
Committee on Trade and Environment

**ANNOTATED BIBLIOGRAPHY OF SELECTED LITERATURE
CONCERNING THE USE OF TRADE MEASURES
IN MULTILATERAL ENVIRONMENTAL
AGREEMENTS (MEAs)**

Note by the Secretariat

This Note has been prepared in response to requests from delegations for background information relevant to trade and environment. This Note contains an annotated bibliography of selected literature concerning the use of trade measures in multilateral environmental agreements (MEAs). The Secretariat has also prepared select bibliographies on trade and environment in general, contained in WT/CTE/W/49 and WT/CTE/W/72. Listed below are articles and books which discuss issues relevant to the relationship between the rules of the multilateral trading system and the trade measures contained in MEAs, and between their dispute settlement mechanisms (Items 1 and 5 of the CTE's work programme). This body of literature has been selected based on its usefulness in the Secretariat's research which aims to improve an understanding about MEAs that contain trade-related provisions. In this respect, the Secretariat's on-going research is available for consultations by interested delegations.

The document has been divided into references for materials concerning specific MEAs and general references for materials on MEAs and trade-related measures. Materials are listed according to the most recent date of publication. By way of general reference information for consultation by delegations, Annex I contains a list of CTE documents relevant to Items 1 and 5, and Annex II lists several websites which contain information on trade and environment.

**I. THE BASEL CONVENTION ON THE TRANSBOUNDARY MOVEMENT OF
HAZARDOUS WASTE AND THEIR DISPOSAL**

Title

International Trade and the Basel Convention

Author and Publishing Information

Jonathan Krueger, London: The Royal Institute of International Affairs, Trade and Environment Series, 1999.

Physical Description

133 pages including appendix and tables.

Abstract

This book examines the interaction of international trade and the Basel Convention. The author examines the trade provisions of the agreement prior to the Ban Amendment, and the controversial provisions of the Ban. There is a recommendation that the Convention should focus on efforts for the implementation of environmentally sound management in developing countries. The report also has a focus on other areas of the Convention, such as improving compliance and moving toward cleaner production. The report concludes that MEAs are the best instruments to strike the proper balance between trade liberalization and sustainability, and are not incompatible with the multilateral trading system.

Title

The Basel Convention and Transboundary Movements of Hazardous Wastes

Author and Publishing Information

Jonathan Krueger, London: The Royal Institute of International Affairs, Briefing Paper No. 45, May 1998.

Physical Description

9 pages including bibliography and tables.

Abstract

This short article provides a useful update on the development and current status of the Basel Convention. There is discussion of the Ban Amendment and the criticism surrounding the controversial decision to ban the export of hazardous waste that is destined for recovery. Information regarding the possible negative economic effects of the ban is provided. The concerns of this ban for the multilateral trading system are briefly mentioned.

Title

The Effects on Trade of the Basel Convention on the Control of Hazardous Wastes and their Disposal

Author and Publishing Information

Laura B. Campbell, 1998 (*Mimeo*, study available with the Secretariat).

Physical Description

73 pages and bibliography.

Abstract

This study examines the trade measures in The Basel Convention and includes a discussion on incentives (technical assistance and capacity building). The trade measures are looked at in terms of their relationship and effectiveness in achieving the Convention's environmental goals, including "environmentally sound management of hazardous waste". The Conference of the Parties' decisions which affect trade measures are also discussed in the study, including the Ban Amendment. The study links trade measures to environmental objectives and explains their importance to the working of the Convention.

Title

Experience with the use of Trade Measures in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

Author and Publishing Information

OECD Joint Session of Trade and Environment Experts, Paris: OECD, 1997 (COM/ENV/TD (97) 4/FINAL).

Physical Description

51 pages including bibliography.

Abstract

This report was prepared for discussion at the meeting of the OECD's Joint Session of Trade and Environment Experts in April 1997. It is a detailed document providing information as to the estimated effectiveness of the Basel Convention. There is also a discussion of the Ban Amendment, to the Basel Convention and a copy of the amendment is included in the report. The paper examines the trade-related measures as well as non-trade measures within the Convention.

II. THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

Title

Experience with the Use of Trade Measures in CITES

Author and Publishing Information

OECD Joint Session of Trade and Environment Experts, Paris: OECD, 1997(OECD/GD(97)106).

Physical Description

68 pages including bibliography.

Abstract

This document is the first in a series on the use of trade measures in multilateral environmental agreements by the OECD's Joint Session of Trade and Environment Experts. Trade measures in CITES are reviewed and the three Appendices of the Convention are outlined in detail. Examples of national legislation implemented due to CITES are provided from five Parties. The report provides a discussion of the objectives of the trade measures. The problems associated with the Convention are also explored, such as illegal trade in wild flora and fauna and how this is combated through international policing and customs. The report then assesses the effectiveness of the trade measures through various factors such as compliance and reporting done by the parties.

Title

Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment

Author and Publishing Information

Peter H. Sand, *European Journal Of International Law* 8 (1997), 29-58.

Physical Description

29 pages.

Abstract

The author, who was the Secretary-General of CITES from 1978 to 1981, presents an overview of the evolution of the regime of regulation wildlife management through the control of trade in endangered species. The Conference of the Parties of CITES has adopted 190 recommendations over the 25 years of the Convention's existence which has given shape and form to CITES. The author identifies that there is insufficient national implementation among many of the parties, gaps in national reporting and lack of capacity building for some developing countries. Future challenges of CITES are discussed in the conclusion of the paper.

III. THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) AND THE KYOTO PROTOCOL

Title

Trade Implications of the Kyoto Protocol

Author and Publishing Information

Aaron Cosbey, Winnipeg: International Institute for Sustainable Development, 1999. This article appeared in the Spring 1999 Issue of Policy Matters, IUCN Commission for Environment, Economic and Social Policy newsletter.

Physical Description

5 pages.

Abstract

This article summarizes the potential conflicts with WTO rules that parties may face when WTO Members nationally implement their Kyoto obligations. The paper provides examples of problems that may arise with WTO rules through the implementation of carbon tax and border tax adjustment, product standards, incentives for carbon reduction (subsidies) and green government procurement.

Title

Trade Rules and Climate Change Policy: Some issues of synergy and conflict

Author and Publishing Information

Lucas Assunção. Paper presented at 'Implementing the Kyoto Protocol' Conference; London: The Royal Institute of International Affairs, 14-14 June 1999 (paper available with the Secretariat).

Physical Description

13 pages including bibliography.

Abstract

This article examines the potential conflicts and synergies between WTO rules and the Kyoto Protocol. Issues of relevance to the linkages between these two regimes are domestic subsidies,

carbon taxes and border tax adjustment, government procurement and eco-labelling. Article 3.5 of the UNFCCC and Article 2.3 of the Kyoto Protocol urge that measures taken to combat climate change should not be a means of arbitrary or unjustifiable discrimination or disguised restriction on international trade. This language may need to be strengthened to enhance the coherence between trade, development and climate change policies. A joint WTO/UNFCCC working group is recommended by the author with a view to achieving this greater coherence.

IV. THE MONTREAL PROTOCOL

Title

Experience with the Use of Trade Measures in the Montreal Protocol on the Substances that Deplete the Ozone Layer

Author and Publishing Information

OECD Joint Session of Trade and Environment Experts, Paris: OECD, 1997 (OECD(97)230).

Physical Description

40 pages including bibliography.

Abstract

This report is the second in the OECD series which examines the use of trade measures in multilateral environmental agreements. The report summarizes the trade measures taken under the Protocol until 1997. There is information relating to the environmental effectiveness of the Montreal Protocol in controlling the production and consumption of Ozone Depleting Substances (ODS). The non-compliance mechanism is discussed in detail as it is an innovative process which adds to the overall success of this agreement in ensuring compliance.

