

Clarifying the Relationship Between Economic and Environmental Governance: Some Key Challenges

Achieving sustainable development requires a more complementary and coherent framework of global economic and environmental governance. Despite this need, little progress has been made in clarifying the relationship between the main elements of this architecture--Multilateral Environmental Agreements (MEAs) and the World Trade Organization (WTO).¹ In clarifying this relationship, the international community will need to address a range of issues, both legal and practical, if it is to ensure that the policies, rules and institutions governing trade and the environment contribute to a more effective institutional framework for sustainable development. Central to this effort must be more proactive engagement by "non-trade" interests in governments, intergovernmental organizations and civil society to ensure that ongoing WTO trade and environment negotiations yield outcomes that are economically, socially and environmentally balanced.

MEAS AND WTO: CENTERPIECES OF ENVIRONMENTAL AND ECONOMIC GOVERNANCE

MEAs and multilateral trade rules each have a role to play in achieving sustainable development. MEAs provide co-operative frameworks to address the growing environmental and health problems facing humanity. The WTO is the pre-eminent institution at the international level responsible for liberalizing trade and other economic activities. Because economy and environment are inextricably related, MEAs and the WTO necessarily overlap in their coverage, and address many of the same issues, parties and products, albeit from differing perspectives.

NEED TO CLARIFY MEA-WTO LINKAGES

These overlaps give rise to a range of MEA-WTO linkages that need to be clari-

fied as part of the broader institutional framework for sustainable development. Growing interdependencies--economic, social and environmental--increase the need for policy coordination at all levels. At the international level they demand efforts to ensure that the policies, rules and institutional structures of MEAs and the WTO are mutually supportive, to maximize their joint contribution to sustainable development.

Realizing synergies and ensuring that trade and environment systems are complementary may yield benefits for MEA parties and WTO Members. Increased *policy coherence* can help reduce the complexity of international negotiations; increased *rule coherence* can smooth national implementation; and increased *institutional coherence*--for example, in the area of capacity building--can help secretariats ensure that capacity building is demand-driven, and suited to the genuine needs of developing countries.

To date there has been no formal dispute between the WTO and MEAs. Nevertheless, the potential for conflict is real. Indeed, it will likely increase if countries decide not to join new environmental instruments such as the Kyoto Protocol and Cartagena Protocol on Biosafety. Even without formal conflict, uncertainty about this relationship has the potential to "chill" development of new environmental obligations and inhibit implementation of existing ones.

Progress in clarifying the MEA-WTO relationship remains limited. Without cooperation, a supportive relationship between trade and the environment cannot be assumed. Rather, it will only be realized through proactive attempts to identify overlaps, realize synergies, and reduce or avoid tensions between the two areas of policy.

WTO NEGOTIATIONS ON "SPECIFIC TRADE OBLIGATIONS" IN MEAS: RISK OR OPPORTUNITY?

One area for greater cooperation is the relationship between WTO rules and trade-related environmental measures in MEAs. Currently, these measures remain under a cloud of uncertainty at the WTO. To reduce this uncertainty, WTO Members have agreed to address one aspect of this issue. At the Doha Ministerial, they agreed to negotiate "the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements."² These negotiations will likely have major implications for the relationship between environmental and trade rules. Although the WTO Members' recognition of the need to clarify the MEA-WTO relationship is welcomed, the language of the negotiating mandate has raised concerns:

- While it includes safeguards to ensure that negotiations do "not add to or diminish the rights and obligations of Members under existing WTO agreements...nor alter the balance of these rights and obligations," it includes no similar safeguard for the MEAs.
- Despite the Doha Ministerial Declaration's encouragement of efforts to promote cooperation between WTO and relevant international environmental and development organizations, especially in the lead-up to the World Summit on Sustainable Development (paragraph 6), the WTO has not (at the time of writing) granted MEA Secretariats the right to observe and participate in WTO negotiating sessions, which means that MEA obligations are being considered by another international organization without their participation.
- The WTO's mandate is limited to the *least* controversial aspect of the MEA-WTO relationship, specifically enumerat-

ed measures between MEA parties, and ignores the difficult issues of measures against non-parties to an MEA (e.g., the Montreal Protocol's restrictions on trade in ozone depleting substances with non-parties), and of trade-related measures that are permitted but not specifically enumerated in MEAs.

Indeed, it seems that the WTO is negotiating the aspect of the MEA-WTO relationship that least requires clarification on either substantive or procedural grounds. Substantively, a recent WTO decision upheld a unilateral trade measure "as long as...ongoing serious good faith efforts to reach a multilateral agreement" exist.³ Such a unilateral measure could hardly be in a better position than *specifically enumerated* trade measures *between parties* that are *already* embodied in an MEA. Procedurally, WTO Members stated in the 1996 Committee on Trade and Environment Report to the Singapore Ministerial that parties to an MEA should consider resolving disputes "over the use of trade measures they are applying between themselves pursuant to the MEA...through the dispute settlement mechanisms available under the MEA."⁴ Applying this recommendation in practice would likely prevent MEA-related disputes arising in the WTO. It is hoped that WTO Members will take these two results as a starting point for their negotiations, and that negotiations will strengthen rather than weaken the situation of the MEAs.

