

*Enhancing Synergies
and Mutual Supportiveness
of Multilateral Environmental
Agreements and the
World Trade Organization*

A SYNTHESIS REPORT

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Over the past two years, UNEP has convened a series of five meetings between the Secretariats of the World Trade Organization (WTO) and various Multilateral Environment Agreements (MEAs). The process has sought to identify means to increase the complementary functioning of MEAs and the WTO, so as to promote sustainable development. The meetings were designed with close reference to the needs of developing countries, and were scheduled back-to-back with related inter-governmental meetings. Financial support was provided to enhance developing country participation, and civil society organizations participated alongside governments in the last four meetings.

Participants recognized that the international structures which govern trade and environment have grown up in relative isolation from one another. While there has to date been much emphasis on potential conflicts between trade measures used to implement MEAs and WTO rules, participants discovered a number of untapped synergies between the two regimes. Policy tools such as environmental assessment of trade policies, economic instruments for environmental protection and provisions on technology transfer could all make MEAs and the WTO work together, and jointly enhance their effective implementation.

Just as the two international regimes have developed and operated in relative isolation, so too have the various national-level departments and agencies charged with environmental, economic and development policy-making. There is a need for joined-up thinking on the part of these various national-level agencies and departments, as a prerequisite for more coherent international governance. In particular, consultations between relevant ministries at the national level should take place prior to key international meetings and negotiations.

The series of meetings identified a number of concrete steps that can be taken to increase cooperation and complementarity between the trade and environment regimes:

- Greater participation by MEA Secretariat staff in WTO regional seminars on trade and environment
- Obtaining observer status for MEA Secretariats in relevant WTO committees
- Enhanced information flow between the two regimes and training of officials to understand the respective regimes.
- Working together to avoid potential trade and environment disputes, and to ensure that efforts to resolve current disputes draw upon expertise in the environmental community.
- Identifying natural resources which might be exploited sustainably, thereby furthering economic, developmental and environmental ends.
- Enhanced cooperation with civil society.
- Joint efforts between MEAs, the WTO and UNEP to ensure more coherent and effective capacity-building for implementation of international agreements.

Emphasis was also placed upon three other policy tools which could enhance the mutual supportiveness of MEAs and the WTO: First, the use of environmental assessment of trade-related policies can help to strengthen implementation of MEAs. Methodologies for assessment are currently being developed by a number of governments and intergovernmental organizations, including UNEP. These hold out the prospect of addressing negative environmental impacts of trade and enhancing positive ones.

Second, an international working group has been established by UNEP to identify and design economic instruments and promote awareness and understanding of their use to achieve sustainable development objectives. These instruments can be designed to build synergies between MEAs and WTO agreements so as to support the implementation of both. Such tools include those which allow for more accurate pricing of natural resource use, and for the management of trade so that a higher proportion of profits are returned to the local communities from which the resources are drawn.

Third, both MEAs and the WTO contain provisions on technology transfer, which could be implemented in a complementary fashion. Increased access to environmentally sound technologies can assist developing countries in improving economic and environmental performance. Capacity-building to help developing countries develop and adapt technologies to meet their own requirements and development needs could further enhance the positive effects of such increased access. The relationship between provisions of the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS) and various MEAs could also be explored by UNEP, MEAs and the WTO, as means of enhancing access to environmentally sustainable technologies.

Realizing these complementarities and “synergies” between MEAs will require greater information exchange and collaboration between the secretariats of the respective bodies. Joint capacity building activities undertaken by staff from MEA and WTO Secretariats, engaging national officials from trade, environment and foreign affairs ministries, will accelerate realization of these synergies. Securing observer status for MEAs and UNEP, in all the relevant WTO bodies (e.g. of the CBD in the TRIPS Council and the Committee on Agriculture, and of UNEP in the General and TRIPS Councils), will also be a key to building complementary capacity building and other implementation oriented actions.

Achieving greater coherence between global economic and environmental governance is a crucial prerequisite for securing sustainable development. Preparations for the World Summit on Sustainable Development, and the summit itself in Johannesburg in September 2002 provide an important platform for reviewing the relationship between the regimes which govern international trade, environment and finance. The outputs of this series of meetings on MEAs and the WTO are therefore relevant to the Global Ministerial Environment Forum in Colombia in February 2002, the Preparatory Committees for the WSSD, and the Summit itself.

1. Introduction

The purpose of this paper is to summarize and synthesize the output of a series of UNEP-sponsored meetings, which have explored how to realize synergies and reduce potential tensions among trade and environmental policies, rules and institutions. Five meetings have taken place between June 1999 and June 2001 bringing together the Secretariats of the World Trade Organization (WTO), multilateral environmental agreements (MEAs) and UNEP, in most cases also with governments and NGOs. This synthesis is used to generate proposed next steps for this “MEA-WTO process” in the final section of this paper.

The Secretariats of the following MEAs have been represented at some or all of these meetings: the Convention on Biological Diversity (CBD), the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (SBC), the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), the Montreal Protocol on Substances which Deplete the Ozone Layer, the Multilateral Fund for the Implementation of the Montreal Protocol, the Convention on Migratory Species (CMS), the Convention to Combat Desertification (UNCCD), the UN Framework Convention on Climate Change (UNFCCC) and the UN Fish Stocks Agreement. The Interim Secretariats of the Rotterdam Convention on Prior Informed Consent and the Stockholm Convention on Persistent Organic Pollutants were also represented at most of these meetings.¹ Two regional seas agreements, namely the Barcelona and Cartagena Conventions, have been present at some of the meetings. The WTO and UNCTAD Secretariats have participated in all these meetings, which have been structured to provide a constructive, open and informal dialogue on concrete issues on the interface between MEAs and the WTO.

