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Trade and environment in the architecture of international governance

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Report on

Trade and Environment in the

Architecture of International

Governance

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Trade and Environment in the Architecture of International Governance

Preface

The Concerted Action on Trade and Environment (CAT&E) is designed to provide an opportunity for the large and growing community of European researchers working on trade and environment issues to meet regularly, to discuss research hypotheses and methods, to review results, and to develop new lines of co-operative research. CAT&E will launch a dialogue with policy makers at all levels. It aims to create a process that can document the progress of research and generate new research impulses in this area. It seeks to advance the resolution of current conflicts between trade and environment. The information obtained in the course of the Concerted Action is annually summarised in state of the art reports and bibliographies in a fashion that is useful to both researchers and policy makers. The bibliographies focus on the most recent literature. The reports serve as an input to CAT&E's annual members' meetings and open conferences. To structure the reporting and discussions, the following themes have been identified initially (in random order; the theme of the present paper is underlined):

- ✓ Subsidies
- ✓ Government Procurement
- ✓ Investment
- ✓ TBT, SPS, and Labelling
- ✓ Trade and Development
- ✓ Trade, Environment and Human Rights
- ✓ Trade in Commodities
- ✓ Implementation Procedures
- ✓ Trade in Services
- ✓ Intellectual Property Rights
- ✓ Trade and Multilateral Environmental Agreements
- ✓ Dispute Settlement
- ✓ Transparency and Participation
- ✓ Sustainability Impact Assessment of Trade Agreements
- ✓ European Trade Policy Development
- ✓ Trade and Agriculture
- ✓ Trade, Environment and Labour
- ✓ Trade, Environment, and Public Health
- ✓ Science and Precaution
- ✓ Trade and Environment in the Architecture of International Governance.

Introduction and scope of the paper

At the international level, no single democratic or legitimate authority is able to reconcile different views and take final decisions. The international framework of global environment and economic concern is characterised by collective decisions taken in numerous institutions with differing state members and processes of norm elaboration. We need to find enlightened ways of managing our ecological interdependence (Esty, 2000), our economic interdependence and the numerous links between the two. This management has to be defined through the concept of governance, which means to govern without government (Rosenau & Czempiel, 1992). Governance is more than legal arrangements between states: it also deals with the participation of non-state actors. For example, eco-labelling and fair trade show us that a governance system can emerge from non-state initiatives. Despite this example, the debate on governance is mainly focused on states and intergovernmental organisations (IGOs) as the principal actors in international society.

There is growing recognition among policy makers and the public at large that civil society plays an integral role in international governance for sustainable development. Although this seems to be evidenced by the MEAs that identify public participation as a prerequisite for promoting the goals of sustainable development, it is not for the WTO. The importance of broad public participation—often achieved through civil society involvement—has emerged as a consistent theme in many international agreements for sustainable development, from the Stockholm Declaration (Part I, paragraph 7) all the way through to the Johannesburg Declaration on Sustainable Development (paragraph 26). The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) represents a new precedent for participation.

Both global trade and environmental governance have their own history and dynamic (UNEP and IISD, 2000) and have to be part of the sustainable development governance system. Trade rules on the one hand, and environmental rules on the other, result from two different approaches. Trade governance is based on a central institution, the World Trade Organization (WTO), which is the successor to the General Agreement on Tariffs and Trade (GATT), established in the wake of World War II. The WTO is an institution for the negotiation and implementation monitoring of global rules of trade between nations. The aim of the WTO is to promote a trading system which is more predictable, free, competitive, beneficial for less developed countries and non-discriminatory. International environmental co-operation has developed considerably—particularly during the last thirty years—and this has led to many multilateral environmental agreements (MEAs) being signed. Each of these MEAs, which touch upon various aspects of the environment, was elaborated with a specific logic and its own dynamic. They currently form an international governance system that is complex and evolutionary. International environmental governance stems from a regulation approach: it affirms the need to set up protection or support policies (by means of taxes, subsidies, standards, etc.) for the supply of certain public goods and services (environment).

