By Solomon Major

CHAPTER FIFTEEN

I. Introduction (pp. 395-7)

Items of interest/for further exploration

A. Environmental Impact of Trade
   - Environmentalists equate free trade with environmental destruction—free traders believe that such claims are overblown. Is either side "right?"
   - Environmentalists favor economic/trade sanctions for environmental trespass, free traders are less sanguine. Are trade sanctions a reasonable way to address environmental concerns?

B. "The Race to the Bottom"
   - Is there a danger that free trade will create a race to the bottom where each country undertakes measures that lower their environmental standards to attract/retain capital—but where such "beggar thy neighbor" policies end up making each country worse off?
   - T&H see some danger of this but believe that there are better solutions e.g. comparative advantage in other (non-environmental damaging) industries, creation and export of environmentally friendly technology, and better planning and implementation of environmental laws;
   - Higher environmental standards might even confer a *competitive* advantage to certain countries that can create better eco-technology for export, etc.

C. Because of differing infrastructure and geographical resources and endowments, T&H maintain that even if environmental standards were universally set, different countries would have significantly different costs/benefits in meeting these standards (i.e. poor countries might not have the technology necessary to compete with richer countries possessing better eco-friendly technology)

Rather then address any of these (potentially very interesting) points directly, T&H instead introduce a discussion on the design and usefulness of GATT Article XX, followed by a series of case studies briefly summarized below.

II. Article XX a GATT Environmental Charter? (pp. 397-8)

Article is a measure that exempts certain measures from other GATT articles—provided that they are not used in a discriminatory/trade distorting manor. Although "environment" is not mentioned explicitly in Article XX, measures therein designed to allow signatories to the GATT treaty to protect, for example, "public health (sub-section "b"), or "exhaustible natural resources" (g), allows for an environmental reading of many of the exemptions.

III. Case Studies (please feel free to skip this section—I know I wish I could have)

A. Herring and Salmon (pp. 399-400)
   USA *v.* Canada; Canadians make a law (appealing to Article XX(g)) that all fish caught in Canadian waters be processed in Canadian plants; this is necessary in order that the Canadians can keep track of the numbers of fish caught and thus reduce the danger of over fishing; USA counters that this was (even according to internal

   Canadian communiqués) a blatant ploy to protect Canadian jobs; GATT panel agrees with USA; winner: USA

B. Salmon and Herring Landing Requirements
USA *v.* Canada; After loosing *Herring and Salmon*, Canadians rewrite law (XX(g)) that all fish caught in Canadian waters be *landed* in Canada prior to processing at plants in either Canadian or foreign locals; this is necessary in order that the Canadians can keep track of the numbers of fish caught and thus reduce the danger of over fishing; USA counters that this too was a blatant ploy to protect Canadian jobs; GATT panel agrees with USA and says that while *some* of the catch might need to be landed for environmental reasons, the *whole* catch need not be; winner: USA

T&H here take off on a tangent concerning a Thai *v.* USA case involving USA cigarettes (not given complete coverage elsewhere in the text). The Thai's argued that US cigarettes were a health risk despite the fact that they were in no way different then the Thai cigarette that the Thai govt. was happy to allow their populace to continue smoking. GATT agreed that this was discriminatory, however T&H argue that in a Third World country such as Thailand, such anti-competitive trade measures might be a reasonable and low cost way around the "sophisticated techniques of persuasion and psychological manipulation employed by Western cigarette manufactures." Whatever…. (p. 400)

C. Lobsters (pp. 402-4)
USA *v.* Canada; USA has size requirements for caught lobsters to keep those too young to have yet spawned from being caught; however the lobster caught in the colder northern Canadian waters are often smaller even once they have reached full maturity; Canadians want exemption; USA claims that it is too hard to tell where lobsters are caught once the enter into the market and, given that the laws are the same for domestic and foreign catches, maintain that there is no discrimination; GATT panel agrees (though T&H believe that this goes against the spirit of the *Salmon and Herring Landing Requirements* case); winner: USA.

T&H note that this is evidence of the differential impact of "universal" environmental rulings (see I. C above; p. 404)

D. Superfund (pp. 404-5)
USA *v.* various other states; USA taxed certain petroleum and chemical products—but only on imports and gave no justification for this difference; GATT panel strikes tax on petroleum products; winner: other states; however USA claims that cost of tax was equal to costs of meeting certain domestic restrictions regarding costs on producers of toxic materials and should thus be allowed as "equivalent to an internal tax" (Article II: 2(a)); other countries claim that it is not the USA's business whether or how they treat toxins in *their* countries—the US rules do not apply; GATT panel sides with USA in this instance; winner USA

I have lost patience with these stupid case studies and I expect that you have not even read this far, thus I have decided to skip the next several cases and move on to the equally

nebulous conclusion of this chapter. Those who are interested (for whatever reason) in the cases, I refer to T&H pp. 405-420