The process initially focused on the relationship between the WTO and UNEP administered MEAs. However, the Secretariats of some non-UNEP administered MEAs have chosen to become involved. The process remains open to all interested MEA Secretariats, whether UNEP administered or not.

This series of meetings stem from formal UNEP mandates, as well as decisions taken and statements made in other international fora, including the WTO. As part of an overall mandate on trade and environment, the 21st Governing Council of UNEP requested the Economics and Trade Unit of UNEP to promote understanding and dialogue about multilateral environmental agreements (MEAs), *inter alia*, to develop capacity to ensure that trade and environment policies are mutually supportive (GC 21/14). This request built on that of the 20th session of the Governing Council which mandated analytical studies on the relationship between trade measures contained in MEAs and international trade policy (GC 20/29).

The cooperation fostered between the WTO, MEA and UNEP Secretariats is also intended to respond to and complement insights gained from the work of the WTO’s Committee on Trade and Environment (CTE). The CTE’s Report delivered on the occasion of the Singapore WTO Ministerial Conference in 1996, noted that:

“WTO Agreements and multilateral environmental agreements (MEAs) are representative of efforts of the international community to pursue shared goals, and in the development of a mutually supportive relationship between them due respect must be afforded to both”.²

1 Almost all these MEA Secretariats, and the WTO Secretariat, have commented on this paper.

2 Report of the Committee on Trade and Environment (1996), (WT/CTE/1), 12 November 1996, para. 171, Section VII of the Report of the General Council to the 1996 Ministerial Conference, (WT/MIN(96)/2), 26 November 1996.

The purpose of this paper is to summarize and synthesize the output of a series of UNEP-sponsored meetings, which have explored how to realize synergies and reduce potential tensions among trade and environmental policies, rules and institutions.

Outputs from this MEA-WTO process are also of relevance to preparations for the World Summit on Sustainable Development (WSSD) that will take place in September 2002 in Johannesburg, South Africa.

The discussions, joint analysis and close collaboration between the WTO, MEA and UNEP Secretariats embody that mutual respect. The Elements of Cooperation agreed between the WTO and UNEP in November 1999 have facilitated this process. Arranging the meetings referred to in this paper back-to-back with CTE meetings has also enhanced the direct contribution that this MEA-WTO process has made to related discussions in the WTO. This synthesis paper will also contribute to the further development of the MEA-WTO process, discussions in the CTE, and was initially released immediately prior to the WTO's Ministerial Conference in Doha in November 2001.

Outputs from this MEA-WTO process are also of relevance to preparations for the World Summit on Sustainable Development (WSSD) that will take place in September 2002 in Johannesburg, South Africa. Environment ministers at the Global Ministerial Environment Forum in Malmö, Sweden pointed to the need to strengthen environmental institutions, and also of ensuring that the environmental perspective is taken into account in macroeconomic policy-making. They noted that the WSSD should:

“review requirements for a greatly strengthened institutional structure for international environmental governance...that has the capacity to effectively address wide-ranging environmental threats in a globalizing world.”³

Outputs from this MEA-WTO process, and this synthesis paper in particular, may thus provide a useful contribution to the fulfilment of those two mandates, and to decisions taken at the WSSD. This paper also provides governments, other international organizations and NGOs with an opportunity to comment on the next steps to be taken in this process.

2. Context and objectives of the MEA-WTO process

Two simple assumptions underlie this paper, and the process out of which it has been developed. The first is that international cooperation is the key to sustainable development, and that MEAs and the WTO are important instruments to achieve that cooperation. The second is that there are unrealized opportunities to make these institutions and their policies and legal frameworks work together more effectively in pursuit of sustainable development. This is because these institutions and frameworks have been developed separately from each other, and also tend to operate in isolation from each other, notwithstanding the fact that their governmental memberships are broadly the same. This situation has been created in part by a lack of coordination between economic, trade and environmental policy-makers at national level, albeit a situation that is beginning to be addressed.

This process has therefore identified existing and potential synergies between the MEAs' system contributing to global environmental governance, and the WTO's system contributing to global economic governance. This takes place in the context of preparations for the WSSD, including UNEP's ongoing initiative aimed at strengthening International Environmental Governance (IEG), mandated by its 21st Governing Council. While the policy-oriented assessment of IEG being undertaken in accordance with Decision 21/21⁴ focuses largely on enhancing cooperation and potential synergies between MEAs, there are issues which go beyond the mandate of Environment Ministries alone.⁵

3 Para 24, Malmö Ministerial Declaration from the first Global Ministerial Environment Forum in Malmö, Sweden, 29-31 May 2000.

4 Decision 21/21 on International Environmental Governance, taken at the UNEP Governing Council, 5-9 February 2001 (UNEP/GC.21/9).

5 Proposals of the President of the UNEP Governing Council for consideration of the Open-ended Intergovernmental Group of Ministers on International Environmental Governance, UNEP/IGM/3/CRP.1, para 4 (d), 8 September 2001.

Poverty can be an important cause of environmental degradation, which must be addressed in developing policy solutions that fully integrate trade, environment and development concerns.

These relate to the need to integrate environmental considerations into economic and social decision-making at all levels, which is also reflected in Chapter 8 of Agenda 21.