Conflicts may emerge between trade and environmental regimes. This hypothesis has been proved true on several occasions. Clarifying the relationship between these two

elements of the international architecture is therefore a difficult task (Cameron et al., 1994). This debate is far from clear, mainly because of the diversity of scholars' objectives and the confused characterisation of this relationship. It is not easy to determine whether different proposals share the same objective because they do not use the same terminology, and most of them do not clarify the terminology they do use. We have to deal with terms such as harmonisation, coherence, compatibility, integration and linkage without knowing exactly what they cover.

This lack of integration and coherence of the international system is particularly obvious in the case of trade and environment issues and has now been studied for several decades. The debate resurfaced—in the 1990s, in particular—in conjunction with a number of high-profile environmental disputes in the GATT and the creation of the WTO. Efforts to reform the international environmental and trade architecture mobilised researchers, public officials and social actors but the main debate was conducted under the auspices of UNEP and in the major UN Conferences, UNCED in 1992 and WSSD in 2002. UNEP organised different meetings of groups of international environmental experts, approaching the debate from the perspective of the need for institutional environmental reform. The Rio+5 meetings in 1997, despite their poor output, provided an occasion for the heads of state of Brazil, Germany, Singapore, and South Africa to call in a Joint Declaration for a global UN organisation for environmental questions. On September 23, 2003, at the United Nations General Assembly, France's President Chirac called for the creation of a United Nations Environment Organisation (UNEO). Early in 1998, Secretary-General Kofi Annan established a Task Force on Environment and Human Settlements, chaired by UNEP Executive Director Klaus Töpfer. This Task Force recommended a strengthened UNEP and a more efficient international environmental regime. During the preparation of the WSSD and in response to Resolution 55/200 dated December 20, 2000, UNEP relaunched the debate on international environmental governance with the aim of redefining its role as leader in the management of environmental problems for the ten years to come. However, as the German Advisory Council on Global Change mentioned, "repeated calls have been made in recent years for a comprehensive redesign of the international institutional and organizational architecture. No consensus on the necessary steps has yet been found" (WBGU, 2001: 132).

The potential for conflict between trade and environment is theoretically real (Dale, 1999) and may have increased as a result of recent decisions by some countries not to join new environmental instruments. Meanwhile, trading measures taken in the name of the MEAs have not yet been contested within the WTO. Keer (2002) puts this situation down to the low volume of international trade covered by MEA trade-related measures. The creation of the Committee on Trade and Environment (CTE) (Sørensen, 2001), which led to a formal mandate for negotiations at the Doha Ministerial Conference and through the ongoing negotiation of new trade obligations without adequate sustainability assessment (Stilwell & Tarasosky, 2001), shows the necessity for the WTO to understand environmental issues and find solutions that can help maintain the principles of the WTO's trade system.

This paper identifies the relevant proposals for better coherence based on research and briefly surveys the methodological approaches used for it.

Identification of relevant research hypotheses

There are three main ways of addressing the question of coherence between the global trade and environmental regimes:

- Analysing WTO consistency of trade measures contained within MEAs (i.e. the fear that trade-related measures in MEAs serve protectionist ends).
- Analysing whether a dominant global trading system overrides international environmental treaties.
- Analysing articulations and synergies between multilateral governance systems and other initiatives based on partnerships between actors, with or without their countries' participation: ad hoc regional and international initiatives (NEPAD), 'coalitions of the willing' (Kimberley Process), public-private initiatives (Global Compact), and private initiatives (Forest Stewardship Council).

Several areas of potential conflict have been identified: the precautionary principle, TRIPs, investment, trade in services, agriculture, like products and processes and production methods (capacity to discriminate between products on the basis of how they are produced in the exporting country), eco-labelling and other related information-based measures.

Possible ways to improve the international architecture can be sought from two different angles. The first is the possibility of internal reform of the WTO (Brack, 2000). The second is better co-ordination between the WTO and other legal systems (Caldwell, 1998). An interesting middle way would be to emphasise research on the Appellate Body of the WTO. The decision of the Appellate Body in the Shrimp/Turtle case developed an interpretation of the WTO agreements that is in conformity with the goals of MEAs by confirming that principles of international law require trade and environmental agreements to be interpreted in a mutually consistent manner (Brack, 2003; Mann & Porter, 2003).

