one is brought into existence.”⁹ As Richardson argued, a GEO:

. . . Would create substantial incentives for member states to improve their environmental performance. Nongovernmental organizations would be watching, exhorting and pushing. Domestic awareness of the national effort would be heightened by the international attention it attracted. Media coverage would be correspondingly intensified. The attention thereby focused on the government’s response would generate pressure to raise its level. It is arguable, indeed, that the self-reinforcing process thus set in motion could become a formidable substitute for official action—more effective than regulation and far less expensive than its enforcement. If this happens, what has generally been called “soft law” will become progressively harder.¹⁰

The linking of the environmental activities of a GEO to market access and trade reform in the WTO, the Organization for Economic Cooperation and Development (OECD), and the multilateral lending agencies would also create additional incentives for developing countries to support it. Susskind and Ozawa noted that “environmental negotiations, up to now, have been conducted largely in isolation from negotiations on other

to deal with fishing practices, rather than bringing the matter before the trade body as a result of a trade embargo. See Sampson 2000, p. 83 and fn 7, p. 98.

⁹ Richardson’s analysis and call for a Multilateral Environmental Agency was developed in the context of climate change, although the arguments he advanced are general ones. See Elliot L. Richardson, “Climate Change: Problems of Law-Making,” in Hurrell and Kingsbury, *International Politics*, pp. 166-182.

¹⁰ Richardson, “Climate Change,” *ibid.* pp. 176-177.

international issues such as debt, trade, or security.” Linking these issues properly can enhance the potential for mutual gains, since “the goal of a well-structured negotiation is not to encourage compromise but to find ways of ensuring that all parties will be better off if they cooperate.”¹¹ How such linkage occurs is important, and will be considered in the sections to follow.

In the mid-1990’s, both Esty (1994) and this author (Runge, 1994) proposed a GEO. The main rationale for its creation concerned transboundary environmental challenges, often described as global public goods (or bads) such as climate change, atmospheric ozone pollution, degradation and loss of plant genetic resources, transboundary shipments of hazardous wastes, and threats to endangered animal and plant species.¹² Because they respect no national boundaries, their solution requires joint participation and coordination by sovereign states. Absent a “global Leviathan,” agreements must be reached which call upon each affected country in the global commons to adopt policies that contribute to a general solution.¹³ Thus far, the mode adopted most often is a multilateral environmental agreement (MEA), such as the Montreal Protocol (1989) respecting atmospheric ozone, the Cartagena Protocol (2000) respecting biosafety and plant genetic modification, the Convention on International Trade in Endangered Species (CITES) agreement (1972) respecting endangered species and the Basel Convention (1992) respecting hazardous wastes.

¹¹ Lawrence Susskind and Connie Ozawa, “Negotiating More Effective International Environmental Agreements,” in Hurrell and Kingsbury, *International Politics*, pp. 110-141. See also Scott Barrett, “International Agreements for the Protection of Environmental and Agricultural Resources: An Economics Perspective.” London: London Business School, 1992.

¹² Other early advocates of a GEO were Steve Charnovitz and Jeffrey Dunoff, who suggested modeling it on the International Labor Organization (ILO), as well as Geoffrey Palmer. See Steve Charnovitz, “The Environment versus Trade Rules: Defogging the Debate.” *Environmental Law* 23 (1993): 511-517. Jeffrey Dunoff, “International Misfits: The GATT, the ICJ, and Trade-Environment Disputes.” *Michigan Journal of International Law* 15 (1994): 1043-1127. Geoffrey Palmer, “New Ways to Make International Environmental Law.” *American Journal of International Law* 86 (April, 1992): 259-283. See also Daniel C. Esty. “GATTing the Greens,” *Foreign Affairs*, vol. 72, no. 5 (Nov/Dec, 1993): 132-36. More recently see John Whalley and Ben Zissimos. “A World Environmental Organization?” mimeo. University of Western Ontario, University of Warwick and National Bureau of Economic Research. October, 2000 and Frank Biermann. “The Case for a World Environmental Organization.” *Environment* 42: 9 (November, 2000): 23-31. See Inge Kaul, Isabelle Grunberg and Marc A. Stern. *Global Public Goods: International Cooperation for the 21st Century*. New York: Oxford University Press, 1999. Todd Sandler, *Global Challenges: An Approach to Environmental, Political and Economic Problems*. New York: Cambridge University Press, 1997. Daniel Esty, *Greening the GATT: Trade, Environment and the Future*. Washington, DC: Institute for International Economics, 1994. C. Ford Runge (with Francois Orlalo-Magne and Philip Van de Kamp), *Freer Trade, Protected Environment: Balancing Trade Liberalization and Environmental Interests*, New York: Council on Foreign Relations Press, 1994.

