

# A COMPREHENSIVE STUDY: MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAs) AND THE WORLD TRADE ORGANIZATION (WTO)

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**Abstract:** *This article aims to present trade policies, dispute settlement and the environmental issues and their environmental measures in WTO regime. The WTO main purpose is to deal with the rules and regulations of trade between nations and its place where member governments go to negotiate and try to arrange the trade problems and ensure the trade flow smoothly, freely, predictably as possible. Whereas, Multilateral Environmental Agreements are specially governed by United Nations Framework Convention on Climate Change (UNFCCC) focused on to act or not to act in a certain way to protect conserve and enhance the environment. Thus, most environmental inconvenience has a transboundary and can only be addressed effectively through international co-operation among member nations. So in that case the WTO dispute settlement system has dealt with environmental disputes more frequently than any other international courts or tribunals. Even though, the WTO agreements themselves contain measures allowing for environmental considerations. The article squabbled that the main dilemma is the institutional disparities of the trade and environmental spheres. Furthermore, the relevancy of WTO articles XX to the MEAs is uncertain and the conflicting interpretation of terms. The study would further discuss the problems related to conflict between the two systems and the Dispute Settlement procedure of the WTO and MEAs. CONCLUSION: The study in the later part would give some suggestions as to why there is a disparities between trade and the environment and dispute settlement mechanism which appears to be the appropriate legal system for the purpose of settling disputes resulting from divergent perspectives between the WTO rules and MEAs trade system.*

**IndexTerms** - Transboundary, Dispute settlement, WTO, Multilateral Environmental Agreement, Environmental problems, Global environmental issues, Sustainable development.

## I. INTRODUCTION

The debate about the relationship between trade and the environment as at present negotiated within the World Trade Organization, is threatening to let trade rules further invade into the regulatory scope of Multilateral Environmental Agreements instead of merging the rights of MEAs to limit trade liberalisation whenever it poses a threat to a sustainable environment for countries and societies. The goal of establishing a positive relationship between World Trade Organization (WTO) rules and Multilateral Environmental Agreements (MEAs) has been on the international agenda for around two decades. The MEAs are concerned with multilateral cooperation for protecting environment and human health besides MEAs also addressed the problems of global warming, ozone depletion, species loss, biodiversity protection and hazardous waste trade. In general the actions taken pursuant to MEAs do not have trade implications, and most of the actions taken in the WTO do not have environmental implications. Conversely, there are a few MEAs which require having some specific trade obligations as means to achieve the environmental objectives. This leads to overlap between these two international bodies of law. Furthermore, these two bodies are equally valid and have equally critical objectives, what is needed is for each to better understanding the other's jurisdictions.

## II. RESEARCH METHODOLOGY

In this present study doctrinal method of research is used and secondary data from various text books, journals and web sites is collected.

## III. MULTILATERAL ENVIRONMENTAL AGREEMENTS

The foundation of MEAs was laid by the Stockholm Declaration in the year 1972 and the main purposed was to give the United Nations and the international community the opportunity to consider systematically the problems of the human environment. And the Stockholm was first collective environmental initiatives convened under the support of the United Nations in the year 1972 at Stockholm. Therefore, MEAs used as a concrete mutual solution to potential conflict between trade and the environment. Multilateral Environmental Agreement are a cooperative means of protecting and conserving environmental resources or controlling pollution that is transboundary in nature. There are about two hundred and fifty international environment agreements existing today and about twenty among these contain trade measures. MEAs are voluntary commitment among sovereign nations that try to find to address the effects and consequences of global and regional environmental degradation. They address environmental problems with transboundary effects, traditionally domestic environmental issues that raised extra jurisdictional concern. Some of the MEAs are under the auspices of United Nations Environmental Programme, some are under the Food and Agricultural of the United Nations and some are stand-alone agreements. For that reason, there is no particular umbrella organization for MEAs. Here are few major MEAs they are: The Basel Conventions: requires that no category of waste to be exported to State not party to the convention unless, the state is a party to any other bilateral agreement, regional or multilateral; The Montreal Protocol: requires parties to provide varieties of trade restrictions including voluntary industry agreements, product labelling requirements, requirements for import licenses, excise taxes, quantitative restrictions on import and total or partial import bans; and the Kyoto Protocol:

potentially might lead to similar policy measures affecting trade. Like for example energy efficiency, renewable energy resources, removal of market distortion such as subsidies and transport.

The main reason for incorporating such trade restriction are:

- Provide a means of controlling and monitoring trade in products where the uncontrolled trade would lead to environmental damage.
- Provide a means of enforcing the MEAs, by forbidding trade with non-parties or non-complying parties.

