

1. Introduction

This Paper makes some observations and raises several questions on the trade-environment policy interface. Environmental considerations are having an increasingly important role in shaping the international trading system. In a general sense, the Paper gives a positive response to the broad question of whether environmental objectives can be attained without destroying the GATT/WTO. Trade measures are already included in a number of International Environmental Agreements, and the GATT allows for the use of nondiscriminatory market access restrictions to protect a country's environment.¹ The question of whether the GATT should allow for the use of trade measures in response to environmental degradation in foreign countries remains. Is there a certain range of circumstances when multilaterally agreed trade measures could potentially play an environmental role? This Paper raises some questions on the possible application of trade measures, specifically what may be considered a new form of countervailing duty, for environmental reasons. The issues raised are complex and more than occasionally politicized. Our analysis indicates that the likelihood of developing a new and effective form of countervailing-like duties to address subsidization with adverse environmental affects is problematical.

There has been little constructive international dialogue on revising multilateral trade rules to allow for the use of countervailing-like duties to take into account environmental concerns more fully. To the limited extent that there has been a discussion, it has been polarized, with some environmental groups arguing for a broad application of countervailing-like duties, and the trade policy community holding the view that such environmentally related duties are undesirable and would have adverse implications for the international trading system. One commentator, reflecting the environmentalist view, has concluded that "it is an anachronism that at a time when people are focusing on changing development practices to make them sustainable, the trading community is forbidding the use of trade measures to assist in this process."²

¹A number of International Environmental Agreements contain trade restrictive measures. These include the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Basel Convention on the Transboundary Movement of Hazardous Wastes. See Keith H. Christie, "Stacking the Deck: Compliance and Dispute Settlement in International Environmental Agreements", Policy Staff Paper No. 93/15, Department of Foreign Affairs and International Trade, December 1993.

²Edith Brown Weiss, "Environment and Trade as Partners in Sustainable Development: A Commentary", American Journal of International Law, 86 (1992), p.731.