In seeking to enhance synergies between MEAs and the WTO it is necessary to take into account the needs and constraints of developing countries, and their need for technical assistance and capacity-building. This has implications for both the process of exploring the MEA-WTO interface, and the selection of foci within that interface. Thus, for example, UNEP has made a sustained effort to maximize developing countries' participation in this MEA-WTO process, including by scheduling meetings back-to-back with other related intergovernmental meetings and by providing financial support for participation. With regard to coherence, enhancing synergies between MEA and WTO provisions relating to capacity-building and technology transfer have been cited as important potential foci for the process by many participants, and those themes are currently being developed.

These objectives and considerations are reflected in the following synthesis of the outputs from the five meetings held between June 1999 and June 2001. The meetings referred to are the following:

- “WTO/MEAs Meeting”, Geneva, 28 June 1999 (secretariats of MEAs, WTO, UNCTAD, ILO and the Center for International Environmental Law, an NGO);
- “High Level Panel Discussion on MEAs and the WTO”, New York, 27 April 2000, during the Eighth Session of the Commission on Sustainable Development (secretariats of MEAs, WTO, UNCTAD, CSD, governments and NGOs);
- “Enhancing Synergies and Mutual Supportiveness of MEAs and the WTO”, Geneva, 23 October 2000 (secretariats of MEAs, WTO, UNCTAD, CSD, governments and NGOs);
- “High Level Meeting on Environment, Sustainable Development and Trade”, Berlin, 20-22 March 2001 (secretariats of MEAs, WTO, UNCTAD, governments and NGOs);
- “Compliance, Enforcement and Dispute Settlement in MEAs and the WTO”, Geneva, 26 June 2001 (secretariats of MEAs, WTO, UNCTAD, governments and NGOs).

The last three meetings have concluded with Chairmans' Summaries which were each finalized after circulation of at least one draft to meeting participants. Each of those summaries provided an overview of the main issues raised by participants and a list of future activities that were suggested by meeting participants. These summaries did not represent consensus documents by Governments attending the meetings. Those summaries and the UNEP reports of the first two meetings provide the basis for the following synthesis. The full versions of all five documents can be found on the website of UNEP's Economics and Trade Unit at <http://www.unep.ch/etu>.

2.1 Context

The discussion has been set in the overall context of the need to achieve sustainable development. Poverty can be an important cause of environmental degradation, which must be addressed in developing policy solutions that fully integrate trade, environment and development concerns.

There has been broad agreement among participants on the following points.

- The WTO and MEAs are on the same legal footing, a fact which is reflected in the preamble of the Biosafety Protocol adopted in Montreal, in January 2001.

Strengthening the mutual supportiveness and coherence of trade and environment policies, rules and institutions is required to maximize their joint contribution to sustainable development...

- There remains a considerable gap in the understanding of trade and environment officials of multilateral agreements in the other policy sector, and the relationship between them, and there is an urgent need to develop better mutual understanding.
- Discussions on this issue in the WTO's Committee on Trade and Environment have deepened the analysis but are not making progress towards policy solutions to potential tensions.
- There is an urgent need for confidence-building on trade and environment, particularly as between developed and developing countries, so as to make progress on these issues.

Closer examination of the implications of trade and trade liberalization for MEAs, and of MEA obligations for trade and the economic gains it can bring, are likely to be keys to developing that better understanding and building confidence. In undertaking those examinations the objective of ensuring equitable relations between developed and developing countries, and the principle of common but differentiated responsibility must be borne in mind.

2.2 Objectives

With regard to the objectives of this MEA-WTO process, some participants in the discussions have remarked that actual conflicts between provisions of MEAs and the WTO have yet to occur, and since they have not there is little value in trying to anticipate them. Other participants wish to avoid any possibility of such conflicts occurring, because of the legal and political problems they could create, and so are urgently seeking a clarification of the MEA-WTO relationship. What the discussion and analysis that have taken place has clearly shown is that there are many potential synergies between MEA and WTO provisions, which discussions in other fora such as the CTE tend not to have focused on.

Increased *policy* coherence should lead to more effective policies and accomplishment of their intended goals; increased *rule* coherence may smooth national implementation; and increased *institutional* coherence—for example in the area of capacity building—may augment the effectiveness of Secretariats in supporting parties' implementation of their respective agreements.

Discussions during the meetings have revealed a broad agreement that this MEA-WTO process could contribute to two other important objectives.

- The scale and pace of environmental degradation underlines the need for effective MEAs—realising synergies with the WTO could enhance that effectiveness.
- The exchange of views and analysis and deeper cooperation facilitated through this process should help the MEA, WTO and UNEP Secretariats to better serve their memberships, and strengthen implementation of the relevant agreements.

From UNEP's perspective, the growing interdependencies, both economic and environmental, increase the need for policy coherence and coordination at all levels, and demand renewed efforts to build mutually supportive relationships between MEAs and the WTO. Strengthening the mutual supportiveness and coherence of trade and environment policies, rules and institutions is required to maximize their joint contribution to sustainable development, and are likely to yield significant benefits for MEA parties and WTO Members, particularly developing countries.

Building mutually supportive relationships will require policy-makers to identify areas of intersection between MEAs and the WTO, to maximize synergies, and to minimize areas

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of potential tension. While each is significant, so far the discussions of MEA-WTO linkages have, in the view of many environmental policy-makers, focused disproportionately on potential tensions (e.g. potential for MEA measures to create “trade distortions”, or their theoretical incompatibility with WTO rules). This perspective does not necessarily reflect the priorities of MEAs.

UNEP and many MEA Secretariats have identified the need to broaden the debate to explore the numerous available synergies, believing that a more practical approach focusing in greater detail on concrete examples is desirable. This could provide the basis for a more positive and pro-active engagement among the trade and environment communities, particularly in relation to implementation issues such as technical assistance and capacity building.

