



Friends Of The Earth International
Position Paper, July 2003
email: info@foei.org
www.foei.org

Don't let the WTO trade away the environment

Shift WTO Negotiations
on Multilateral Environmental Agreements to the UN

Friends Of The Earth International
Position Paper, July 2003

Summary

Friends of the Earth International opposes the continuation of current WTO negotiations on the relationship between WTO rules and multilateral environmental agreements (MEAs). In Cancun governments must agree to stop the negotiations, as the WTO should have no rule making competence over international environmental governance in general and specifically not over MEAs. Instead the negotiations about the relationship of WTO rules and MEAs **should** be transferred to the United Nations, building on and strengthening existing initiatives by UNEP and other UN agencies.

Since the UN has been mandated to ensure the coherence between socio-economic development and the environment, it must be the UN's task to ensure that international trade does not adversely affect sustainable development and that multilateral trade rules are in accordance with the rules set out in multilateral environmental agreements.

Multilateral Environmental Agreements and The WTO - the Doha mandate

Paragraph 31 (i) of the WTO's Doha Ministerial Declaration mandates negotiations on the relationship between existing WTO rules and specific MEA trade obligations. The negotiations take place in Special Sessions of the WTO's Committee on Trade and Environment (CTE), as mandated by the Trade Negotiation Committee in its meeting in February 2002. They are scheduled to be concluded by 1st January 2005.

There are approximately 200 multilateral environmental agreements in place today, a number of which contain provisions related to trade and trade rules. In addition, trade measures constitute one of the most important instruments for effective national implementation of MEAs. The CTE's task is to clarify the relationship between these trade obligations and WTO rules.

Some Member states have suggested focusing on the relationship between the WTO and those six MEAs whose trade obligations are considered to be 'specific' and 'mandatory' in nature. Other countries propose to focus not only on specific and mandatory trade obligations but to include the national trade measures used to implement MEAs as well. As a result, the discussion currently underway in the WTO is focusing primarily on the following MEAs and the 'specific trade obligations' they establish, although it has not ruled out a broader approach:

1. The Montreal Protocol, which regulates the production, consumption and export of substances which damage the ozone layer (chlorofluorocarbons - CFCs);
2. The Basel Convention which controls trade or transportation of hazardous waste across international borders;
3. The Convention on International Trade in Endangered Species (CITES);
4. The Cartagena Protocol on Biosafety, which regulates trade in genetically modified organisms;
5. The Stockholm Convention on Persistent Organic Pollutants; and
6. The Rotterdam Convention on the Prior Informed Consent Procedure (PIC) for Certain Hazardous Chemicals and Pesticides in International Trade.

In addition, para 31 (ii) mandates negotiations on procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status.¹

The current state of play

Most of the intergovernmental discussions since the Doha decision to negotiate on the relationship between MEAs and trade rules has focused on how to structure the negotiations. The principle question has been *how to define a specific trade obligation* (STO). Whereas most countries support the initial proposal of Australia to look at specific and mandatory trade provisions only, some countries, led by the EU and Switzerland, are in favour of a broad definition which includes national implementation measures, Conference of the Parties (COP) decisions and other MEAs such as the Convention on Climate Change and the Kyoto Protocol.

¹ In addition, to the negotiations on MEAs, governments have launched negotiations in para 31 (iii) on eliminating tariffs and non tariff barriers on environmental goods and services. See FoEI paper: Sale of the Century: Services. the implications of current negotiations, available at http://www.foe.co.uk/resource/reports/qatar_services.pdf

These apparent details could have extremely important consequences for MEAs. For example, the use of trade measures that are left to the discretion of MEA members could be deemed to be WTO-inconsistent. So too could decisions taken by the MEAs' COPs that are not codified in annexes or protocols or ratified by the full membership.

In general, there is a very significant risk that the negotiations could result in the WTO:

- setting rules or criteria for the use of trade obligations in current and future MEAs;
- defining a set of MEAs, or a set of specific trade obligations, that are WTO-consistent and thereby deeming others to be WTO-inconsistent regardless of their merits;
- making provision for WTO supervision of national implementation of MEAs resulting in a limitation of governments' rights to regulate in favour of the environment; and/or
- setting rules that may effectively prevent the adoption or implementation of MEA-mandated trade measures by any WTO Member or MEA Party.

The alternative conceptual approach, asking for a political statement about the relationship between the WTO and MEAs, as proposed by the EU and Switzerland, is also unlikely to offer any safeguards for MEAs. The main reason for this is that the WTO will never decide any wording that would go beyond "mutual supportiveness", which is effectively the status quo. The WTO would certainly not put environmental rules above trade rules. A statement about mutual supportiveness will mean little should a conflict between a MEA and a WTO agreement arise.

In short, whatever approach is taken, no 'safety net' for MEAs is likely to be forthcoming from the CTE's negotiations. This view is supported by the fact that only a few MEA Secretariats are allowed to follow the negotiations directly and even then only on an *ad hoc* basis. They need to be reinvited for every meeting and it takes only one objection from a member state to exclude them all together. Furthermore the MEA secretariats may only speak when addressed or at the end of the session. They are therefore reportedly extremely frustrated with the whole process: "It was an experiment' [an] official said of a CTE meeting], 'we listened and were given an opportunity to speak at the end. But we do not want to be there just to legitimize an eventual WTO decision.'" (Bridges, Vol 7, Number 16, 7 May 2003)

Implications

The current WTO negotiations on the relationship between multilateral environmental and trade rules are entirely unsatisfactory. As the negotiations allow the WTO to encroach upon areas of both international and national environmental policy - in which it has no competence - the most likely outcome will be the subordination of international environmental governance to economic and trade considerations.

