Expanding trade can help solve environmental problems, says report

Increased world trade leads to higher per capita incomes, and with that the freedom and incentive to devote a growing proportion of national expenditure to the environment. "The opportunity for countries to trade in world markets for goods and technologies facilitates the implementation of needed environment-improving processes at home." The available evidence suggests that this is indeed happening.

GATT rules do not prevent governments adopting efficient policies to safeguard their own domestic environment, nor are the rules likely to block regional or global policies which command broad support within the world community. At the same time, trade measures are seldom likely to be the best way to secure environmental objectives and, indeed, could be counterproductive.

These are among the key conclusions in a study on "Trade and the Environment" released in February by the GATT Secretariat. The study is part of the annual International Trade 1990-91, to be published by GATT in early April (in two volumes—the first consists of analyses and the second, statistical tables—available from the Secretariat and accredited bookellers, SwF 30,- per volume).

The Secretariat warns against the use of unilateral trade measures to offset the competitive effects of different environmental standards and sees a serious risk of environmental issues and concerns being exploited by trade protectionist interests.

The need for multilateral cooperation in the environmental field is another capital theme. "It is no longer possible for a country to create an appropriate environmental policy on its own," says the study. If transborder physical spillovers are involved, "the only alternative to unilateral actions based on economic and political power is for countries to cooperate in the design, implementation and enforcement of an appropriate multilateral agreement for dealing with the problem at hand". Even when environmental problems are domestic (no pollution is escaping across the border) attempts by countries to go it alone on environmental policies would sooner or later lead to frictions with trading partners...

The study recognises that promoting cooperation can be difficult but concludes that positive incentives for countries to join multilateral agreements - for instance, financial assistance and transfers of environmentally-friendly technology as well as action in the foreign aid, debt and market access areas - is likely to be far more effective than any negative approach, particularly one involving discriminatory trade restrictions.

With respect to GATT rules, the study says that they "place essentially no constraints on the ability of countries to use appropriate policies to protect their environment from damage from domestic production activities or from the consumption of domestically produced or imported products".

There can be a GATT constraint, however, when there is concern about production or consumption activities in another country. This is because the rules prohibit making market access dependent on changes in the domestic environmental policies or practices of the exporting country.

"What the rules do constrain is attempts by one or a small number of countries to influence environmental policies in other countries not by persuasion and negotiation but by unilateral reductions in access to their markets... Countries are not clones of one another and will not wish to become so - and certainly not under the threat of unilateral trade measures."

In examining the issue of competitiveness, the study notes that firms which find their market shares and profits under competitive pressure are prone to label as unfair any source of cost advantage enjoyed by their foreign rivals. This is where the "level playing field" notion is often heard. However, the GATT study points out that "the existence of less strict environmental standards in a lower income country is not a sufficient basis for claiming that the environmental standards are "too low" or that the country is manipulating its environmental standards in order to improve the competitiveness of its producers."

The study also points out that in principle there is not difference between the competitiveness implications relating to different (Continued on page 2)
Trade and environmental interests are mutually reinforcing, says A. Dunkel

Citing the study as marking an "important new stage" in the work of GATT, Director-General Arthur Dunkel has underlined the importance of multilateral action in improving trade and enhancing environmental standards. "The two should be pursued simultaneously and, indeed, are potentially mutually reinforcing," he said.

The report is "GATT's first authoritative attempt to come to grips with the potential opportunities as well as the potential dangers of the links between trade policies and environment policies," he pointed out. Mr. Dunkel expressed the hope that the study "will help demonstrate that increasing trade improves our ability to invest in and protect the environment and that multilateral trade rules and trade liberalization—especially the kind envisaged in the Uruguay Round—are not threats to the ambitions of many rightly concerned citizens around the world to see animal and plant life and the natural environment safeguarded.

At the same time, Mr. Dunkel warned that "we must guard against the risk of the issue of the environment being kidnapped by trade protectionist interest." Should this happen, he said that "the world will lose out twice—through lost growth resulting from reduced trade and through inadequate or ineffective environmental policies."