Consequently, rather than seeking to provide a theoretical examination of MEA-WTO linkages, this process has been exploring concrete examples of synergies and potential tensions that have been identified by the participants. The synthesis of the meetings which follows, identifies specific, concrete issues on which greater mutual supportiveness can be built between MEAs and the WTO, as well as providing procedural indications for how this might be done. The focus is on existing provisions of MEAs and the WTO, and cost effective and cooperative means by which implementation of WTO Agreements might better support that of MEAs, and vice versa.

The list of potential synergies identified is not exhaustive, nor may all of them ultimately yield opportunities for joint action. Nevertheless, it is a starting point for dialogue and cooperation to build a stronger, more mutually supportive relationship between MEAs and the WTO.

3. Synthesis of the meetings

Participants in these meetings have recognized a number of characteristics of and requirements for enhancing the mutual supportiveness of the international governance frameworks for trade and the environment. In particular, many have noted that a multistakeholder, participatory process, engaging all the relevant international organizations, governments and civil society is required to identify and build synergies between MEAs and the WTO. This was a primary aim of this UNEP-coordinated process, which has been structured and resourced accordingly.

Participants in the process made the following additional points.

- That there is value in increasing opportunities for and generally enhancing dialogue at national and international levels, between trade and environment officials, UNEP, MEAs and WTO Secretariats.
- There is a need to increase the participation of developing country representatives from both trade and environment ministries in meetings such as these, including those of the WTO’s Committee on Trade and Environment.
- Involvement of government officials, and particularly those of developing countries, in trade and environment discussions and negotiations is hampered by the dispersed locations of environmental institutions and the multiplicity of meetings.

There was a very broad recognition that trade and environment policy-makers need to work together more, both to build synergies and ensure coherence of the two legal regimes. The WTO and MEA Secretariats need to ensure their respective participation in key meetings of the other institutions which are of relevance to implementation of their own

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agreements. While this point related to meetings held at the international level, such coordination and cooperation, must be underpinned by a strengthening of the coordination between trade and environment ministries at the national level. The need to increase opportunities and expertise for greater coherence and coordination of environmental with trade and other economic policies could well imply a requirement for additional budgetary resources in the relevant ministries.

Discussions and analysis conducted during this process ranged over issues of institutional cooperation, capacity-building, decision-making processes, compliance and dispute settlement processes and a number of policy tools that are important with regard to enhancing synergies. These are laid out below, under each of these headings.

3.1 Institutional cooperation for developing synergies

The need for more regular informal contacts and cooperation, and also more formal interaction between the MEAs and the WTO, was a theme that was referred to repeatedly during these meetings. Such contacts serve to raise awareness of officials in the different institutions about the objectives, implementation tools and decision-making processes in the respective agreements. By transferring information during negotiations and implementation of the agreements, contacts and cooperation also contribute to coherence, can prevent conflicts before they arise, and build synergies during implementation. The following specific points were made during the meetings.

- More cooperation and information exchange between MEAs and the WTO, and more meetings, will contribute to enhanced coordination between these agreements.
- The value of securing observer status for MEAs in WTO bodies, and vice versa, in enhancing information exchange and cooperation was emphasized.
- Greater information exchange in the area of compliance and dispute settlement may assist both MEA and WTO officials in understanding the objectives of their different agreements.

3.2 Resources and capacity-building for developing synergies

It was recognized that for many developing countries lack of capacity and limited technical, technological and financial resources were all important factors limiting compliance with and implementation of MEAs. These needs can be addressed in the context of the MEAs themselves, but also through the activities of other international organizations. Participants made the following specific points.

- There is a need for more supportive measures in MEAs, such as capacity building and technology transfer, financial transfers, and the use of market incentives to achieve sustainable development.
- Enhanced trade flows or investment provisions in MEAs could generate additional financial resources for the implementation of these agreements.
- More capacity-building on trade, environment and development, by such mechanisms as the UNEP-UNCTAD Capacity Building Task Force, will be a crucial part of any solutions.
- Joint capacity-building activities by the MEA and WTO Secretariats could facilitate the development of synergies between these agreements.

Intensifying communication and dialogue between developing and developed countries, outside formal negotiating fora, was also recognized as a valuable approach to identifying areas of common interest.

3.3 Decision-making for developing synergies

There was general recognition that the MEA and WTO regimes have developed differing approaches to implementation and decision-making related to it. Intensifying communication and dialogue between developing and developed countries, outside formal negotiating fora, was also recognized as a valuable approach to identifying areas of common interest. The following specific points were made during discussions in the meetings.

- Achieving greater coherence and coordination on trade and environment policies at the national level will contribute to enhancing coherence at the international level.
- Greater policy coordination at the national level is important to ensure that all relevant rights and obligations in international agreements have been considered during the implementation of existing agreements and the negotiation of new ones—this also reduces the potential for conflicts between MEA and WTO provisions.
- Civil society participation in decision-making processes is an important prerequisite for sustainable and coherent policies.

3.4 Compliance and dispute settlement for developing synergies

One of the potential next steps identified in the Chairman's Summary of the meeting on 23rd October 2000, was that UNEP and WTO could elaborate a paper contrasting dispute settlement and compliance practices in the two regimes. This joint paper was developed ahead of the meeting on 26th June 2001, and served as the main input for that meeting and the subsequent MEA Information Session that took place in the WTO CTE on 27th June.⁶ A number of governments and intergovernmental organizations commented on the clarity and utility of the paper in informing these discussions.