V. MEAS AND TRADE-RELATED MEASURES

Title

A Call for Coherence in International Law – Praises for the Prohibition Against "Clinical Isolation" in WTO Dispute Settlement

Author and Publishing Information

Gabrielle Marceau, *Journal of World Trade*, 33(5): 87-152, 1999.

Physical Description

65 pages.

Abstract

The influence of MEAs and principles of public international law in Panel and Appellate Body interpretations of WTO environmental provisions are examined by looking at recent WTO Appellate Body decisions, including Shrimp/Turtle. The article explains that in the absence of agreement by WTO Members on how to resolve trade and environment issues, the Dispute Settlement Body of the WTO will have to develop rules on a case-by-case basis on the application of Article XX and other environmental provisions. The author explores the relationship between WTO provisions and those of other treaties, including MEAs, and suggests how WTO provisions could be interpreted coherently and consistently with other rules of international law.

Title

Environmental Treaties and Trade: Multilateral Environmental Agreements and the Multilateral Trading System

Author and Publishing Information

Duncan Brack, in Gary P. Sampson and W. Bradnee Chambers eds., *Trade, Environment, and the Millennium*, Japan: United Nations University Press, 1999.

Physical Description

27 pages including endnotes.

Abstract

The author notes that the failure to resolve the potential conflict between the legal regimes of international environment and international trade could lead to actual conflict. This article concludes that a new WTO side agreement for MEAs would provide a solution to this conflict and the author explains the status and the substance of a side agreement for MEAs and the WTO.

Title

Policy Effectiveness and Multilateral Environmental Agreements

Author and Publishing Information

Scott Vaughan and Ali Dehlavi, Geneva: UNEP Economics, Trade and Environment Unit, 1998.

Physical Description

172 pages.

Abstract

This is the most recent edition to UNEP's Environment and Trade Series. This report attempts to analyse the effectiveness of MEAs containing trade measures. The focus is on the three main agreements which incorporate a range of trade measures: the Basel Convention, the Montreal Protocol and CITES. The main research for the report was provided by five independent analytical studies commissioned by UNEP from various organizations such as IUCN and the Center for International Environmental Law, as well as academics in the field of trade and environment. The effectiveness of the agreements is looked at with the following factors in mind: implementation of MEAs by States, quantitative changes in environmental quality, success of controlling a targeted pollutant, facilitation of measures such as capacity building and technological assistance and others. Non-compliance measures are discussed as are the different types of measures used in the three MEAs from quotas to incremental funding.

Title

Trade Measures in Multilateral Environmental Agreements: Synthesis Report of Three Case Studies

Author and Publishing Information

OECD Joint Session of Trade and Environment Experts, Paris: OECD, 1998 (COM/ENV/TD(98)127).

Physical Description

76 pages including endnotes, tables, annexes and a bibliography.

Abstract

The OECD has produced three case studies on MEAs, examining in detail the Montreal Protocol, CITES and the Basel Convention. This report is the final in the series and it compares all three case studies and looks at the effectiveness of their trade-related provisions. The study states the environmental objectives of the three agreements, and then analyses the trade measures and their role in achieving these environmental objectives. Provided within the Executive Summary is a list which highlights the factors that contribute to the success of these MEAs, as well as a list which shows the factors that limit their success.

Title

Trade and Environment: Bridging the Gap

Author and Publishing Information

Agata Fijalkowski and James Cameron, eds. London: Cameron May, 1998.

Physical Description

190 pages, including introduction by the editor.

Abstract

This book is a compilation of eleven articles from a Round Table Conference on MEAs held in the Hague, Netherlands in September 1997. The topics discussed include environmental law, dispute settlement, and articles on specific MEAs such as the Basel Convention and the United Nations Framework Convention on Climate Change, as well as an analysis on the development of the Biosafety Protocol to the Convention on Biological Diversity.