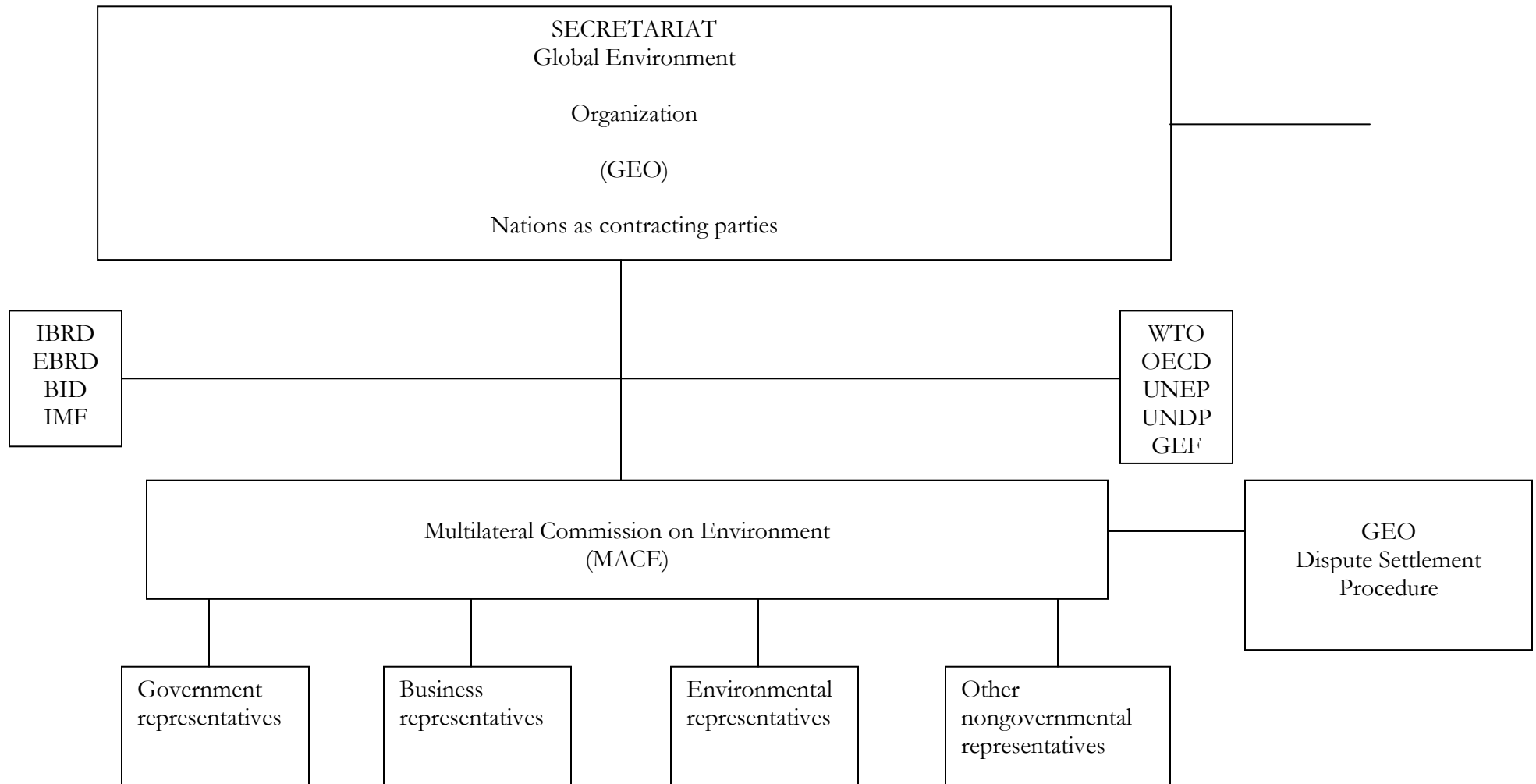
¹³ See Oran Young. *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms*. Cambridge: MIT Press, 1999.

While it is arguable that such MEA's are an adequate response to these environmental problems, two fundamental questions arise.¹⁴ First, should the MEA's themselves somehow fall outside the trade disciplines of the GATT/WTO system, or (especially when they involve explicit trade measures or sanctions) are they in fact in violation of the principles of free trade? Second, can the hundreds of existing MEA's, and the scores which can be anticipated in the coming decades, including renegotiated agreements on carbon and climate, be adequately managed without creating an institutional umbrella to help oversee the linkages among and between them, and their potential conflicts with WTO rules?

The basic design of a GEO advanced by Runge (1994) was composed of a Secretariat and a Multilateral Commission on Environment (MACE) (see Figure 1). The Secretariat would be the formal, ministerial-level body of government representatives, meeting periodically to affirm certain policies. The Commission would be a policy oriented group of environmental experts drawn from non-governmental organizations (NGOs), academia, business and government. While the representatives to the GEO Secretariat would, like WTO

¹⁴ C. Ford Runge, "Multilateral Environmental Agreements (MEA's): Which Way Forward?" Prepared for *The Princeton Encyclopedia for the World Economy*. K. Reinert and R. Rajan (eds.), Princeton University Press, forthcoming 2009.