IV. More Stuff…

A. Sanctions *v.* inducements in trying to maintain global environmental standards

1. T&H first badly misread Hufbauer, Schott, and Elliot's *Reconsidering Economic Sanctions*—coming away from reading that book with an overly optimistic belief that sanctions are likely to be successful….
2. Then consider inducements to gain compliance but note that such measures reward bad behavior and thus introduce problems of moral hazard (p. 423)
3. They further consider "ecolabling" where eco-friendly products can be labeled and it can be up to the customers whether they want to buy such items (perhaps at a premium)—thus implicitly putting a market value on environmental damage. They believe that uncoordinated consumer activity based on such labeling will fail however due to collective action problems (p. 424)
4. T&H thus determine that sanctions (or sanctions combined with the other measures are the most promising instrument to induce eco-cooperation

B. Competitiveness-based Environmental Trade Measures
1. Argument 1: It is unfair that our workers should be rendered uncompetitive due to other's low economic standards. T&H argue that this should just be seen as one more case of *comparative advantage* and should not unduly concern the high-standards country. Also, because there is no objective measure of environmental friendliness, such measures are too open to capture by protectionist forces. (pp. 425-6)
2. Argument 2: Race to the bottom. T&H see some danger of this but believe that there are better solutions e.g. comparative advantage in other (non-environmental damaging) industries, creation and export of environmentally friendly technology, and better planning and implementation of environmental laws. Even if sanctions were shown to be a viable option in a given case, they should be undertaken under GATT and not as unilateral "beggar thy neighbor" polices (pp. 427-8)

C. NAFTA (pp. 424-40)
T&H are ambivalent as to the effectiveness of NAFA environmental measures (Article 1114: p. 433-4; and the NAFTA environmental side-agreement: p 434-40), but generally find evidence that they are a means for *domestic* NGO's in the various countries to bring violations in their countries international attention although their have been cases of cross-boarder charges leveled by various NAFTA members, again most often coming from NGO's, including NAFTA's own environmental component.

CHAPTER SIXTEEN

T&H note that many (most) labor cases are tried under International Labor Organization (ILO) auspices; rather then under the GATT agreement (p. 441)

I. Case for Contextual Labor Rights (pp. 443-445)

A. Much like as in the case of environmental measures, a universal standard is likely to place different costs on different (types of) economies. Because of this, argue T&H, there should be a context based—rather then universal—environmental normative standard.
B. Governments, even in non-representative countries are, according to T&H, better aware of what sort of labor standards are needed in their particular case then are international observers.
C. Because there have been correlation demonstrated between labor rights and aggregate economic growth, it is in individual counties' interests to liberalize as much as they can (p. 446).

D. We must also bare in mind that universal standards must also cope with the pervasive market distortion of imperfect mobility of laborers between regions/countries (p. 446)

II. Effects of Labor Sanctions on Sender Country

Because of market elasticity, higher employment/prices to the sender are unsure. Because sanctioned contracts from the sub-par country will be transferred to *the country that is the low cost producer of those items marginally above the given labor standards* and this country *is most likely not going to be the sender country* the effects of sanctions on the sender are likely to be slight (pp. 446-9).

III. When are Sanctions Most Likely to be Effective? What Kinds of Sanctions are Most Likely to be Effective?

A. T&H argue that when the sender has significant pecuniary leverage over the target (e.g. is a major market for target or has extended (revocable) GSP preferences to the target), they have the ability to use this to extract labor practice (or other) concessions from the target.
B. T&H go through the same argument as to the relative utility of sanctions *v.* incentives *v.* labeling as in the case of environmental policies and largely reach the same conclusions (pp. 449-52; see notes from CHAPTER FIFTEEN Iv. A1-4 above)

IV. Competitive Based Arguments for Labor Rights-Based Trade Measures

A. Argument 1: It is unfair that our workers should be rendered uncompetitive due to other's low standards.
B. Argument 2: Race to the bottom.

Again, their arguments mirror those concerned with environmental protection measures (pp. 453-6; see notes from CHAPTER FIFTEEN Iv. B1-2 above)

V. Conclusion (pp. 462-3)

T&H conclude by noting that, despite the fact that the ILO has been reticent to take as active a role as has the WTO/GATT, and although there is no Article XX to deal with human rights, prison labor, etc. they still foresee progress in this area. They argue that there is a growing common understanding of "core" human/worker rights—the necessary precursor to multi-lateral action to secure those rights—despite the understanding that different circumstances and contexts preclude a "one size fits all" standard. While arguments for a (competitive-based) "leveling of the playing field" are less often heard, the convergence of expectations on certain rights which transcend context, T&H believe are taking shape. This linked with empirical evidence that protecting labor rights often *increases* economic welfare, and developed countries continued willingness to use sanctions and GSP preferences to illicit cooperation with labor rights norms are likely to lead to a better worker environment in the future.