Multilateral cooperation

Environmental issues can become internationalized in at least one of three ways. The first two, which can occur even when the issues are in principle purely domestic, are through concerns over the impact of environmental policies on international competitiveness, and through the assertion of jurisdiction over other nations' environmental priorities and practices. The third and most obvious way is through the transborder spillover of pollution into another country or the global commons (primarily the upper atmosphere and the oceans). Although current concerns with the environment encompass a wide range of issues, from water pollution to ozone depletion, and the treatment of animals to standards for pesticide residues in food, they all share a common need for multilateral cooperation, not only to minimize potential trade frictions, but especially to identify and implement workable and effective solutions to regional and global environmental problems.

As a result, it is no longer possible for a country to create an appropriate environmental policy entirely on its own. Even when environmental problems are domestic...
(in the sense that no pollution is escaping across the border), an attempt by countries to go it alone on environmental policies would sooner or later lead to frictions with trading partners and most likely to unilateral trade actions. What is needed is multilateral rules to guide countries in formulating their own environmental policies and in responding to domestic complaints about the impact of their own and other countries' policies on international competitiveness. To back up the rules, a dispute settlement procedure is necessary for handling conflicts that cannot be resolved among the countries concerned. If existing rules and procedures are judged to be adequate for the task, fine. If not, some negotiated changes will be necessary.

When an environmental problem involves a transborder physical spillover, the only alternative to unilateral actions based on economic and political power is for countries to cooperate in the design, implementation and enforcement of an appropriate multilateral agreement for dealing with the problem at hand. This will often also be the case with assertions of jurisdiction over other countries' practices and policies, including the treatment of animals and endangered species.

Regardless of the nature of an environmental problem, the contribution of multilateral cooperation is to reduce the possibility that solutions are affected by differences in the economic and political strengths of the parties involved. Given the justifiable basis for a diversity of environmental standards among countries, it is important to minimize the risk of solutions being imposed by the larger or richer countries.

Negative incentives—in particular, the use of discriminatory trade restrictions on products unrelated to the environmental issue at hand—are not an effective way to promote multilateral cooperation. Alternatively, the use of positive incentives coupled with peer pressure can be a viable option—and all the more so since the likelihood of negative incentives being a workable and sustainable approach in the medium term and across a range of issues is open to serious doubt.

The role of trade policy

There is much support for the view that unilateral restrictions on trade would never be the most efficient instrument for dealing with an environmental problem. Of course it is always possible to find an example, hypothetical or taken from the real world, which appears to contradict that conclusion. But always at the base of such an example would be a national environmental policy that is considered inappropriate.

If all countries participated in all international environmental agreements, there would be nothing more to add. However, it is often a challenge just to get a critical mass of countries—let alone all countries—to participate in an international environmental agreement. As soon as participation is less than universal, trade policy re-enters the picture, albeit in a different role. Trade measures could be used as one type of carrot—or, despite the arguments noted above, as one type of stick—to encourage participation.

Past experience suggests that the organizers of an environmental agreement are also likely to consider including trade provisions—that is, measures affecting trade only in the product or products covered by the agreement—designed to minimize the extent to which trade between participants and non-participants could undermine the agreement. Recalling that a country's trade measures can too easily seem to be low cost and non-binding in the short term, this can only reduce the amount of protectionist interests introduced into the environmental agreement. These concerns are heightened by the possibility of protectionist groups to draw environmental groups into implicit or explicit coalitions whenever possible. But it is not unlikely to be costless, and certainly not in the medium and long term. Biases that protectionist interests introduce into the environmental policy package increase the costs of environmental improvements. In the longer term, this can only reduce the amount of improvement the society will be willing to undertake. When that happens, the protectionist interests gain not only at the expense of the rest of the economy, but also at the expense of the natural environment.

Risks and opportunities for the trading system

There is a serious risk that the trading system could get badly bruised by a rush to deal with environmental issues which are viewed as urgent by important segments of the population in an increasing number of countries. To someone unfamiliar with, or indifferent to, the contribution of economic efficiency and the trading system to postwar economic prosperity, trade measures can too easily seem to be low cost
and readily available tools for pursuing environmental goals.