Figure 1. Structure of a Global Environmental Organization (GEO) (adapted from Runge, 1994).



representatives, be government officials, expert environmental and business involvement was also proposed, similar to the International Labor Organization (ILO), via the Commission. The Commission would thus be composed of a standing group of environmental experts, government and business representatives from all member countries. Its meetings would be open to the public, and would allow worldwide access to the data and analysis underlying its work. The primary focus of this work would be to propose ways to “harmonize up” national environmental standards, while carefully considering the technical issues and problems of this process for developing countries. The GEO Commission would issue regular reports and related documents proposing improved policies, identifying environmental “hot spots,” and recommend special projects for national governments. This process would allow for public comments from any group, governmental or nongovernmental. The effect would be to open the GEO Commission to full public participation and review.

The GEO and its Commission would work closely with the World Bank (IBRD) and other multilateral lending agencies, such as the European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank (IDB), as well as the International Monetary Fund (IMF), to develop funding for environmental projects to upgrade national infrastructure, especially for waste water treatment, sanitation, and hazardous waste disposal. National governments would be encouraged to establish an initial tranche of \$10 billion for these purposes to operate on a revolving basis through the Global Environmental Facility.¹⁵ This funding would focus primarily on projects in developing countries in Latin America, Asia, Africa, and in Eastern Europe and the former Soviet Union, where national resources for environmental improvements are most scarce.

The GEO would also work jointly with the WTO and the Organization for Economic Cooperation and Development (OECD) to identify trade measures that threaten environmental quality, and to develop environmental policies that are least burdensome to

¹⁵ The Global Environmental Facility was launched in 1991 as a three-year pilot program to allow for actions where no international agreement had yet been negotiated. It is jointly managed by the World Bank, the United Nations Environment Programme, and the United Nations Development Programme. Its role was further elaborated at the 1992 Rio Conference, and it has complex links to the Biodiversity and Climate Conventions, as well as to the Montreal Protocol. Its further role is, however, still the subject of debate among all of the organizations involved. See Kenneth Piddington, “The Role of the World Bank,” in Andrew Hurrell and Benedict Kingsbury, (eds.), *The Institutional Politics of the Environment: Actors, Interests and Institutions*. Oxford: Clarendon Press, 1992, pp. 212-227.

trade expansion. It could also serve as a general “chapeau” for the growing number of multilateral environmental agreements just as the ILO serves as an umbrella over a large number of special labor agreements and arrangements. The overall effect would be to relieve the WTO of major institutional demands to accommodate a “green agenda.” Since the WTO is not an environmental organization, and should not become one, a well-engineered GEO would reduce pressure to “reform GATT,” which would be diverted constructively into the development of instruments directly aimed at environmental targets. In cases in which trade burdens due to environmental policies come before WTO dispute settlement panels, the GEO Commission would utilize its expertise to offer evidence, analysis, and proposed alternatives to the policies in dispute. In addition the GEO could have its own dispute resolution procedures.

While a highly elaborated plan will require a great deal of analysis and consultation, it is well to ask whether such an organization is really needed, in light of the UNEP and related work by development agencies such as the United Nations Development Programme and the Commission on Sustainable Development created as a result of the 1992 Rio Conference. While supplementing and drawing on the work of these groups, knowledgeable observers and participants still support a GEO.¹⁶

A principle of economic planning developed by economist Jan Tinbergen (1950) is that in general each target of policy merits a separate instrument. This principle can be interpreted to mean that environmental targets are generally best met first by environmental policies, and trade targets by trade policies. If an appropriately balanced combination of environmental and trade policy measures is found, the result can be gains both from the trade reforms *and* from improvements in the level of environmental quality. In general, therefore, some *combination* of trade and environmental policies will be most efficient. Conversely, the advantages of trade policy reform can be lost if appropriate environmental actions are not undertaken jointly.¹⁷

¹⁶ For a discussion of the role of the UN agencies in global environmental affairs, see Peter S. Thacher, “The Role of the United Nations,” in Hurrell and Kingsbury, *International Politics*, pp. 183-211. A cautionary note on the need for new institutions in the context of NAFTA is given in Stephen P. Mumme, “New Directions in United States-Mexican Transboundary Environmental Management: A Critique of Current Proposals,” *Natural Resources Journal*, vol. 31 (summer 1992): 539-562. The range of supporters for a GEO has nonetheless continued to expand.

¹⁷ See C. Ford Runge. “A Conceptual Framework for Agricultural Trade and the Environment: Beyond the ‘Green Box.’” *Journal of World Trade* 33: 6 (December, 1999): 58-63. See also Kym Anderson. “The Standard

Precisely because an independent entity such as GEO is lacking, a greater temptation exists to use trade measures to enforce environmental obligations, violating the targets and instruments principle and threatening the world trading system. Trade interests may condemn the use of such measures for environmental goals (such as dolphin safe tuna), but in the absence of effective multilateral environmental rules and an overarching entity such as the GEO, environmentalists will claim that they have no recourse.

It is naive to imagine that these two realms of policy can be entirely disjoint, but the creation of a GEO would assist in separating many issues that do not need to be in conflict. The weaker the perceived ability of environmental groups to influence international policies, the greater their incentive to use “linkage” destructively: to threaten the trading system in order to gain environmental concessions.¹⁸ By drawing environmental expertise and energy into the functioning of a GEO, the GATT/WTO system would be largely left to pursue its own trade agenda, mindful of environmental concerns, and in cooperation with a GEO secretariat, but not as a functioning “green” trading body.