During those discussions the following points and suggestions were raised.

- MEAs and the WTO agreements share many common elements in their compliance systems. For example, WTO agreements contain notification requirements, and provide for monitoring and transparency as well as review mechanisms by WTO collective bodies.
- With the exception of the UN Fish Stocks Agreement, MEA dispute settlement provisions generally follow a progression including negotiation, good offices, mediation, conciliation, arbitration and judicial settlement. The approach is generally one of dispute avoidance, with judicial dispute settlement as a last resort.
- In contrast, the WTO dispute settlement system is compulsory in nature, and has exclusive jurisdiction and binding effects. These characteristics could lead to the WTO attracting disputes it was not properly equipped to resolve.
- Strengthening compliance and dispute settlement mechanisms could, in the case of some MEAs, enhance both the effective implementation of MEAs, and reduce any potential for tension with WTO provisions.

⁶ "Compliance and Dispute Settlement Provisions in the WTO and in Multilateral Environmental Agreements". Note by the WTO and UNEP Secretariats. WT/CTE/W/191, 6 June 2001.

The need for capacity building, financial and technical assistance to support implementation of these agreements was stressed in this regard, rather than the need to strengthen dispute settlement mechanisms.

Appropriate solutions to building synergies will depend to a considerable extent on the nature of the individual MEAs. More specifically, broad policy-making conventions such as the CBD generally aim at assisting Parties in the implementation of the agreement through a supportive and non-confrontational approach, thereby preventing disputes from arising. The need for capacity building, financial and technical assistance to support implementation of these agreements was stressed in this regard, rather than the need to strengthen dispute settlement mechanisms. However, this situation is quite different when dealing with MEAs which have a more narrow focus, and which deal with trade, or the prohibition or control of trade in certain products, such as the Biosafety Protocol, the Basel Convention and CITES.

A number of participants suggested that potential tensions between trade and environmental regimes could be reduced through better communication and understanding of the compliance and dispute settlement systems in MEAs and the WTO, and by dissemination of Appellate Body decisions. Sharing expertise in respective areas of competence may also help reduce the potential for formal disputes.

3.5 Policy tools for developing synergies

An array of policy tools were mentioned by participants in the meetings as having the potential to enhance synergies between MEAs and the WTO. These will be of differing importance and utility in the context of individual MEAs, and parties to them according to their implementation needs and priorities. These include:

- policies that internalize environmental costs should be developed and applied in order to capture the real value of producing and consuming products. Such measures can direct economic activities to contribute to MEA implementation and would not be in contradiction with WTO rules;
- identification and reform or reduction of environmentally adverse and trade distortive subsidies would be a valuable step towards resolving potential tensions between trade and environment policies, generally;
- enhancing market opportunities for environmentally friendly products, particularly those from developing countries, would contribute to sustainable development; and
- economic instruments which can provide effective tools for enhancing the benefits of trade liberalization policies, as well as for implementing MEAs, and can contribute to the mutual supportiveness of those agreements and the WTO.

A number of participants emphasized that assessment of the impacts of trade liberalization on the environment, as well as the economic and trade impacts of MEAs, are areas requiring further attention. Some others noted that trade measures have played an important role in enforcement and compliance, and ensuring broad membership in MEAs, and preventing free-riding.

4. Next steps in the MEA-WTO process

The next steps in this process will share the same characteristics as the preceding ones, namely that they will:

- focus on concrete issues and options for enhancing synergies between MEAs and the WTO;
- be informal and participatory, securing the input of all stakeholders including governments, secretariats of intergovernmental organizations, affected communities and NGOs; and
- be conducted in a constructive atmosphere with a view to increasing opportunities for collaboration between MEA and WTO Secretariats, so as to more effectively implement these agreements and meet the needs of their respective memberships.

These discussions will prioritize the identification of actions and activities that can be facilitated jointly by secretariats, in a cost efficient manner.

Each of the meetings in the process so far concluded with the development of a list of potential next steps in the process. These lists have been compared with the key points that arose from the combination of the meetings, as set out in the preceding sections. A list of next steps is offered below with reference to the mandates, individual activities and current cooperation between the MEAs, WTO and UNEP.

4.1 Institutional cooperation

Cooperation between UNEP, MEA Secretariats and the WTO (including communication between staff, exchange of documents, and participation in each other's meetings) has already improved understanding of each other's respective frameworks. The Elements of Cooperation agreed between the WTO and UNEP secretariats in November 1999 have been instrumental in facilitating the exchanges in this MEA-WTO process. This process, coordinated by the Economics and Trade Branch, has helped operationalize that agreement between the Secretariats. A number of MEAs have also participated in the WTO's "information sessions" and offered statements to the Committee on Trade and Environment. While existing cooperation has been beneficial, more creative and innovative interactions between trade and environment institutions could further enhance synergies.

Increased cooperation between the Convention on Biological Diversity and the WTO, for instance, would help both organizations to identify linkages, and to work cooperatively on common issues.

- The CBD Secretariat, in its July 1998 communication to the CTE, noted that each of the 10 items of the agenda discussed at the CTE raise biodiversity-related issues. In addition, the CBD's Conference of the Parties has discussed a number of issues that touch on trade.⁷

7 These include decisions on: 1) access and benefit-sharing arrangements (V/8); 2) alien species that threaten ecosystems, habitats or species (V/15); 3) incentive measures for the conservation and sustainable use of components of biological diversity (V/16); 4) Article 8(j) and related provisions on the knowledge, innovations and practices of indigenous and local communities (V/18); 5) impact assessment, liability and redress (V/24); 6) sustainable use (V/26A); 7) agricultural biological diversity (V/5); and 8) the relationship between intellectual property rights and the relevant provisions of the CBD and the WTO TRIPS Agreement (V/26B). See, www.biodiv.org.