As regards the design and implementation of environmental policies, GATT rules place essentially no constraints on the ability of countries to use appropriate policies to protect their environment from damage from domestic production activities or from the consumption of domestically produced or imported products. Concern over the possibility that technical or other kinds of regulations could create unnecessary obstacles to trade has led, it is true, to certain multilateral disciplines. But those disciplines contain qualified exceptions for actions related to protecting or improving the environment.

When the environmental problem is due to production or consumption activities in another country, the GATT rules are more of a constraint, since they prohibit making market access dependent on changes in the domestic policies or practices of the exporting country. The rationale for this is that to do otherwise would invite a flood of import restrictions as countries (especially those with large markets) either attempted to impose their own domestic environmental, economic and social policies on other countries, or used such an attempt as a pretext for reducing competition from imports.

Furthermore, the fact that GATT rules block the unilateral use of trade measures to dictate changes in the environmental policies of other nations does not mean that governments are powerless. They still have the possibility of negotiating a multilateral solution or, failing that, of requesting a GATT waiver. These options offer the prospect of resolving environmental problems and conflicts, while at the same time effectively guarding against the excesses that would result from unilateralism.

In other words, GATT rules could never block the adoption of environmental policies which have broad support in the world community. This is because the most instances of two-thirds of GATT's membership—currently 69 out of 103 countries—is sufficient to amend the rules or grant a waiver. What the rules do constrain is attempts by one or a small number of countries to influence environmental policies in other countries not by persuasion and negotiation, but by unilateral reductions in access to their markets.

The real risk, therefore, is not that trade policies will be used, but that they will be used unilaterally. If the door were opened to use trade policies unilaterally to offset the competitiveness effects of different environmental standards, or to attempt to force other countries to adopt domestically-favoured practices and policies, the trading system would start down a very slippery slope. Countries are not clones of one another, and will not wish to become so—certainly not under the threat of unilateral trade measures.

The opportunities presented to the trading system consist mainly in exploiting the various ways in which open international trade can contribute, in conjunction with appropriate national environmental policies, to the improvement and protection of the environment. From an institutional standpoint there is a need for a careful examination of the existing rules to be certain that they do not hinder multilateral efforts to deal with environmental problems. This will be one of the important tasks of GATT's recently activated Group on Environmental Measures and International Trade.

More broadly, the economic growth stimulated by open trade policies increases wealth and spreads knowledge and information, which in turn increase the range of choices available to consumers, including the option of choosing to enjoy the services of a higher quality environment.
Many GATT members have called for the early adoption of a panel report critical of a United States' ban, taken to limit killing of dolphins, on imports of Mexican yellowfin tuna. At the Council meeting on 18 February, they said that the matter was no longer simply a bilateral question because a recent US court decision had extended a secondary embargo to around 20 more contracting parties.

At the same time, the Council resolved a dispute between the United States and Canada through the adoption of a panel report. The panel found Canadian provinces' treatment of imported beer inconsistent with GATT provisions. A panel report with a conclusion that a US countervailing-duty action on Brazilian non-rubber footwear contravened the most-favoured-nation provision of the General Agreement was presented to the Council. The Council also heard a Yugoslavian request for a panel to examine recent trade sanctions imposed by the European Community.

Aside from dispute settlement, new trade arrangements figured prominently at the meeting. The Council approved the submission to a vote by GATT members of a decision granting a waiver to a preferential trade arrangement between the United States and the Andean nations aimed at combating illicit trafficking of narcotics. The European Community reported on the signing of association treaties with Poland, Hungary and the Czech and Slovak Federal Republic as a first step towards free-trade agreements in the future. The EFTA countries announced a free-trade agreement with Turkey. Finland informed the Council of the signing of a trade agreement with Estonia.

Finally, the trend towards more open trade in the developing world was again confirmed by Colombia's announcement that it was disinvoxing the GATT cover for trade restrictions maintained by developing countries experiencing balance-of-payments difficulties.

Tuna panel report presented

The panel report on US restrictions on imports of yellowfin tuna from Mexico was on the agenda at the request of the European Community. This report was circulated to GATT members in September 1991 but consideration by the Council had been held back due to continuing bilateral consultations between the United States and Mexico on the matter. The report was deferred at the request of the United States and Mexico in November 1991.

