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## *Trade Policy*

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<b>Citation</b>	Ashford, Nicholas A. "Trade Policy."
<b>As Published</b>	<a href="http://www.issues.org/30.2/forum.html">http://www.issues.org/30.2/forum.html</a>
<b>Publisher</b>	National Academy Press
<b>Version</b>	Original manuscript
<b>Citable link</b>	<a href="http://hdl.handle.net/1721.1/85019">http://hdl.handle.net/1721.1/85019</a>
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LETTER TO THE EDITOR: "TRADE POLICY" published Winter 2014 *Issues in Science and Technology*: 14-16. Available at <http://www.issues.org/30.2/forum.html>

In an otherwise insightful and thoughtful article, Sebastian Pfotenhauer (Trade Policy Is Science Policy," *Issues*, Fall 2013) might better have entitled his contribution "Trade Policy Needs to Be Reconciled with Science Policy." The North American Free Trade Agreement (NAFTA) and the agreements administered by the World Trade Organization, particularly the General Agreement on Tariffs and Trade (GATT) and the Technical Barriers to Trade (TBT), were adopted to promote international trade and increase the economic benefits therefrom. Harmonization of environmental, health, and safety, and (EHS) standards and practices was generally not the goal of these agreements, except perhaps for the TBT agreement, which was predicated on EHS standards being based on "strong science" that could result in uniformity dictated by rigorous scientific consensus focused on risk assessments.

NAFTA does not pretend to aspire to harmonization of EHS standards and practices, but rather to encourage its three North American countries to enforce their own laws that differ in their approach to health, safety, and the environment. In the GATT, exceptions to "non-tariff barriers" are specifically reserved to those measures in national law that are necessary to protect human, animal or plant life or health; necessary to secure compliance with other laws or regulations that are not inconsistent with the provisions of the GATT; and that pertain to conservation of exhaustible living and nonliving natural resources. Rather than leaving the impression that EHS standards have generally been "declared a barrier to trade," Pfotenhauer might have instead emphasized that the ban of certain asbestos products by France was actually declared permissible in a case brought by Canada against the European Union and that the U.S. ban on shrimp caught along with endangered turtles would have been regarded as permissible were it not for the fact that the United States did not treat restrictions on shrimp imports from Asia the same as the imports of shrimp from other countries. These are very important decisions of the WTO under the GATT that are likely to be controlling legal precedent in future disputes. Particularly relevant is the established principle from these cases that nations are entitled to set their own precautionary degree and nature of protection in their EHS standards and practices without violating WTO trade agreements.

However, most disturbing was the opinion of the WTO appellate board in the asbestos case that the dispute should have been decided under the TBT agreement, rather than under the GATT. Under the TBT agreement, as mentioned above, technical standards are to be based on "science," although uniformity among nations is not required. To the extent that what comprises strong science might be agreed on by scientific bodies employing traditional scientific standards for compelling evidence, a compromise of the precautionary principle might well be expected, and uniformity could theoretically emerge, although the latter is not guaranteed. The GATT and the TBT agreement are widely acknowledged to be in conflict with respect to the extent of precautionary action permitted under each.

Finally worth mentioning is the political influence that lobbying efforts by U.S. companies have had and continue to have on the adoption of European Union EHS standards and practices. This was most obvious in the case of the European Union's Registration, Evaluation, Authorization

and Restrictions of chemicals and the current flurry of activity in Brussels in the energy and global climate area. Of course, one might say that trade policy has always been political, but when commercial and economic interests are allowed to trump legitimate and serious concerns about health, safety, and the environment, including those related to energy production and global climate problems, advocates for the environment and public health should press for adequate protections that are not held hostage to these commercial interests. The devil of the U.S.-EU trade agreement will ultimately be in the details of the agreement still to be worked out.

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