Together, three arguments thus constitute the core rationale for a GEO. They are: (1) the unwillingness and inappropriateness of the GATT/WTO system as a center for transnational environmental expertise and activity; (2) the widespread number of environmental issues which are inherently multilateral due of their scale and multiple jurisdictions, making them “global public goods” which cannot be adequately managed through existing agencies or ever-proliferating and uncoordinated MEA’s; and (3) the logical necessity of separate institutional authority for what are substantively separate environmental problems, which pose a set of targets for policy that require their own instruments at an international level.¹⁹

IV - IMPLEMENTATION AND POLICY CONSTRAINTS

Welfare Economics of Policies Affecting Trade and the Environment.” in K. Anderson and Richar Blackhurst (eds.). *The Greening of World Trade Issues*. New York: Harvester-Wheatsheaf, 1992. Kerry Krutilla.

“Environmental Regulation in an Open Economy.” *Journal of Environmental Economics and Management* 20 (1991): 127-42.

¹⁸ Grant Hauer and C. Ford Runge. “Trade-Environment Linkages in the Resolution of Transboundary Externalities.” *The World Economy* 22: 1 (January, 1999): 25-39.

¹⁹ In a brief opposed to a GEO, Calestous Juma (2000) asserts that Esty’s arguments in favor revolve around “administrative efficiency” claims. A careful reading of Esty’s 1994 volume, and the arguments developed here suggests that administrative efficiency, even if improved by a GEO, is not a central argument in its favor, especially in light of the struggles it would face from existing UN agencies.

There are important reasons why a GEO may be beyond the reach of the world's governments and their leaders. The first is that it will be opposed as unnecessary—that existing institutions, suitably augmented, are adequate to respond to transnational environmental challenges. The second is that it is unwieldy—another international bureaucracy which may prove just as unresponsive as existing ones to the concerns and interests of member states and may actually challenge their sovereignty over national environmental issues. The third, and most potent, is that its creation would reflect the same “rich man's club” priorities which, in the view of many developing countries have dominated the GATT/WTO system, tilting its functioning toward priorities of the North rather than the South.

The first argument is that the panoply of existing UN agencies, NGOs and MEAs together constitute a sufficient response to transboundary environmental issues. These include the UN Environment Programme (UNEP) the UN Commission on Sustainable Development (CSD) and the hundreds of MEAs noted above. Others include the UN Development Programme (UNDP), the World Bank, the World Meteorological Organization (WMO) and the Global Environmental Facility (GEF). In addition, a growing number of NGOs, such as the World Resources Institute (WRI) in Washington, D.C., the World Wildlife Fund (WWF), and the Center for International Environmental Law (CIEL) have become active participants in the trade/environment agenda.²⁰ Juma (2000) notes that because of the diversity of environmental problems, specialized institutional responses are often required, reflected in the MEAs and other agreements that deal with these questions issue by issue. While coordination may be desirable, in his view, “centralization” is not.

The second claim leveled at a GEO is that it is likely to be an unwieldy and unresponsive international bureaucracy of its own, which simply adds another layer to the

²⁰ For a broad analysis of an emerging global culture, See John Boli and G.M. Thomas (eds) *Constructing World Culture: International Nongovernmental Organizations Since 1875*. 1999. Cited in Schaffer, 2000, note 13. See also Barbara J. Bramble and Gareth Porter, “Non-Governmental Organizations and the Making of U.S. International Environmental Policy,” in Hurrell and Kingsbury, *International Politics*, pp. 313-353. See also Nancy Lindboug, “Non-Governmental Organizations: Their Past, Present and Future Role in International Environmental Negotiations,” in Lawrence E. Susskind, Eric Jay Dolin, and J. William Breslin, eds., *International Environmental Treaty Making* (Cambridge, Mass.: Harvard University Program on Negotiation Books, 1992). Daniel C. Esty. “Non Governmental Organizations at the World Trade Organization: Cooperation, Competition or Exclusion.” *Journal of International Economic Law* 12: 3 (1998): 135-37. For a more critical evaluation of the role of NGOs, see Peter Spiro “New Global Potentates: Nongovernmental Organizations and the ‘Unregulated’ Marketplace.” *Cardozo Law Review* 18: 3 (1996): 957-969.

many and diverse responses to global environmental problems noted above. Below the surface of this argument are GEO opponents who are relatively comfortable with their influence over existing institutions, and who fear that they would lose this influence in a new body. These groups include not just bureaucrats at bodies such as UNEP, but state agencies and NGOs as well. It is arguable that member states of any multilateral body, as well as stakeholders such as environmental NGOs, seek to capture it for their own purposes. Such investments in capture, once made, are defended against new and uncertain prospects.²¹ A GEO that is less subject to capture, and therefore “unresponsive,” is also less subject to special interests. By increasing the scope for coordinated approaches to global environmental issues, a GEO may reduce opportunities for exercising such influence, and thus arouse concerted opposition from defenders of the status quo.