The panel chairman, Mr. András Szepesi (Hungary), introduced the panel report to the Council (see Focus No. 86). He emphasized that the task of the panel had been to examine the dispute in the light of current GATT provisions and not to rule on the appropriateness of the United States' and Mexico's conservation policies as such. Furthermore, the panel believed that the adoption of the report would affect neither the rights of individual GATT members to pursue internal environmental policies and to cooperate with one another in harmonizing such policies, nor the right of the Contracting Parties to jointly address international environmental problems.

The panel had noted that the GATT imposed few constraints on a contracting party's implementation of domestic environmental policies. The panel also noted that the GATT environmental exceptions (Article XX, paragraphs "b" and "g") did not specify criteria limiting the range of life or health protection policies, or resource conservation policies for the sake of which they could be invoked. It suggested that the Contracting Parties could set these criteria by amending or supplementing provisions of the GATT or waiving obligations thereunder.

The panel concluded that the US import prohibition on yellowfin tuna from Mexico and from "intermediary nations" was contrary to GATT Article XI.1 (on elimination of quantitative restrictions) and was not justified by the exceptions in the General Agreement. On the other hand, the panel ruled that the two other measures complained against did not contravene the General Agreement: the so-called "Pelly Amendment" to the Fishermen's Protective Act of 1967 and the provisions of the US Dolphin Protection Consumer Information Act regarding "dolphin safe" labelling of tuna products.

The European Community explained that it had asked for a full Council debate on the tuna report because the report addressed important issues affecting the interests of all GATT members. It said that the impression in some quarters that the report had placed GATT members in a dilemma was wrong. The EC pointed out that the panel's conclusions confirmed that the General Agreement imposed very few conditions on domestic environmental measures, and that solutions to problems on trade-environment measures should be pursued through international cooperation. The panel had only condemned a unilateral measure which had extra-territorial implications, it said.

The EC expressed concern over a secondary embargo by the United States on tuna imports from an additional thirty contracting parties, including four Community members (France, Italy, Spain and the United Kingdom). It argued that the adoption of the report was a necessary first step towards clarifying the relationship between GATT rules and environmental measures.

The two parties concerned would be doing GATT a disservice by removing the issue of the panel report from the table—what had started as a dispute between two parties was now of interest to all of us," it concluded.

Venezuela shared the EC concern over the secondary embargo on tuna products. It noted that the US court order of 31 January 1992 called for intermediary nations to ban imports of tuna from Venezuela and Mexico to avoid the secondary embargo. "This would not only require the United States to violate GATT rules but would also require other nations to do the same or relinquish their rights to export tuna to the United States," it charged. Venezuela contended that the US Marine Mammal Protection Act had not given effective protection to dolphins but instead had distorted world trade and encouraged tuna fleets to leave the eastern tropical Pacific. It added that dolphins were neither an endangered nor a threatened species.

Mexico said that while it shared US environmental goals, it strongly believed that the US Marine Mammal Protection Act was aimed at protecting US fishing fleets and not dolphins. It pointed out that the US measure...
applied only to a certain part of the seas without US fishing fleet's presence, and only to yellowfin tuna, while dolphins and tuna were found in many parts of the world. Mexico welcomed the conclusions of the report but it was willing to give others the opportunity of time and "the right atmosphere" to further study the issues involved.

The Nordic countries (Iceland, Finland, Norway and Sweden) welcomed a discussion of a report, which they said had been "in limbo" for sometime. They said that the two parties involved, as was their right, apparently had decided to settle the matter bilaterally. They said that the report indicated that there were limits on ways in which national legislation could be extended to other countries but it also pointed in the direction of international cooperation in the environmental field. In endorsing the report, they said it was clearly not inimical to environmental concerns.

Hong Kong said that interaction on the panel report posed the danger of diminishing the credibility of the GATT. It stressed that the contracting parties had the collective responsibility for the adoption of the panel report within a reasonable period.

Canada welcomed the panel's recommendations regarding what it said were extra-territorial and unilateral measures. It said the United States' secondary embargo was unacceptable and stressed this was no longer a bilateral issue. It supported the adoption of the report.