PRACTICAL WAYS TO ENHANCE MEA-WTO COMPATIBILITY

In addition to a legal clarification through WTO negotiations, a number of practical measures can be undertaken to increase mutual support between MEAs and the WTO. These include:

- Assessing the environmental and developmental impacts (sustainability assessment) of trade rules and liberalization to contribute to the development of policies that support sustainable development. The Doha Ministerial Declaration encourages that expertise be shared with WTO Members wishing to perform environmental reviews and assessments at the national level (paragraph 33 of Doha Ministerial

Declaration).

- Encouraging the transfer of environmentally sound technologies by simultaneously implementing obligations in MEAs and the WTO's TRIPS Agreement that require the transfer and dissemination of technology to developing countries. This issue could also be raised in the Technology Working Group established in the Doha Ministerial Declaration (paragraph 37 of the Doha Ministerial Text).

- Building capacity and enhancing technical assistance by working together in areas of overlapping competence to increase the co-ordination between national trade, environment, and other officials, as noted in the Doha Ministerial Declaration (paragraph 33 of the Doha Ministerial Text).

- Enhancing communication and co-operation between compliance, enforcement and dispute settlement mechanisms, and further strengthening enforcement of MEA rules, to prevent trade and environment tensions escalating into formal WTO disputes. Observer status and information exchange between MEAs and the WTO dispute settlement body could help in this area (paragraph 31 Doha Ministerial Text).

- Actively using the WTO Committees on Trade and Environment and on Trade and Development to identify and debate environmental and developmental aspects of the negotiations, to help achieve the objective of having sustainable development appropriately reflected, as suggested by WTO's Doha Ministerial Declaration (paragraph 51)

- Studying the relationship between new trade and environmental rules, including between existing MEAs and *proposed future* WTO rules (including in areas of services, agriculture and investment). This is required as the WTO's negotiating mandate is limited to clarifying the relationship between MEAs and *existing* WTO rules; proposed future rules are not included in the mandate.

LOOKING FORWARD: ENHANCING THE INPUT OF "NON-TRADE" POLICYMAKERS INTO TRADE AND ENVIRONMENT DISCUSSIONS

Achieving progress on these legal and practical issues will require a more coordinated approach by the non-trade (environment, consumer, development, etc.) com-

munity. Environmental policy-makers, in particular, should be vigilant to ensure WTO negotiations respect the jurisdiction of MEAs, that MEAs and the WTO are preserved as co-equal bodies of law, and that trade rules do not limit the choice of future MEA measures.

Environmental policy-makers should also be slow to adopt unthinkingly the WTO's concept of "specific trade obligations," which seem to focus primarily on the trade impacts of MEA measures. In many cases a major purpose of MEAs is to restrict and regulate trade in certain categories of products (such as hazardous waste, chemicals, endangered species or GMOs), so applying usual WTO logic of promoting "least trade restrictive" measures may work against many MEAs.

Consequently, environmental officials should seek to inform trade policy-makers about the diversity of MEA measures that have implications for trade, and the diversity of policy justifications underpinning them. An understanding of the purposes, nature and diversity of MEA measures will help the WTO to avoid adopting a one-size-fits-all approach to trade-related measures in MEAs that undermines, rather than promotes, progress towards a more effective institutional framework for sustainable development.

Ultimately, clarifying the relationship between economic and environmental governance cannot be left to one institution alone. A multilateral process of meetings among environment, trade, and other officials, from governments, inter-governmental and non-governmental organizations, to examine the relationship between international economic and environmental governance may ultimately be required to ensure coherent development and implementation of international economic and environmental law. The coming 12 months, including the WTO's negotiations as well as the WSSD meeting and its follow up, offer opportunities for making headway.

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1. This note is based on the joint WWF-CIEL paper entitled Towards Coherent Environmental and Economic Governance: Legal and Practical Approaches to MEA-WTO Linkages, by Matthew Stilwell and Richard Tarasofsky.

2. WTO Doha Ministerial Declaration, paragraph 31(i) (WT/MIN(01)/DEC/W/1).

3. United States - Import Prohibition of Certain Shrimp and Shrimp Products, Recourse to Article 21.5 by Malaysia, AB-2001-4, WT/DS58/AB/RW (2001), at para. 153.

4. Report (1996) of the Committee on Trade and Environment (WT/CTE/1), at para. 178.