A related issue concerns the many national agencies and ministries to which existing MEAs and agreements are tied back. At an administrative level, the authority for various aspects of international environmental policymaking emanates from these different parts of national governments. In the United States, while the Executive Office of the President is ultimately responsible, duties for international environmental policy are parceled out across a large number of executive agencies, from the Environmental Protection Agency (EPA), to the National Oceanic and Atmospheric Administration (part of the Department of Commerce), the State Department, Department of Energy, Office of the U.S. Trade Representative, and Department of Agriculture among others. Each agency will defend its role in status quo agreements against any “coordination” that diminishes it.²²

The third and most potent forces arrayed against a GEO are developing countries convinced that it may force Northern priorities on Southern interests. These include not only environmental goals regarded as lower priorities in developing countries but trade protection in “green” disguise. As Juma (2000, p. 15) notes, “many developing countries are concerned that a new environmental agency would only become another source of conditions and sanctions.” These concerns were amply revealed in the WTO’s Committee

²¹ See Shaffer, 2001, op. cit. note 27. A more recent analysis of the links from domestic political interest to trade and environment issues at the international level is Gregor Shaffer. “WTO Blue-Green Blues: The Impact of U.S. Domestic Politics on Trade-Labor, Trade-Environment Linkages for the WTO’s Future.” *Fordham International Law Review*. Forthcoming 2001.

²² See for example, “Administration Unclear on Policy for WTO Environment Committee.” *Inside U.S. Trade* Jan. 26, 1996 for a discussion of internal dissension over goals and responsibilities in the CTE.

on Trade and Environment (CTE). In opposing even the formation of the CTE, spokesmen for the Association of Southeast Asian Nations (ASEAN) such as Thailand, and other less developed country (LDC) representatives from Morocco, Tanzania and Egypt all questioned the need for it. Shaffer (2001) notes that none of them wanted “to be pressured into signing an environmental side agreement analogous to NAFTA’s.”²³ When the CTE agenda was finally settled, it reflected a variety of issues of direct concern to developing countries, notably a cluster of issues that linked LDC environmental initiatives to the achievement of expanded access to Northern markets.²⁴

However, even these concessions did little to assuage nervousness by developing countries concerning the possible growth of environmental conditionality. Of particular concern was the widespread sense that environmental demands would join similar demands by labor interests in the North to justify shutting off developing countries market access, a view reinforced by the political alliances struck between greens and labor in opposition to trade liberalization. Discussing the idea of opening the Article XX exceptions to broaden allowances for environmental measures, for example, Brazil’s Deputy Permanent Representative to the WTO stated in 1998 that “We [developing countries] cannot be in favor of a change in Article XX. We think that this would create an imbalance in terms of a whole set of disciplines and commitments and would set a precedent for other issues.” As Shaffer notes, the other issues he had in mind were trade restrictions based on ‘unfair’ labor standards.²⁵ It is particularly noteworthy that Mexico, after acceding to the North American Free Trade Agreement (NAFTA) environmental side agreement with the U.S. and Canada, led the opposition to many U.S. proposals in the CTE. When the U.S. delegation questioned whether Mexico’s representatives to the CTE were speaking for the Mexican government, Mexico City quickly confirmed that these opposing views were indeed official positions.²⁶

In summary, three major claims raise questions over the possibility of successfully launching a GEO. They are (1) that existing bodies and agreements respecting international environmental issues are adequate, and do not require a centralized overarching entity; (2) that a GEO would, in any case, be unwieldy, simply adding another layer of bureaucracy to

²³ Shaffer, 2001, p. 10.

²⁴ Shaffer, 2001, p. 14.

²⁵ Shaffer, 2001, p. 21.

²⁶ Interview with Ricardo Barba, Deputy Permanent Representative to the WTO from Mexico, quoted in Shaffer, 2001, p. 26.

existing agencies and groups, most of whom will oppose any attempts at coordination that diminishes their influence; and (3) that most developing countries will oppose any new body which may pressure them to conform to higher environmental norms or standards or risk reduced access to Northern markets. Together, these three claims pose serious challenges to a GEO, requiring that any successful argument in its favor demonstrate (1) that existing arrangements are *not* in fact adequate and that coordination may not imply centralization; (2) that a GEO can be implemented in a way which accommodates existing institutional arrangements; (3) that LDC suspicions and reservations can be overcome.

It is clear that the creation of a GEO would pose difficult issues of implementation. Among them: (1) What duties of existing bodies would be assumed by a GEO, and what would these bodies then do? (2) What new responsibilities would be assigned to a GEO by its members, and by whom would these duties be performed? (3) What would be the relationship between a GEO and the WTO? While no definitive answers can be given to these complex legal and administrative questions in a brief treatment some general comments are in order.