The United States representative, Ambassador Rufus Yerxa, noted the widespread participation in the debate, counting some 17 representatives on behalf of 35 contracting parties who had spoken in favour of adopting the report. He said the views expressed would be reported to Washington. There seemed to be support among the GATT members, including Mexico, for the US objective of saving the dolphins, he said. He added that to prevent conflicts between environment and trade interests, where there could be no winner, "we must find multilateral solutions that showed a high respect for the environment".

He stressed that the US Administration had no jurisdiction over the embargo, which was the result of a court order. The Administration, he said, had appealed the case to a higher court but had been unsuccessful in obtaining a suspension of the tuna embargo. He said that it seemed that the only course available for resolving the matter would be to seek the appropriate legislation in the US Congress.

Beer panel report adopted

The United States urged the Council to adopt a panel report (see sidebar) containing a recommendation that Canada ensure that provincial liquor boards comply with GATT provisions in their treatment of imported beer. It recalled that Canada had promised at the Forty-Seventh Session of the Contracting Parties in December 1991 (see previous Focus) to agree to the adoption of the report at the First Council meeting of 1992.

Canada said it stood by its commitment, and would comply with the panel's recommendations. It noted that this was the first time a GATT panel had ruled that a contracting party had not met its obligations under Article XXIV:12 (that a contracting party ensure that regional and local governments observe GATT rules). It stressed that since the adoption of a related panel report in 1988, the US had sought, through a bilateral agreement with the European Community (the complainant in the previous panel), had taken steps to bring their practices on wine and spirits into compliance with the General Agreement. Extensive consultations with the provinces were underway to address the panel's recommendations. Canada underlined its commitment to meeting its obligations but it also pointed out that "the issues involved were complex—some changes could be implemented administratively and some would require legislative action".

Canada drew attention to a notice published on 27 December 1991 in the US Federal Register that substantially increased duties might be imposed on Canadian beer and malt beverages by 10 April 1992 in the absence of satisfactory progress in bilateral talks. It objected to what it called the setting of arbitrary deadlines on this matter and stressed that any retaliatory trade action must first be authorized by the Council.

Panel report on on footware

The Council considered for the first time a panel report on a trade dispute between Brazil and the United States. Brazil had complained that the United States had discriminated against Brazilian non-rubber footwear in backdating an obligation under the Subsidies Agreement (injury test before imposition of countervailing duties) to the date of the Brazilian request for an injury review (October 1981) instead of the date of entry into force of the Code (January 1980). It had argued that the US action was inconsistent with the most-favoured-nation provision of GATT (Article I) because the US had backdated its legislation to January 1980 with respect to certain products from India, Trinidad and Tobago and Mexico. A panel established under the Subsidies Agreement had already ruled that the US countervailing action was consistent with the Code.

The panel established by the Council found that the United States, under Section 104(b) of the Trade Agreements Act of 1979, had failed to grant to signatories to the Subsidies Agreement the advantage accorded in Section 101 of the Trade Act of 1974 to like products originating in countries beneficiaries to the United States' GSP programme. This advantage involved the automatic backdating of the revocation of countervailing duty orders issued without an injury determination to the date on which the US assumed the obligation to provide an injury determination. The panel concluded that the United States had acted inconsistently with Article I:1 of the General Agreement. As Brazil had only requested a general ruling, the panel did not issue a recommendation on action by the United States.

Brazil welcomed the panel's conclusions and urged the immediate adoption of the report. It said the panel's findings were also important for other GATT members because they upheld the most-favoured-nation principle of GATT "which is at the heart of the General Agreement".

The United States said it was still studying the report, and requested the Council to defer consideration until the next meeting.

Yugoslavia requests panel on EC trade sanctions

Yugoslavia asked for a dispute-settlement panel to examine trade sanctions imposed by the European Community in November 1991 (see Focus No. 87), which it said contravened the General Agreement. It criticized a further EC measure for differential treatment of parts of Yugoslavia as contrary to the most-favoured-nation requirement of GATT Article I. It added that the Community had not responded to its request for consultations on the matter.

The European Community doubted whether measures limited to withdrawal of trade preferences could run counter to Article I. It was unable to consult because of "the fluidity of the situation". However, the Community noted "the climate has been changing" and it could now accede to Yugoslavia's request for consultations.

