

WTO members have set out for an undeniable need for reflection on environmental issues in the context of trade, while at the same time recognise that any such order must embrace the interests of developing countries. The Doha Declaration sets out a considerable number of goals, calling for: enhancement of the existing relationship between WTO agreements and trade measures within multilateral environmental agreements (MEAs), liberalisation of trade in environmental goods and services (EGS), technical assistance and capacity building advancement. Simultaneously, attention had to be paid to relationship with the WTO TRIPs agreement, eco-labelling and the effect of environmental measures on market access. It is ambiguous as to whether negotiations will be able to accomplish such a vast range of objectives.

The primary issue is to related WTO agreements with trade-related provisions in MEAs, which should have a knock-on effect as to whether MEAs can be properly incorporated in the governance of trade with regard to instances where trade and the environment overlap.

MEAs have never been covered in WTO trade disputes, even where disputes concern environmental subjects such as the Canada-Asbestos and US Shrimp-Turtle cases. The WTO law only takes into account trade concerns, although Article XX of the GATT (General Agreement on Tariffs and Trade) allows governments to restrict certain trade when that harms human, animal or plant life. However, governments are allowed only to put in place measures to protect environmental concerns that are of minimal hindrance to trade.

Contemplation on MEAs

Consensus amongst WTO members was achieved to include only trade measures explicitly provided for and mandatory under MEAs in negotiations, which were referred to as Specific Trade Obligations (STOs). After much deliberation members agreed to discuss STOs within six MEAs.

Three of those MEAs came into existence before the WTO agreement came into force and hence their regulations maintain little resemblance to WTO law. This may cause more difficulty in combining their STOs with WTO measures, as the language is dissimilar in the agreements (see the table below).

Table as of 16/Feb/05	CITES	Montreal Protocol	Basel Convention
Date of Signature	3 March 1973	16 September 1987	22 March 1989
Entry into force	1 July 1975	1 January 1989	5 May 1992
Parties	167	188	163
WTO Members	136	145	130

There is an overwhelmingly large membership to these MEAs, thus accommodating their STOs within WTO law should not be a cause of concern to WTO members. At the same time, STOs in the following new agreements have been identified for consideration.

Table as of 16/Feb/05	Biosafety Protocol	PIC	POPs
Date of Signature	29 January 2000	10 September 1998	22 May 2001
Entry into force	11 September 2003	24 February 2004	17 May 2004
Parties	111 (as of 10 Dec 2004)	80	93
WTO Members	90	68	78

PIC: Rotterdam Convention on Prior Informed Consent; POPs: Stockholm Convention on Persistent Organic Pollutants

It has been argued that the recently enforced MEAs encompass more compatibility with WTO language and rules than the older MEAs. However, these recent MEAs do have less WTO members as parties and of them few are developing countries. It is important to note that any multilateral trade and environment agreement between STOs (within MEAs) and WTO law should only include such STOs where there is universal agreement.

This is a very delicate matter, as it is known that environmental NGOs from rich countries are stronger than those in poor countries and may be able to lobby their interests at the WTO against developing countries' environmental practices. Trade sanctions could be placed for environmental reasons but harm trade in developing countries causing stagnation in development and be harmful to livelihood concerns.

In addition, the US have not ratified any of the recent MEAs. US along with Argentina, Canada and China have not signed the Biosafety Protocol, which initiates trade measures to restrict imports of agricultural crops based on biotechnology. Disregard of MEAs by such powerful members could cause their failure.

Questionable Possibilities for Negotiations

Article XX of the GATT agreement could be amended to include a new exception, covering measures taken pursuant to the specific provisions of an MEA - complying with an understanding on the relationship between measures under MEAs and WTO rules.

A new WTO agreement on MEAs, similar in status to other WTO agreements can be asserted. The advantage of this approach is that it avoids attempts to amend existing rules, with probable implications for a wide range of topics like definition of MEA, definition of trade measures. Also it would create a very clear set of rules, which would apply only to MEA -trade relationships.

However, the developing countries' export interests must be considered if such an agreement is to be made. Many developing countries often lack the ability to achieve an MEA's objectives, which may cause far greater problem for the poor countries.

Liberalisation of EGS

Members are considering the unification of similar issues in 'List' approaches submitted by many countries and the 'Environmental Project Approach' (EPA) proposed by India.

Amendment needed in the List Approach

The US, EC, Switzerland, New Zealand and Canada based their lists on the APEC and OECD listings of environmental goods. However, such identified goods are beneficial to developed-country exports to a large extent and offer little to developing countries' interests.

Furthermore, environmental goods identified in APEC and OECD listings should include goods having dual end uses, therefore potentially leading to liberalise goods that have no environmental end use effects.

A possible solution to the dual end use EGS could also be provided by another fusion of the List Approach and the EPA. After a list of EGS is formulated, products, which might have possible dual end use, may be identified. Thereafter such dual end use products might be traded as a total package solution by connecting the same with other environmental goods in a manner producing a direct environmental end product or solution.

EPA must merge with the List Approach

A proper consideration of the EPA 'criteria' proposed by India must be considered thoroughly. Currently it is circumspect that the criteria may need to differ depending on the environmental project chosen, which could lead to delay on consensus.

Also there is a demand for further research on how successfully the EPA would benefit developing countries' export trade, as opposed to the List Approach.

Liberalise EPPs with caution in regard to their PPMs

UNCTAD suggested the inclusion of Environmentally Preferable Products (EPPs) in the classification of EGS, such as organic products, non-timber forest products and related natural products. This would imply an attractive enlargement of the global market of EGS for developing countries, as they boast comparative advantage in these sectors and are seen to be the principal exporters. The global EPP market is estimated to be around US\$28bn in 2000.

However US, China and Korea argue against environmental goods being selected in relation to their production and process methods (PPMs), which would include EPPs. The PPM issue is difficult to deal with under the WTO law, as a member is prohibited in discriminating between goods based on their PPMs.

On the other hand, Brazil supports the need for EPPs and so does EC, New Zealand, and Switzerland. There is a need to weigh the potential of EPP market liberalisation against possible discrimination towards developing countries' trade in goods based upon their PPMs.

Liberalise EGS that enhance MEA objectives

EC and Switzerland suggest that in ascertaining the extent of low and high environmental impact, goods should be determined via the governance of MEAs. A List Approach could be adopted as a total package solution in answer to MEA objectives. Once certain identified goods and services can significantly tackle trade, environment (based on MEAs) and development issues. These can then be listed in the form of a package solution rather than as per sectors.

Environmental services are isolated

More detailed discussion is needed on modes of supply commitments, especially modes 3 (commercial presence) and 4 (entry and temporary stay of service suppliers), since trade in environmental services could be significant through these modes.

Limitations on commercial presence should be reviewed, such as licences to provide environmental services. A reduction in barriers in the movement of semi-skilled professionals in environmental services (which is highly labour intensive) should be considered for the benefit of all countries.