First, it is probable that a GEO would assume some of the responsibilities of UNEP and the Commission on Sustainable Development (CSD). This is in part, Esty (2000) argues, because UNEP as a program agency “tries to do too much.”²⁷ The CSD is similarly overstretched. In addition, there are responsibilities of the UNDP and the World Bank related to environment and development in which the GEO might assist, assuming development projects remained the province of these groups. The GEO could, for example, assist in the planning of expanded irrigation schemes involving interbasin and/or international transfers of water so as to minimize environmental disruptions. A major function of the GEO would be to provide a transparent source of information on global environmental issues, assisting what is now often the task of NGOs. As currently arranged, Esty (1999, p. 1564) notes that someone attempting to track environmental decisions at the WTO “would find out a great deal more by reading newsletters from the World Wildlife

²⁷ UNEP’s weaknesses have led other international bodies such as the UN Food and Agriculture Organization (FAO) and the UN Educational, Scientific and Cultural Organization (UNESCO) to initiate their own environmental programs.

Fund then communicates from the Office of the U.S. Trade Representative.”²⁸ Although groups such as UNEP and even some NGOs might feel threatened by a GEO, it is probable that enough work will remain to keep every group fully engaged in international environmental affairs. However, to the extent that budgetary resources are drawn off existing agencies and programs to support a GEO, internecine competition will be intense.

The new responsibilities assigned a GEO are of special importance in developing a rationale for its creation. As noted above, one of these would be to offer a “chapeau” for the growing number of MEAs, especially in the context of dispute settlement. While it can be argued that each MEA responds to different needs and constituencies, there is a strong argument for coordinating many of these efforts. This does not imply any necessary changes in the MEAs, or in the lines of authority stretching back to national governments. One analogy is the role played (since 1967) by the World Intellectual Property Organization (WIPO), headquartered in Geneva. The WIPO was established in part to help unsnarl the “treaty congestion” that surrounded intellectual property and patent rights, and to help rationalize and coordinate these efforts.²⁹

It is also arguable that a GEO would help to offset the perception in developing countries that MEAs and exceptions granted to WTO contracting parties under GATT Article XX or other headings are heavily tilted in the direction of the Northern states. The Indian NGO Centre for Science and the Environment, for example, has “characterized the use of trade measures in MEAs as an inequitable lever available only to stronger countries.”³⁰ As noted above, so long as this perception continues, Southern countries will remain skeptical of global environmental initiatives. Yet a GEO may be precisely the mechanism needed to give added weight to these Southern concerns.

One of the most pressing and unmet needs to which a GEO could contribute is preparation and technical support available to developing countries in the formulation of trade, development and environmental initiatives. If a GEO is to succeed, it must treat these

²⁸ Daniel C. Esty. “Toward Optimal Environmental Governance.” *New York University Law Review* 74: 6 (Dec. 1999): 1495-1574. Indeed, the total budget resources devoted to these efforts by NGOs considerably exceed those of sub-agencies in UNEP responsible for environmental information. Shaffer (2001, p. 32 n. 97) notes that Greenpeace’s annual income in 1998 was 125 million dollars, and that of the World Wildlife Fund was 53 million dollars.

²⁹ See Esty, 1994, p. 96.

³⁰ Quoted in Shaffer, 2001, p. 36. Biermann (2000, p. 25-26) argues that improving technology transfers to developing countries for environmental improvements could be a major GEO function.

needs as of paramount importance. In particular, a GEO should take as its responsibility the implementation of the primary principles emerging from the 1992 Rio Declaration on Environment and Development (ostensibly the current responsibility of the Commission on Sustainable Development):

- that developing and developed countries have differing responsibilities to enact domestic measures to protect the environment;
- that international transfers are necessary to assist developing countries to upgrade their environmental protection measures;
- that unilateral measures are to be avoided.³¹

In the context of a GEO, these three principles imply: (1) That a form of “special and differential treatment” in environmental policies is to be expected as part of an international body of multilateral environmental rules, in which the differing capacities of the North and South to mount programs of environmental protection are realistically acknowledged; (2) That the resources to undertake environmental programs are substantial; (3) That just as unilateralism in trade policy is ultimately self-defeating, so is it in environmental policy, at least where transborder issues are concerned. Naturally, a GEO would not require all national environmental measures to be subjected to oversight, but where these measures affect the “global commons,” multilateralism should provide a foundation principle.

Finally, the GEO/WTO interface will be all-important. Perhaps, paradoxically, if it is to take environmental pressures off of the WTO, a GEO should be located in Geneva. There, it could assist the WTO (analogous again to WIPO), and would be situated to work in cooperation with the World Health Organization (WHO) and the growing number of environmental NGOs who have found it useful to use Geneva as a base.

A last set of implementation issues concerns timing and phasing. It is very unlikely, given the problems and potential opposition facing a GEO, that it could be implemented in a single “grand stroke.” Such an achievement would only be likely to emerge from a more general agreement to reform and revitalize all of the major multilateral institutions: the World Bank, IMF, WTO and UN System, in a single exercise analogous to the momentous post-war conferences of the late 1940s.

³¹ Quoted in Shaffer, note 132, p. 47.