Waiver for anti-narcotics pact

The United States said Bolivia, Colombia, Ecuador and Peru were "paying a heavy political price because of the high number of lost lives and substantial depletion of their national treasuries" in the fight against illicit trafficking in narcotics. The Andean countries, the United States said, were "asking for trade, not aid" to give their citizens opportunities to engage in trade in legitimate products as an alternative to narcotics trafficking. In response, President Bush signed into law in December 1991 the Andean Trade Preference Act (ATPA).

The United States requested that the ATPA be granted a ten-year waiver from the most-favoured-nation provision of the GATT. It said that as the Act covered only 0.1 per cent of US imports, trade would not be diverted from other suppliers. It promised to notify any trade-related measures taken under this law; to consult with any interested GATT member; and to submit annually a report on the implementation of the ATPA. Noting that a second Drug Summit involving the United States, Mexico and the Andean countries would shortly take place, the United States said that an immediate decision on this matter would be important.

Many delegations shared the United States' concern over trade in illegal drugs and supported in principle the US request. However, some of them stressed the need for GATT to regularly monitor the trade effects of any preferential arrangement.

The Council approved the text of a draft
decision granting the waiver and recom-
Meat oversupply to persist failing structural changes, says report

In 1991, the international beef markets faced sluggish prices, reflecting a continued excess of global production over consumption. Large supplies of competing meats (poultry, pork and lamb) added to the downward pressure on beef prices. A major drop in prices was averted because the former Soviet Union sharply increased its import demand. A sustained firming of beef prices would require that major suppliers align their production to medium-term trends in demand.

These are among the conclusions of *International Markets for Meat 1991/92* published in February by the GATT (available in English, French or Spanish from the GATT Secretariat and accredited book sellers - price: Swiss Francs 25.-). The report examines trends in production, consumption and trade of bovine meat, and summarizes developments in pigmeat, poultry meat and sheepmeat. It offers an outlook for 1992 and lists significant trade policy developments and improved cattle feedings in members countries of the Agreement Regarding Bovine Meat.

According to the GATT report, world exports of beef increased by close to five per cent in 1991. The European Community overtook Australia as the world’s largest beef exporter. EC beef exports rose by an estimated 48 per cent to 1.16 million tons (carcass weight) while Australian shipments fell by 15.3 per cent to 1 million tons. Brazil and the United States also saw sizeable increases in beef export with 43.5 per cent and 14.5 per cent, respectively.

The European Community’s move to the top rank among world beef exporters was closely related to a 100,000 tons sale to Brazil, and an estimated 250,000 tons exports to the former Soviet Union. In November 1991 a barter deal involving another 100,000 tons of beef to be exported from France to the ex-USSR was agreed.

Although global beef imports increased by an estimated 3 1/2 per cent in 1991, purchases by the United States and Japan declined. Following a surge of beef imports earlier in the year, the United States imposed voluntary export restraint agreements on Australia and New Zealand in November 1991.

The GATT report highlights other key developments in the world beef market for 1991:

- Despite cattle herd rebuilding in major producing countries, world beef production increased in 1991. This development largely reflects higher average slaughter weights.
- A trend towards a slowdown in the growth of cattle herds was observed in an increasing number of countries. Major factors behind this trend include genetic developments and improved cattle feeding and finishing techniques. These are likely to result in shorter cattle herd cycles in the years to come.
- Despite efforts to encourage demand through promotion campaigns, per capita consumption stagnated or declined in most industrialized countries in 1991. In these, as well as in other countries, a trimming of household budgets resulted in lower consumption of beef. In addition, consumption of beef was adversely affected by the increasing price competitiveness of other meats.
- Most Central and Eastern European countries virtually disappeared from the beef export scene. This reflected both the economic and political changes underway in these countries and the loss of their major market: the Soviet Union.
- In 1992, beef output is expected to decline in some major producing regions including the European Community and Central and Eastern Europe mainly as a result of falling cattle numbers.
- Poor global economic prospects will dampen demand for beef in industrialized countries in 1992.
- Competition from other meats will persist, but beef import demand is expected to strengthen in some markets in the Middle East, North Africa and Asia. Overall, however, international beef trade is expected to slightly shrink in 1992.