Some scholars emphasize the participation aspect of the governance issue, which can be considered to be an average approach in that it implies some change in the WTO process and better co-ordination with the well established and legitimate non-state actor participation process in environmental institutions.

Other research hypotheses on governance matters focus on the extent to which the need for coherence and integration affect institutional design (Kimball, 2000). The main hypothesis discussed and commented on in the literature is whether it is possible to develop institutions for sustainable development from existing international environmental regimes or if it is necessary to begin with existing economic governance regimes and then consider whether they are adequate to the task or, if not, how they can be adapted to make them more adequate (Biermann & Bauer, 2004).

Starting here, one can infer more detailed research questions concerning institutional design aimed at resolving tensions between trade and environment concerns:

- Inter-agency co-ordination: what kind of international partnership could strengthen financial and technical co-operation, information-sharing, consultation, reporting, etc.? (Labelle, 2001; Brack & Hyvarinen, 2002);

- Co-ordination with non-governmental actors: can/should civil society, the expert community, private business and the public policy network participate in the debate? If so, in what way? (Ecologic & FIELD, 2002; Esty, 1997);
- Co-ordination of agenda setting, issue management and implementation both at the global and the regional level (Von Moltke, 2001);
- Creation of a new global environmental organisation as a counterpart to the WTO (Biermann & Bauer, 2004; Charnovitz, 2002);
- Importance of capacity building (investment, developing national infrastructure).
- Performance/progress review: Importance and use of sustainability impact assessment (Kirkpatrick & Lee, 2002) in implementation and negotiation;
- Reinforcement of dispute settlement process and non-compliance mechanisms in MEAs (Brack, 2001; Edwards, 2001; Marceau & González-Calatayud, 2001).

Survey of methodological approaches

The methodological approaches for addressing this lack of coherence are essentially legal and political analysis and a certain amount of economic research (Whalley & Zissimos, 2002). Although the governance structure of global trade (and especially the WTO) is well described in the literature, the global environmental architecture is more difficult to apprehend from every angle. Legal analysts approach the question from the perspective of a potential conflict, by identifying the conflict or advancing solutions to resolve it. Political analysts approach the question from the perspective of regime efficiency, institutional arrangements or the feasibility of the options suggested. Their analyses consist essentially of identifying the current system's shortcomings and reasons for its lack of effectiveness (too many meetings, loss of policy coherence, reduced impact of the limited available resources, time frame, burden on poor countries, geographical dispersion, insufficient human resources, insufficient financial resources, overlap of mandates and competition) so that they can infer a number of recommendations (UNEP, 2001).

There are three key gaps in the research:

- The problem of co-ordination between the multilateral institutions themselves (WTO, UNEP, IMF or MEAs) and between these multilateral institutions and other initiatives based on partnerships (Global Compact, NAFTA, Forest Stewardship Council). How legitimate and effective are these governance systems and how can this be evaluated? Are innovative initiatives efficient and legitimate and are they reproducible on a larger scale?
- Given the different scales of the issues, negotiation and implementation, what are the best possible articulations between the various levels of governance and potential complementarities?
- What tools are available at the different negotiation stages (agenda setting, decision making, implementation and evaluation) to reinforce the effectiveness and legitimacy of governance systems (SIA or other)?

Conclusions

The international character of environmental issues and the need to integrate them with economic policies create major challenges for governance. International society is notably short on effective institutions to either co-ordinate overlapping policies or to address

policy conflicts when they arise as they should. The lack of such institutions has created an impasse that has not yet been resolved (Biermann et al., 2003).

The problems of interventional scale complicate the debate. Defining where the global stops and the local begins for each governance system and for the synergy between the two is not yet well known.

Globally speaking, research in this field is characterised by normative approaches (Le Prestre, 2002). The arguments put forward are more a matter of ideological conviction than empiric deductions capable of describing what actually takes place.

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