Increased cooperation between the Convention on Biological Diversity and the WTO, for instance, would help both organizations to identify linkages, and to work cooperatively on common issues.

The CBD's Executive Secretary has requested observer status in the WTO's Committee on Agriculture and the TRIPS Council. Similarly, UNEP has requested observer status in the WTO General Council and the TRIPs Council. These requests are still pending. WTO members should explore how the requests might be granted, to facilitate joint work on these policy issues of concern to themselves, parties to the CBD, and the membership of UNEP.

4.2 Capacity-building and resources

Capacity building and technical cooperation were identified in all of the last three meetings as areas that would benefit from enhanced and concerted efforts of UNEP, MEAs and the WTO. The following specific steps were identified as offering useful opportunities for enhanced understanding and coherence between MEAs and the WTO, and trade, environment and development policies at national and regional levels too.

- Next steps:*
- *Capacity-building.*
 - *Technology transfer.*
 - *Trade for poverty alleviation & conservation.*

- Joint capacity-building efforts by the MEA and WTO Secretariats, and also in collaboration with relevant organizations such as UNCTAD, should be developed to assist the implementation of MEAs and WTO agreements.
- Regional workshops provide a useful way to bring together trade and environmental officials to explore synergies, and to discuss concrete issues of concern to them.
- WTO regional seminars on trade and environment and the UNEP-UNCTAD Capacity Building Task Force on trade, environment and development provide valuable capacity-building services, which can contribute to building synergies between MEAs and the WTO.⁸

There are significant synergies to be realized in the implementation of technology transfer and technical assistance measures in MEAs and the WTO. Increased access to environmentally sound technologies and enhancing the capacities of developing countries to develop and adapt technologies to meet their own requirements and development priorities will strengthen their implementation of MEAs and help expand their trading opportunities. For example:

- the relationship between Trade Related Aspects of Intellectual Property Rights (TRIPS) (e.g. Arts. 7, 8 and 66.2) and the provisions in MEAs for the transfer of environmentally sound technology should be further explored by UNEP, MEAs and the WTO.

Transfer of environmentally sound technology has strong potential for integrating trade and environmental objectives and policies as it promotes greater production efficiency while helping to reduce environmental harm.⁹ MEAs such as the Basel Convention include

8 The participation of the Secretariat of the Basel Convention in the WTO regional seminar, which took place in Malta in May 2000, illustrates the potential of such collaboration to meet pressing trade and environment policy integration needs in a cost-effective manner. Greater use should also be made of other existing capacity-building mechanisms at the regional level, such as the Basel Convention Regional Centres.

9 See, WTO Special Series 4, Trade and Environment, (Nordström & Vaughan) (noting "Economic growth requiring ever more inputs of natural resources is obviously not as harmless as economic growth driven by technological progress that saves inputs and reduces the emissions per unit of output. That kind of growth will not emerge spontaneously, but may require economic incentives to steer development in a sustainable direction. Trade could play a positive role in this process by facilitating the diffusion of environmentally friendly technology in the world." p 58).

Trade itself can provide resources both for poverty alleviation and for the conservation and sustainable management of natural resources, when that trade is structured on a sound and sustainable basis.

provisions on the transfer of technology.¹⁰ The Multilateral Fund for the Implementation of the Montreal Protocol was specifically established in part to finance the transfer of technology. Closer examination of potential synergies with the relevant provisions of the TRIPS Agreement could initiate more mutually supportive implementation of these agreements.

Trade itself can provide resources both for poverty alleviation and for the conservation and sustainable management of natural resources, when that trade is structured on a sound and sustainable basis. For example, there are a large number of wildlife species listed in the CITES Appendices, whose products and derivatives have a great potential for sustainable exploitation. This includes live animals (tortoises, reptiles, parrots, butterflies, insects, frogs, ornamental fishes, etc); products and derivatives of fauna species (reptile skins, wool, shells, eggs, meat, hunting trophies); flora species (plants artificially propagated (Orchids), dry plants, medicinal plants); tourist souvenirs (rain-sticks); etc. The potential economic value of these species can be translated into tangible economic benefits for populations whose livelihood depends on wildlife.¹¹

Closer cooperation between the Secretariats of CITES and the WTO could advance the realization of such synergies, which can maximize the contribution of natural resource management to sustainable development.

4.3 Decision-making

There are significant opportunities to strengthen channels of communication between trade and environment institutions. The need to improve the exchange of information with the WTO has been noted by environmental officials including those representing the Convention on Biological Diversity,¹² the Montreal Protocol,¹³ CITES and UNEP.

10 Article 10(2)(d) of the Basel Convention requires parties to “cooperate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes”. See, also, Basel Ministerial Declaration on Environmentally Sound Management, <http://www.basel.int/COP5/ministerfinal.htm> p 3 of 8. At COP V, parties reaffirmed technology transfer as a fundamental aim of the convention, and recognized the importance of “the transfer of environmentally sound technologies, especially for developing countries and countries with economies in transition.” They also noted the importance of strengthening regional training and technology transfer centres, building new partnerships with stakeholders, including the private sector, and pursuing cooperation with other international organizations active in areas relevant to implementation of the Basel Convention.