A less ambitious, but still daunting, possibility would be to launch a GEO as part of some final agreement in a multilateral trade negotiation (MTN) round. Such an outcome assumes that such a round can be successfully negotiated by a new U.S. administration, with side-negotiations over a GEO contributing part of the final package.

A third approach would be to open negotiations over a GEO as a multilateral environmental effort, *linked to, but separate from*, MTN negotiations. This would follow, in general form, the NAFTA side-agreement model and would place GEO talks on a separate path. A difference might be that while the NAFTA environmental side agreement would surely not have succeeded had NAFTA failed, GEO talks might proceed and even succeed without a successful MTN. However, for a variety of reasons, related especially to market access requirements of developing countries, this outcome also seems unlikely.

A fourth, scaled-down proposal would establish not a GEO, but a “Standing Conference on Trade and Environment.” This approach would be an expansion of the informal ad hoc sessions so far organized by the WTO Secretariat for delegates, various international organizations and NGOs. The result would be to create a body of interested parties which might, over time, evolve into a more formal negotiating group.³²

Sampson (2000, p. 140-141) in somewhat the same spirit, has advocated the use of an “eminent persons group,” for trade and environment issues on the model of the Leutwiler Group in the run-up to the Uruguay Round. In addition, he has suggested that MTN negotiations might include sub-negotiating groups similar to the GATT Articles subgroup and the Functioning of the GATT System (FOGS) subgroup during the Uruguay Round. The GATT Articles type of subgroups would reconsider environmental exceptions to trade agreements under Article XX, while the FOGS subgroup would contemplate linkages from the WTO to various environmental agreements.³³

³² Shaffer (2001, notes 110 and 111) discusses the five NGO Symposia held by the WTO. See Rubens Ricupero. “UN Reform: Balancing the WTO with a Proposed ‘World Environment Organization’” in *Policing the Global Economy*, 2000.

³³ Biermann offers three “models” for a GEO: a cooperation model, a centralization model and a hierarchization model. The cooperation model would essentially retain all existing bodies in their current state, but would elevate UNEP to a leading and coordinating role, becoming in effect a GEO. The centralization model would grant greater authority to a central institutional actor (again probably UNEP) to oversee and direct the environmental activities of other UN bodies. This model would make the GEO similar to the WTO, and would bring MEAs into a reporting relationship with the GEO. This GEO would have a double-weighted voting procedure in which decisions would require a two-thirds majority of both developed and developing countries. The hierarchization model would grant the GEO enforcement authority like the Security Council,

V - THE ROLE OF DEVELOPING COUNTRIES

Considerable attention has already been given to the role and interests of developing countries in successfully negotiating a GEO. Yet it is critical to understand that as a group, the developing countries feel left out of the many rewards promised in return for their support of a Uruguay Round Agreement. Since the completion of the round in 1994, global trade has risen significantly faster than gross domestic product (GDP), but the share of developing country exports has fallen relative to those of the U.S. and E.U.³⁴ While this is partly a function of relative growth rates, protectionist subsidies and price-supports have grown along with GDP, leaving many developing countries feeling short-changed.

These concerns go beyond environmental measures, but tend to reinforce developing countries suspicions that such measures are yet another excuse to restrict market access. It is expanded market access, above all else, which constitutes their main preoccupation. Brazil has made a market access agreement in agriculture a precondition to the success of the Doha Round. India has agreed that commitments it made on intellectual property rights have not been matched by the expanded market access in agriculture and textiles which it expected to ensue. The Doha Development Round of MTN talks has not been.³⁵

Given this state of affairs, a GEO can only succeed if it is linked to a larger set of real expansions in market access opportunities for developing countries. Like NAFTA and its side-agreements, this is in part because such linkage offers the only prize sufficient to induce developing countries to take a GEO seriously. Second, such linkage will tend to undercut the suspicion that a GEO is a protectionist Trojan Horse. Third, it will underscore the obvious need for economic growth and expansion if Developing countries are to make the many investments required to protect their environments.

and would constitute the most *dirigiste* of the alternatives—approaching a global government. Of the three alternatives, a hybrid of the first two, “cooperation” and “centralization” is closest in spirit to that discussed here. One might call this hybrid the “coordination model.” See Frank Biermann. “The Case for a World Environment Organization.” *Environment* 42: 9 (November, 2000): 23-31.

³⁴ The IMF reports that in 1993, the U.S. share of world exports was 15.7 percent, E.U. 34.7 percent, and the rest of the world 49.6 percent. In 1999, the United States’ share was 17.7 percent, the E.U. 38 percent and the rest of the world 44.3 percent.

³⁵ See J. Michael Finger and Philip Schaler. “Implementation of Uruguay Round Commitment: The Development Challenge.” *The World Economy* 23: 4 (April, 2000): 511-525. Rubens Ricupero. “A Development Round: Converting Rhetoric into Substance.” Background note to the Conference on Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium. John F. Kennedy School of Government. Harvard University. June 1-2, 2000.