WTO rules and the market-oriented principles they promote have in many cases been at the root of many environmental and social problems because they promote increased resource use and global transport whilst perpetuating inequitable terms of trade. This further adds to the ecological debt that developed countries owe to the people in developing countries. In contrast the explicit goal of MEA's is the development of sustainable societies, an objective that is considerably broader than that of the WTO. While MEAs often reflect business interests, MEA *trade measures and obligations* nevertheless can play a major role in ensuring that key specific objectives of MEAs are met and they are certainly amongst the most effective instruments for national implementation.

Looked at in this light, the WTO and MEAs can be seen to be working in opposite directions and it is therefore unacceptable for trade rules (often the source of the problem) to take precedence over MEAs (which are intended to cure the problem).

Are the negotiations on MEAs a negotiating chip?

All negotiations mandated by the Doha ministerial conference are part of a "single undertaking", meaning that the negotiations are conducted as a single package and gains in one negotiating area may be balanced by concessions in other negotiating areas. The negotiations on the WTO/MEA relationship are therefore conducted in the context of "tit-for-tat" economic bargaining. Governmental positions on the relationship between WTO rules and specific trade obligations set out in MEAs may therefore easily be (mis)used as a bargaining chip to secure economic benefits in other negotiating areas.

Almost all negotiations in the WTO are in deadlock at the moment. Among these, the agriculture negotiations have probably been the most controversial, with various governments demanding increased market access for their agricultural exports and/or increased protection for their domestic agricultural markets, particularly of an intransigent European Union. Tying for second place are the vexed issues of whether the US should be allowed to backtrack on its Doha agreement to allow developing countries increased access to cheap generic medicines; and whether the European Union's proposals to introduce new issues such as investment into the WTO will finally be accepted by reluctant developing countries.

Clearly, the environment can not be said to be at the top of any country's wish-list nor is it a priority issue for any delegation in Cancún. There is therefore every chance that even trade negotiators will prioritise their interests in other sectors, notably agriculture or investment, over the MEA negotiations.

International policy-making that affects international environmental governance should not be done within the context of the "tit-for-tat" economic bargaining process of the WTO. The negotiation and use of MEAs to address global environmental problems in support of sustainable societies is an essential pillar of international governance. MEAs must not be subordinated to trade rules and their autonomy and authority must be recognized.

Recommendations

Considering the risks for international environmental governance engendered by WTO negotiations under paragraph 31(i) of the Doha Ministerial Declaration, Friends of the Earth calls on governments meeting at the 5th WTO's Ministerial to recognize these risks and take the initiative to halt the WTO negotiations on the relationship between WTO rules and MEAs and to transfer them to the United Nations immediately. WTO member states should recommend the UNEP Governing Council to initiate negotiations on the relationship between WTO rules and MEAs, building on and strengthening existing initiatives and providing an appropriate platform for the negotiations.

In addition, governments must recognize that it is essential to establish a mechanism of international environmental governance that is independent of the WTO and that therefore:

- countries are not prevented from complying with their MEA obligations due to WTO rules or other economic interests;

- the treatment of non-MEA parties vis-à-vis MEA trade provisions is determined solely by the provisions of the MEA concerned;
- MEAs' compliance and dispute settlement mechanisms are reinforced;
- relevant provisions of MEAs are reformulated to ensure that they effectively protect the environment and promote social justice;
- only the UN has the authority to consider and adjudicate on any potential and actual conflicts between the two governance systems; and
- information exchange arrangements between environmental bodies and the WTO need to be improved and institutionalized

Critically, WTO member states must not permit international environmental governance (through the MEAs) to be made subject to economic and trade considerations. Nor should they allow the WTO to encroach upon areas of international policy in which it has no competence. To this end, governments must not mandate the WTO to:

- set rules or criteria that might in any way define or restrict the use or national implementation of any trade measures agreed to in MEAs;
- set rules or criteria for national implementation of MEAs resulting in a limitation of government's rights to regulate in favour of the environment, such as through *least trade restrictiveness tests*;
- define a set of MEAs, or a set of trade measures, that are WTO-consistent thereby making others WTO-inconsistent regardless of their merits;
- agree to any principles other than those that clearly recognize the primacy and authority of MEAs.

In order to achieve this goal governments meeting at the 5th WTO's Ministerial must:

- grant UNEP and the Secretariats of MEAs with trade-related provisions, objectives, or obligations permanent observer status in all relevant bodies of the WTO.
- call for an independent, comprehensive and participatory social and environmental impact assessment of trade liberalization to ensure that all WTO negotiations reflect and address environmental and development concerns. Such an assessment needs to be carried out before the launch of any and all trade negotiations by UNEP and other appropriate UN institutions. As outlined in paragraph 51 of the Doha Ministerial Declaration, the Committee on Trade and Development and the Committee on Trade and Environment shall each act as a forum to 'identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.' In order to do so, an independent review of WTO decisions and rules is necessary to determine whether they support and promote the development of sustainable societies and to ensure that they are compatible with existing UN treaties on the environment and human rights in general. Governments should also undertake national independent sustainability impact assessments. Northern governments must provide capacity building and technical assistance for them.

Friends of the Earth International
e-mail: info@foei.org
<http://www.foei.org>