11 Initiatives like BIOTRADE, launched by UNCTAD in November 1996, are designed to identify commercial processes that (1) benefit the conservation of wildlife, (2) do not result in an unsustainable pressure for the survival of the species and (3) generate tangible economic benefits for local communities. The mission of BIOTRADE is to stimulate trade and investment in biological resources to create economic incentives for sustainable trade. In the case of CITES, this could result in a conversion of the current illegal over-exploitation of several wildlife species into a legal and sustainable commercial processes beneficial for those species. Sustainable commercial trade could act as a key means for reducing illegal wildlife trade and shifting economic benefits from illegal chains and networks (poachers, smugglers, traffickers, dealers) to local communities, the private sector and public finance.

12 See, CBD secretariat: Submission to the WTO Committee on Trade and Environment (WT/CTE/W/149) para 56 (stating, ...the most important conclusion about any relationship is that the potential for conflict and synergy highlights the importance of continuing direct cooperation between the Convention and the WTO.... The level of cooperation...could be improved. From the perspective of the Convention, the most important issue for the immediate future is its application for observer status in the TRIPS Council and the Committee on Agriculture).

13 Montreal Protocol secretariat: Submission to the WTO Committee on Trade and Environment (WT/CTE/W/57) para 25 (noting, under the heading *Need for Responsiveness by the WTO*, that “It must be stated...that it has not been possible to obtain a formal opinion from the WTO on any contemplated trade measures in the Protocol with reasonable notice. Unless the WTO is in a position to respond quickly to queries, the Parties to the Protocol may not be able to consult the WTO before taking trade measures considered by them to be essential”).

More informed decision-making on trade and environment issues also requires enhanced cooperation at the national level between relevant officials.

Improving the flow of information—both to and from trade and environment institutions—could be examined by UNEP, MEAs, the WTO and other institutions as they seek to further develop a mutually supportive relationship. Specific actions that might be taken include:

- environmental policy-makers could seek to increase their comprehension of WTO rules, the economic dimensions of environmental policy, and the potential negative effects of more liberalized trade on the environment;
- trade policy-makers could increase their knowledge of the economic value of environmental resources and of existing economic practices and policies (e.g. concessions and subsidies) that negatively impact on the environment and natural resources;
- ensuring that observers from MEA and WTO Secretariats are present in the respective negotiations of these bodies which have a legal interface with each other.

More informed decision-making on trade and environment issues also requires enhanced cooperation at the national level between relevant officials. Cooperation is required to promote integrated and cost-effective policy-making, to implement legal obligations in a way that ensures consistency among the competencies of different institutions, and to ensure that the negotiation of new rules advances a unified vision of the international architecture necessary to promote sustainable development.

Coordination at the national level could be improved by:

- more regular meetings between trade, environment and development (or development cooperation) ministries, inter-ministerial meetings prior to major international meetings on trade and environment, and harmonizing national environmental reporting requirements.

Additional cooperation with civil society could also help ensure that the creativity, views and interests of the non-governmental sector are fully taken into consideration, and their support secured for implementation of multilateral agreements.

4.4 Compliance and dispute settlement

The following specific suggestions were made during the meeting on 26th June to enhance information exchange and synergies between the compliance and dispute settlement systems of MEAs and the WTO.

- The WTO and MEAs could explore cooperation in the context of potential disputes, with the aim of avoiding formal disputes, and/or enhancing exchange of relevant information by competent bodies.
- Some participants thought that parties to WTO disputes could usefully select, and may have already selected, dispute panellists with environmental experience in the case of environment-related disputes in the WTO.
- The potential for MEA Secretariats, and/or MEA provisions, to inform WTO dispute settlement processes was discussed. The possibility of doing this under Article 13 of the WTO Dispute Settlement Understanding, which allows panels to seek information from any relevant sources, was mentioned by some participants.

Taking additional measures to increase the capacity of developing countries to implement MEAs could both enhance compliance and reduce the potential for formal disputes. Work

is also underway within a number of MEAs to explain and elaborate compliance regimes (notably CITES, the Basel Convention and the UNFCCC), and UNEP, with the full cooperation of MEA Secretariats, is currently elaborating Guidelines on Compliance and Enforcement, in accordance with GC decision 21/27.¹⁴

4.5 Policy tools for mutual supportiveness

Among the range of policy tools that could be used to enhance the mutual supportiveness of MEAs and the WTO, the use of economic instruments and environmental assessments stand out as being potentially valuable. The conference of the parties of a number of MEAs have recognized the importance of such instruments in achieving their objectives. Trade measures are also important tools for the implementation of some MEAs, and insofar as these are the source of potential tension between implementation of MEA and WTO provisions, they should also be the focus of efforts to enhance mutual supportiveness.

In order to promote the use and application of economic instruments and advance work in this area, it was proposed at the Berlin meeting in March 2001 that UNEP establish a Working Group under the UNEP/UNCTAD Capacity Building Task Force on Economic Instruments. This Working Group met for the first time in June 2001 and will assist in the identification and design of economic instruments, and promote awareness and understanding of their use to achieve sustainable development objectives. In this context, the Secretariats of MEAs and the WTO may wish to request this Group:

- to identify policy tools which could be applied to strengthen implementation of MEAs while also minimizing or avoiding trade-distorting effects.

Identification and design of economic instruments for specific sectors by the working group will also address the constraints and impediments to employing these policy tools at the national level. Policy instruments to enable countries to become self-sufficient in environmental management might also be explored—for example, the design of policy tools for the more accurate pricing of natural resource use and for the management of trade so that a higher proportion of profits are returned to the local communities from which they originate. Such redistribution of the financial returns from trade could both alleviate poverty and contribute directly to the sustainable management of natural resources on which that trade depends.