A last, and especially thorny, issue concerns the potential role of a GEO as an imposer of sanctions and conditionality on countries unwilling or unable to comply with norms or standards. This is, of course, an old and contentious issue in trade policy.³⁶ Most multilateral agreements, including a GEO and its rules, are likely to carry penalties for noncompliance. However, there is no reason in the case of a GEO why such penalties need to take the form of *trade* sanctions, as opposed to fines, denial of voting rights, or other measures “decoupled” from trade itself. This argument can be employed in order to *separate* environment from trade measures, reducing the potential use (and abuse) of trade sanctions to enforce multilateral environmental compliance.

The experience of sanctions in trade policy suggests that they are far less important to the maintenance of world trade rules than the dispute settlement mechanisms of the WTO, which are in turn modeled on those established in 1919 by the ILO.³⁷ If a GEO were to come into being, the opportunity to create a separate environmental dispute resolution process might be of special help in separating multilateral environmental issues from those of trade. Such a process could function as a conduit for disputes under the many MEAs or bilateral environmental agreements (including regional agreements such as North American Agreement on Environmental Cooperation (NAAEC)) so that ad hoc dispute resolution mechanisms for each such agreement could be consolidated. In addition, such a process would allow NGOs to enter disputes as “friends of the court.” While not a formal sanction, the capacity of NGOs to focus international attention on countries found to have violated environmental norms might have important impacts on compliance.

VI - CONCLUSIONS

³⁶ See Robert Hudec. *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System*. Salem, NH: Butterworth Legal Publishers, 1993. In the case of environmental obligations and sanctions, see Scott Barrett. *Environmental and Statecraft*. Forthcoming. In a 1997 theoretical article, Barrett argues that the existence of trade sanctions in environmental agreements may nudge countries towards compliance, so long as a sufficient number of countries are committed to their enforcement. See Scott Barrett, “The Strategy of Trade Sanctions in International Environmental Agreements.” *Resource and Energy Economics* 19 (1997): 345-361.

³⁷ Steve Charnovitz, personal communication. January 10, 2001. See Steve Charnovitz. “Rethinking WTO Trade Sanctions.” A Paper at the Conference, The Political Economy of International Trade. University of Minnesota, September 15-16, 2000. For a review of different types of carrots and sticks, see the appendix in Daniel C. Esty, *Greening the GATT: Trade, Environment and the Future* (1994) and Howard Chang. “Carrots, Sticks and International Externalities.” *International Review of Law and Economics* 17:3 (September 1997): 309-24. For a broader assessment of compliance issues see A. Chayes and A. Chayes. *The New Sovereignty: Compliance with International Regulation Agreements*. Cambridge: Harvard University Press, 1995.

Despite the necessary limits of this analysis, a number of conclusions emerge. The first is that a GEO holds opportunities for both the trading system and the global environment. To the trading system, it offers the opportunity to disentangle trade from environmental matters, allowing the WTO to focus where it should: on expansion of market access and reductions in trade protectionism, saving attention for environmental measures only in cases of obvious trade distortion. A GEO could be of considerable assistance to the WTO in clarifying where environmental exceptions to the GATT articles were justified (under Article XX or other headings) and providing guidelines for minimally trade-distorting MEAs. At the same time, a GEO could help fill the institutional gap in dispute resolution and coordination surrounding the many MEAs and institutions now responsible for global environmental issues, especially UNDP, the CSD and certain activities of the World Bank, UNDP, WHO, WMO, Food and Agriculture Organization (FAO), among others. This coordination need not imply centralization, nor the usurpation of authority from these bodies or national governments.

Second, a GEO could channel needed attention to a wide range of global public goods and global commons issues—from climate change to ozone depletion to biodiversity to air and water pollution to overfishing. These issues are in need of greater focus and attention independent of the trading system, suggesting a need for separate multilateral instruments such as a GEO.

Third, overcoming opposition to a GEO will require a two-fold undertaking involving the politics and posture of both developed and developing countries. In the North, opposition to multilateral institutions generally—arising from both Right and Left—must change. Conservatives will need to overcome their distrust of global environmental initiatives. The environmental left, meanwhile, must overcome its strident opposition to all things multinational. In developing countries, environmental improvements are an urgent need, which can now be deflected by claims that environmental issues are rich men's concerns. Unless a GEO clearly offers specific commitments to special and differential treatment of LDC problems, expanded technical assistance, and ample LDC representation, it will be easily discredited as a form of environmental conditionality and a disguised mechanism of Northern protectionism.

Fourth, it is unlikely that Developing countries will find a GEO attractive unless it is linked to commitments for expanded market access, especially in key areas such as

agriculture and textiles. This suggests a model in which a GEO is *linked* to but *separate* from a new round of MNT negotiations. The virtue of linkage is that Developing countries will see that market access will enable them seriously to contemplate environmental improvements in the context of economic growth. The virtue of separation is that a successful MTN negotiation will not have to internalize questions of multilateral environmental policy.

The overall conclusion is that despite serious hurdles, a GEO can be envisioned which is both pro-trade and pro-environment, strengthening the global trading system, and its rules, while carving out new areas of international environmental competency. Achieving this vision will be difficult, but it is this author's view that we are condemned to succeed.