#### IV. WORLD TRADE ORGANIZATION

The organization was first setup in 1995 to replace a provisional international trade agreement, the General Agreement on Tariff and Trade (GATT). It was signed in 1948 by 23 countries to boost trade liberalization after the second world war. The WTO's responsibility, however is much wider than its predecessor's covering trade in services and intellectual property as well as goods. Therefore, the main aim of the WTO is to encourage free trade by lowering tariffs and other barriers. It does this through agreements negotiated and signed by most of the world's trading nations. The WTO members states should compliance with the rules. When trade disputes between governments or members nations blaze up, it steps in as mediator and, if necessary, arbitrator.

The WTO has now 153 members and summarized the GATT also. The WTO included all the elements of GATT including those that were added to it in the Tokyo Round in 1970s and the Uruguay Round in the early 1990s. WTO rules endeavour at lowering the trade barriers and endorsing fair competition in order to encourage trade and thereby promoting development and economic reform. They also contain measures allowing for environmental considerations. The agreement establishing the WTO rules recognizes that trade should be conducted in a manner which allows the optimal use of the resources in accordance with the objective of sustainable development seeking both to protect and preserve the environment.

#### V. INTER-LINKAGES BETWEEN THE TRADE (WTO) ENVIRONMENT (MEAs) AND THEIR DIFFERENT PERSPECTIVE:

While the trade and environment was not detached they were vitally related with each others. No doubt much environmental instability was due to the increased scale of global economic activities or human activities too. Due to increase in global economics globalization develop and the global nature of many environmental problems became more apparent. Consequently, the links between trade and the environment were numerous, diverse and significant. Trade measures have been assimilated in MEAs where unrestrained trade can potentially lead to environmental damage, or even as a means of imposing the agreement and prevent free-riding by banning trade with non-parties. Hence, trade liberalization was neither essentially good or bad for the environment. Its effects on the environment in fact depended on the extent to which environment and trade goals could be made complimentary and mutually supportive.

Some rights has been confirmed by panel and the Appellate Body time and again like in first case decided by the new WTO dispute settlement body, US-Gasoline, the Appellate Body contented WTO member's autonomy to determine their own environmental policies. Article XX of the GATT specifies certain "general exceptions", two of which are of relevant to trade measures taken with respect to environmental and human health protection. On the other hand, to put fetters on the scope of these exceptions there are a number of relevant WTO provisions. Firstly, any measures that is taken must be believe as 'the least trade-restrictive measures reasonably available to achieve the environmental objective in question'. Secondly, the measures must be applied in a manner "that does not amount to arbitrary or unjustifiable discrimination or a disguised restriction on international trade". Besides, there are some fundamental WTO principles that apply to environmental and public health regulation, as in other areas, include principles of the most-favoured nation (there should not be discrimination between the trading nations. If member country contribute the other member country some special favours, then it will have to do the same for all the WTO members also). Another one is National treatment this principle ensures that imported and locally produced products are treated equally. And lastly, principle of qualitative restriction for import and export.

On the other hand there are different presumption regarding trade and the environment. The trade perception was to create wealth that could be used to increased human well-being. And the environmental viewpoint was seriously hazard the earth's ecosystem and most national governments tried to protect them against costly environmental demand. Again there would be a strong system of rules and clearly mentioned that how the environment be confined at the both national and international level. Hence, government and industry tried to discard such practices. Therefore, trade rules forbidden certain types of environmental regulations may be one way to discard such practices.

#### VI. THE POTENTIAL CONFLICT BETWEEN MULTILATERAL ENVIRONMENTAL AGREEMENTS AND THE WORLD TRADE ORGANIZATION REGIME:

The actions of a WTO member acting in conformity with the trade measures of the MEAs have never been challenged by another member. Thus, a WTO dispute settlement panel has never ruled on the regularity of the trade provisions of the MEAs with the obligations of the WTO regime. As we study the relationship between MEAs and WTO Rules, the whole discussion revolves around the question that whether measures under a multilateral agreement are companionable with WTO rules or not. Since, no prescribed dispute involving under a MEA has been so far brought before the WTO. Nevertheless, the complexity arose out of a fear in the environmental policy community that the reasoning of a WTO panel in the infamous Tuna Dolphin case, in 1991(Mexico Vs. United State) endangered the rapidly developing international planning of environmental protection. It is important to emphasize that the greatest concern is the effect of trade provisions in MEAs on those countries that are members of the WTO regime but are not parties to the MEA. Non-parties to the MEAs will undeniably represent the potential challenges to the trade measures of the MEAs. This is due to the implausibility of a country that has voluntarily joined the MEA and agreed to the trade measures of the agreement. Thus, a parties to the WTO regime who has become a party to the MEAs, has fundamentally put aside the WTO rights in those areas in which the MEAs applies.

