MULTILATERAL ENVIRONMENTAL AGREEMENTS AND WTO RULES
Multilateral environmental agreements and WTO rules

DMD paragraph 31 [Trade and environment]: “With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:
(i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
(ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;”

DMD paragraph 32 [Trade and environment]: “The outcome of […] the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.”

DMD paragraph 30 [Dispute settlement]: “We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.”

It has been repeatedly recognised by the international community that “transboundary” or global environmental problems demand multilateral solutions. This has led to the negotiation of several hundred multilateral environmental agreements (MEAs), such as the Kyoto Protocol governing climate change or the biosafety protocol regulating trade in genetically modified organisms. WTO rules, on the other hand, are aimed at meeting challenges that are different from those addressed by MEAs – namely those associated with liberalising international trade.

Where tensions between MEAs and WTO rules arise, these need to be addressed through a process of assessing how different policy objectives will help us to address different global challenges. This process needs to draw on a broad range of expertise and stakeholders. But today there is too little acknowledgement that such tensions even arise. There is, in some quarters, an insistence that WTO rules aimed at “progressive liberalisation” are supportive of other policy objectives, such as those pursued by MEAs. But what happens when they are not?

Since 1993, WTO Members have debated whether it is necessary to clarify the relationship between WTO rules and MEAs – and if so, how this might be achieved. The negotiating mandates agreed under Doha Ministerial Declaration paragraphs 31(i) and (ii) were an attempt to address a small part of a much wider and more complex set of issues. Being limited to MEA parties, and unable to affect WTO existing rights and obligations, DMD paragraph 31(i) leaves little scope for resolving the wider set of issues – especially those related to MEA non-parties.

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1 See further WWF, “Multilateral Environmental Agreements in the WTO: Negotiations under Para 31(i) of the Doha Ministerial Declaration: An Analytical Paper” prepared by FIELD, March 2002, and subsequent analysis commissioned by WWF from FIELD.
Proposals submitted in the negotiations under DMD paragraph 30 to clarify the WTO’s main agreement governing the settlement of disputes – the Dispute Settlement Understanding (DSU) – might, for better or for worse, open up discussion on the wider set of issues that have been excluded from the DMD paragraph 31(i) mandate. Ultimately, however, it should fall to a purpose-built international forum to examine the WTO-MEA relationship, as part of a coherent approach to addressing global challenges.

Some proposals for new leadership
In particular, governments should use their communications materials and political interventions to:

- highlight that the current approach to addressing a range of global challenges is not coherent; that the pursuit of a particular set of economic policies (e.g. liberalisation) is often wrongly privileged above measured consideration of how best to tackle global challenges in a co-ordinated way.

- call for a process, orchestrated by a purpose-built international forum, to examine the relationship between multilateral environmental agreements (MEAs) and WTO rules, as part of a coherent approach to addressing global challenges.

Some proposals for modest progress
In the course of the negotiations, governments should agree:

- to reiterate the tenets listed in the box below, all of which are based on existing international consensus, as they apply to all MEA measures and to MEA parties and non-parties, to provide guidance to WTO Members and the Dispute Settlement Body.

- that the WTO Dispute Settlement Body will not entertain disputes arising out of the implementation of MEAs until all avenues for resolving the dispute under the MEA in question have been exhausted.

- to grant to MEA Secretariats and UNEP observer status in WTO bodies and to improve information exchange between international environmental organisations (including MEA Secretariats) and the WTO.

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2 See, for example, the US submission (TN/DS/W/74) proposing discussion on the use of international law and “gap filling” by the adjudicators of WTO disputes.
No backsliding!
If nothing else, governments should:

– not accept any attempts under paragraphs 31(i), 31(ii), 30, or any other area of negotiations, to undermine, whether explicitly or implicitly, the tenets listed in the box below, all of which are based on existing international consensus.

– not accept any attempts to prejudice the rights of MEA parties.

– not accept any attempts to privilege some MEAs, or some MEA measures (e.g. those based on specific trade obligations), over others.

– not accept any attempts to make any provision for WTO oversight of the implementation of existing MEAs or the negotiation of future MEAs.

– not accept any attempts to remove from the work programme of the Committee on Trade and Environment regular sessions the wider set of issues arising out of the relationship between MEAs and WTO rules, which have been discussed under Items 1 and 5 of the Marrakesh Work Programme mandated by the 1994 Ministerial Decision on Trade and Environment.
### Ten established tenets governing the WTO-MEA relationship

1. Transboundary or global environmental problems demand multilateral solutions. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.
2. Multilateral environmental policy must be made and administered within multilateral environmental fora, and not in the WTO, in accordance with each body’s respective expertise and mandate.
3. Trade measures based on specifically agreed-upon provisions are necessary in certain cases to achieve the environmental objectives of a multilateral environmental agreement (MEA).
4. A range of provisions in the WTO can accommodate the use of trade-related measures needed for environmental purposes, including measures taken pursuant to MEAs. This accommodation is valuable and it is important that it be preserved.
5. WTO rules should not be interpreted in “clinical isolation” from other bodies of international law and without considering other complementary bodies of international law, including MEAs and internationally agreed principles.
6. Policy co-ordination between trade and environment officials at the national level is desirable and necessary to achieve the individual as well as the joint objectives of WTO Member governments in the areas of trade, environment and development.
7. Co-operation between the WTO and relevant MEA institutions is desirable and necessary to enhance understanding of the relationship between trade and environmental policies.
8. If a dispute arises between WTO Members over the use of trade measures applied pursuant to an MEA, they must first seek to resolve it through the dispute settlement mechanisms available under the MEA.
9. There is a benefit to having all relevant expertise available to WTO panels and the Appellate Body in cases involving trade-related environmental measures, including trade measures taken pursuant to MEAs.
10. Both the WTO and MEA dispute settlement mechanisms emphasise the avoidance of disputes, including through parties seeking mutually satisfactory solutions.

A compilation of the relevant documents establishing these tenets is available as a separate document on our website [www.panda.org/trade](http://www.panda.org/trade)

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If you would like to find out more about WWF’s work on trade policy, please be in touch on trade@wwfint.org
WWF's mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by:

- conserving the world's biological diversity
- ensuring that the use of renewable natural resources is sustainable
- promoting the reduction of pollution and wasteful consumption