A recent workshop on incentive measures for the conservation of biodiversity, convened by the CBD Secretariat, created additional opportunities for inter-agency cooperation on the design of policy instruments.¹⁵ The workshop elaborated proposals for the design and implementation of incentive measures, including environmental taxes, market creation, removal of perverse incentives and environmental funds. The importance of exploring linkages with international organizations focused on economic policies, “in particular trade policies under the WTO”, was noted, and a recommendation was made to establish an inter-agency coordination committee for activities at the international level.

14 Governing Council Decision 21/27, taken in February 2001, requests the Executive Director to continue preparation of the draft guidelines on compliance with MEAs and on the capacity-strengthening, effective national environmental enforcement, in support of ongoing developments of compliance regimes within the framework of international agreements, in consultation with governments and relevant international organizations. The draft guidelines will be submitted to the Governing Council for its consideration at its seventh special session in February 2002.

15 “Workshop on Incentive Measures for the Conservation and Sustainable Use of Biological Diversity”, Montreal, Canada, 10-12 October 2001. Report of the meeting: UNEP/CBD/SBSTTA/7/11/Add.1, 15 October 2001.

Trade measures are also important tools for the implementation of some MEAs, and insofar as these are the source of potential tension between implementation of MEA and WTO provisions, they should also be the focus of efforts to enhance mutual supportiveness.

A transparent and participatory assessment process involving all stakeholders will generally enhance the information on which the assessment is based...

Methodologies for environmental and “integrated” assessments of trade-related policies are currently under development by a number of governments and intergovernmental organizations, including UNEP. These assessment methodologies can be used to enhance the net gains of trade and trade liberalization policies by addressing negative environmental impacts and enhancing positive ones. UNEP can play a key role in enhancing awareness and dissemination of best practices and experiences on assessment. Actions that could be taken include:

- exploring assessment as a tool to increase policy coherence at the national level, and to realize win-win opportunities between MEAs and the WTO, for example in the context of the Convention to Combat Desertification, the CBD and CITES;
- in the context of the CBD, assessing the impact of liberalization of the agricultural sector on biodiversity, in conformity with a decision passed at its Fourth Conference of the Parties.

Assessments should be country led, and the selection of assessment methodologies should be determined by countries at the national level. A transparent and participatory assessment process involving all stakeholders will generally enhance the information on which the assessment is based, and build support for appropriate policy responses.

It was noted that MEAs use trade measures as part of balanced packages of instruments to address environmental problems of concern to the international community. Effective MEAs help to prevent disputes from arising in the WTO’s dispute settlement system, and thus provide an important source of mutual supportiveness for the trading system. UNEP, together with WTO and MEAs, could usefully examine the use of trade measures pursuant to MEAs, and the rules of the multilateral trading system, with a view to enhancing synergies and reducing tensions with the trading system. The following specific suggestions were made.

- UNEP, together with WTO and MEAs, could examine the elaboration of a tool (e.g. a checklist) to provide MEA negotiators with guidance on the use of trade measures in order to maximize synergies between the two regimes.
- Increasing the number of parties to MEAs could decrease the likelihood of MEA-related disputes arising in the WTO, especially those involving a non-party to an MEA.

Discussions and analysis related to the elaboration of the checklist could provide a more detailed understanding of the variety of trade-related measures that are provided for and in some cases applied in MEAs.

5. Governance and Cooperation for Sustainable Development

The relationship between provisions and the implementation of MEAs and the WTO should be seen in the broader context of securing sustainable development. At an international level, enhancing synergies between the governance structures established for the environment, trade and finance will be a key to shaping a sustainable global economy. Preparations for the World Summit on Sustainable Development, and the summit itself in Johannesburg in September 2002, provide important opportunities to review the coherence of these structures and identify actions to enhance that coherence.

Outputs from this MEA-WTO process could contribute to this objective through discussions of the Open-ended Intergovernmental Group of Ministers on International Environmental Governance (IEG). That group will report to the Global Ministerial Environmental Forum (GMEF) in February 2002, with a view to providing input to the WSSD on the future requirements for international environmental governance, in the broader context of multilateral efforts for sustainable development. Analysis and preliminary recommendations on ways in which to enhance synergies between implementation of MEAs and the WTO would be of relevance to this objective. The recommendations for next steps outlined in section 4 above are therefore of relevance both to the IEG process and discussions on the interface between global economic and environmental governance that may take place at the GMEF in Colombia and Prep Comm III of the WSSD in New York.

The responses from governments and other participants in the MEA-WTO process will inform the decision on the next steps to be taken. It is envisaged that the Secretariats of the MEAs, the WTO and UNEP will discuss those steps in January 2002, with a view to identifying those which offer most potential for enhancing synergies between the agreements. Inputs and comments on this paper provided by governments and other stakeholders will also inform the development of this MEA-WTO process.

The priority now for this process is to initiate action on some of the more valuable ideas and suggestions for developing synergies. In some cases this may be done directly by Secretariats or by members of the respective agreements. In other cases it may require that these proposals are first discussed and elaborated in decision-making fora in the relevant intergovernmental body or bodies. Maintaining effective communication and informal cooperation between the MEA, WTO and UNEP Secretariats will continue to play an important role in facilitating the move from ideas to actions. The open, constructive and informal nature of the discussions and analysis so far has also been a key to the progress so far. UNEP recognizes that and intends to preserve those characteristics of the MEA-WTO process, while moving forward on concrete, collaborative actions with its partner institutions.

Preparations for WSSD, and the summit itself in Johannesburg in September 2002, provide important opportunities to review the coherence of these structures and identify actions to enhance that coherence.