Some of the potential inconsistencies between the trade measures of the MEAs and the WTO regime:

##### ➤ National Treatment and MEAs:

Article III's national treatment provision requires that imported like products not be discriminated against in favor of domestic like products. The recent unadopted 1994 panel report, United States - Taxes on Automobiles (Auto Taxes) recognizes that two individual products can never be exactly the same in all aspects and that regulatory distinctions by different national governments may be required in certain circumstances.

➤ MFN and Non-Parties:

The import and export restrictions against non-parties of the MEAs are potentially susceptible to challenge by a WTO member and non-party to the MEA as a violation of the Most Favoured Nation principle of the WTO regime. In the context of the Montreal Protocol, for example, a non-party may affirm that its like products are being discriminated against because they are not a member of the MEA.

➤ Article XI Quantitative Restrictions:

The import restrictions that do not satisfy national treatment and MFN, and the export restrictions of the MEAs that take the form in the name of bans, embargoes, prohibitions, etc., of trade, are potentially vulnerable to challenge as quantitative restrictions under Article XI of GATT.

➤ Article XX:

Article XX contains the general exceptions to WTO obligations. Unfortunately, the relationship between the trade measures of the MEAs and WTO regime is further complicated by the range of interpretations concerning Article XX exceptions. Traditionally, the determination of whether or not a particular trade measure qualifies for an Article XX exception has been indomitable on a case-by-case basis before a WTO dispute settlement panel.

## VII. DISPUTE SETTLEMENT

While most of the multilateral environmental agreements or conventions contain some form of dispute settlement procedures, they generally emphasize avoidance of dispute rather than dispute settlement. Such avoidance has been implemented mainly through transparency, notification and reporting requirements, and institutionalized surveillance and inspection. They both contain provisions for dispute settlement among their parties. Even all MEAs contain dispute settlement procedures among their member parties or in case one party doesn't comply with the MEAs rules. Existing settlement procedures of WTO are based on consultation, panel established, panel examination, interim reviews so on and so forth. Whereas the existing dispute settlement procedure of MEAs are based on non-compliance procedure, arbitration or conciliation procedure and or by the International Court of Justice. But this system is use only when the dispute is between parties to the MEA. If one party of the dispute is not a signatory to the MEA, then this system cannot apply as the MEA rules would not apply to the non-party.

However, when a conflict regarding environmental issues occurs in an international context, the conflicting parties should follow the specified dispute settlement mechanism found in the corresponding international environmental convention or agreement. The majority of these conventions or agreements provide for referral to the International Court of Justice (ICJ). The problems that arise in the consideration of MEAs in the WTO dispute settlement are the relevancy of the agreement in case of conflict. The Vienna Convention stated that when the provisions of two treaties describing to the same subject matter are in conflict, the later in time prevails unless one of the treaties expressly specifies otherwise. Thus, the existence of trade measure in the environmental agreements and the existence of exceptions in WTO suggest that certain provisions of the agreements may relate to the same subject matter. According to basic WTO rules require members not to discriminate between members like products, or between domestic and international production. MEA based measures could potentially run awry of these requirements where imports are treated less favourably than domestic goods in the market particularly where enforcement measures are being taken against non complying parties or non parties. The exception requirements listed in WTO article XX make no reference to MEAs. However, the exceptions for the protection of animals, human and public health, and the conservation of exhaustible natural resources may be applicable. Some of these exceptions have been used in various environment related cases at the WTO, though to date none of these have involved measures taken under MEAs.

## VIII. CONCLUSION

The issue of environmental protection and conservation has become gradually more important on the international agenda. Unilateral trade measures not reliable with the WTO rules seriously undermine the multilateral trade mechanism. Also, the WTO rules should not be interpreted in isolation from other bodies of international law and without considering other complementary bodies of international law, including MEAs. MEAs and WTO, being equal bodies of international law should recognize each other with a view to being mutually supportive, in order to meet the common goal of sustainable development. To ensure harmony between trade and the environment there is a need to develop understanding between specific trade obligation set out in MEAs and the WTO rules. ICJ is an appropriate institution to holding necessary legal competence. It being adequately independent from the government and trade interest, it will create unbiased legal principles on which the settlement of trade and environmental issues could be based. ICJ is one of the perfect forum for settling disputes resulting from collide between MEAs and WTO rules and also one of the principle judicial organ of the United Nations. In case if one of the states fails to comply with it the other party may have recourse to the Security Council of the United Nations, and once the judgements given by ICJ they are final and without appeal. Generally, from the above analysis one could understand as there are fewer places for the application of MEAs in WTO dispute settlement. Therefore, there is a need to find a constructive solution to the present negotiations by providing an alternative mechanism to improve the strength between the WTO and MEA rules.

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