



Environmental Governance

It is not clear that the provisions made in internationally negotiated environmental agreements are safe from challenge under WTO rules. Although the WTO has agreed to look at this issue, the negotiations have a very narrow scope – and may even lead to a worsening of the situation.

Multilateral environmental agreements (MEAs), for example on climate change or dangerous chemicals, are set to play an increasingly important role in delivering sustainable development. While there is considerable overlap between many of these MEAs and subjects covered by WTO rules, for example restrictions on trade in endangered species, there is lack of clarity over the relationships between WTO rules and MEAs. The controversy over whether or not a WTO dispute might be brought over trade measures taken under an internationally negotiated MEA has been long-running. This lack of clarity threatens many of the important provisions of these MEAs.

In the run up to the last WTO Ministerial Meeting at Doha, WWF called for a clarification of WTO rules to recognise that MEAs and the WTO are equal bodies of law, that each should respect the responsibilities of the other, and consequently that MEAs (rather than the WTO) should have primary competence to determine the legitimacy of environmental policies. At Doha the Committee on Trade and the Environment (CTE) was instructed to consider a resolution to aspects of this problem. However, the mandate given to the CTE was too narrow to offer any real hope of addressing the broader issues of the relationships between the WTO and MEAs in the delivery of global environmental governance. At Doha, WWF received assurances that attempts would be made to launch a discussion of these broader issues through the World Summit on Sustainable Development process which culminated in Johannesburg last September. These assurances were not honoured. Rather, the limited pursuit of negotiations at the WTO was used at Johannesburg as an argument for avoiding substantive discussions on the broader issues.

While there is a need for clarification of the relationship between the WTO and MEAs, WWF is concerned that any agreement reached through the narrow negotiations in the CTE should not make the current inadequate situation worse by threatening to undermine the autonomous legal status of MEAs. WWF is particularly concerned that any negotiated clarification of the relationship between MEAs and WTO rules should take full account of the concerns of those government Ministers – from both developed and developing countries – who were supportive of the development of robust MEAs, and who in many cases identified the importance of building trade-measures into these MEAs.

What Should Happen at Cancún?

1. Observer status should be extended to MEAs (see separate ‘Observer Status’ briefing).
2. WTO Members should agree that disputes arising between Parties to an MEA should be addressed, in the first instance, through the MEA (this principle has already been accepted by the WTO’s Committee on Trade and Environment).
3. WTO Members should instruct the CTE to develop a strategy for supporting actors and processes engaged on the broader issues of global environmental governance outside the WTO. Specific attention would be given to UN institutions, MEA Secretariats, and developing countries – many of which were extremely supportive of the development of robust MEAs.