Title

Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements

Author and Publishing Information

UNCTAD. Geneva: 26 August 1997, (TD/B/COM.1/EM.3/2.9).

Physical Description

19 pages.

Abstract

Incentives for parties of MEAs, especially after UNCED in 1992, have become of increasing importance. This report provides a description of the range of incentives used, including capacity building, financial mechanisms and technology transfer. These measures are shown within the context of various MEAs. There is also a discussion regarding additional or innovative financial mechanisms, for example, private sector funding for the creation of investor pools.

Title

International Trade and the Protection of the Environment: The Continuing Search for Reconciliation

Author and Publishing Information

Thomas Schoenbaum, American Journal of International Law, 1997 (Vol. 91, No. 2) 268.

Physical Description

45 pages.

Abstract

This paper provides a good review of the core GATT articles and relevant cases with environmental issues. Also provided is an analysis of GATT Article XX, the general exceptions and the chapeau. Important trade and environment cases before the panel and the Appellate Body are discussed in detail. This discussion provides insight into how the tests have evolved in Article XX(b) and (g) and the development of the tests in the chapeau, especially in the *U.S Gasoline Standards* report of the Appellate Body. Multilateral Environmental Agreements and their conformity to the Multilateral Trading System is looked at, and the author provides suggestions for harmonizing the two systems. Other trade and environment matters, such as eco-labelling and PPMs are also discussed.

Title

Multilateral Environmental Agreements and the GATT: Conflict and Resolution

Author and Publishing Information

Chris World, Environmental Law, 1996 (Vol. 26, No. 3) 841.

Physical Description

60 pages.

Abstract

This article is similar in content to the UNEP book, *The Use of Trade Measures in Select Multilateral Environmental Agreements*. This author, in fact, wrote the CITES chapter in the UNEP report. This article discusses the issues with more brevity and focuses on the three main MEAs which have trade-related provisions, CITES, the Basel Convention and the Montreal Protocol. Import and export restrictions are looked at, as well as provisions in the MEAs that may place quotas or quantitative restrictions on trade. There are also examples of technology transfer and the use of economic incentives in the three international agreements. Article XX of GATT 1994 and the related environmental disputes are analysed as well.

Title

International Economic Instruments For Sustainable Development: Sticks, Carrots And Games

Author and Publishing Information

Peter H. Sand, Indian Journal of International Law, Vol. 36, January 1996.

also available at http://www.jura.uni-muenchen.de/tel/materials/economic_instruments.html

Physical Description

7 pages.

Abstract

The author examines the types of economic instruments found in MEAs to implement sustainable development. According to the author, there are three types: disincentives such as quantitative limits to trade, incentives such as financial contributions from the GEF or the Multilateral Fund and a third type of instrument which is not beneficial to any particular party at first, but may have net beneficial results. The example given of this third type of trade measure is Joint Implementation under the Climate Change regime. These types of instruments hold a level of uncertainty for the countries involved, leading the author to label them 'games'.

Title

GATT Legal Restraints on the Use of Trade Measures Against Foreign Environmental Practices

Author and Publishing Information

Robert E. Hudec in Jagdish N. Bhagwati and Robert E. Hudec eds., *Fair Trade and Harmonization: Prerequisites for Free Trade?* Cambridge: MIT Press, 1996.

Physical Description

79 pages including endnotes.

Abstract

This article looks at unilateral trade measures taken by governments for environmental purposes, which mostly encompass concerns regarding the mistreatment or killing of animals. MEAs with trade-related measures are also discussed in passing as a preferable approach to unilateral actions. The article explores the fact that there may be situations where unilateral trade sanctions are needed to promote sudden change for immediate and irreparable environmental harm. There is disagreement between countries as to the size of these sanctions, and in what cases they are justifiable. The author provides the views of environmental advocates and then contrasts them with the views of the trade policy advocates. This article provides thought-provoking discussion in a contentious area of the trade and environment debate.

Title

The Use of Trade Measures in Select Multilateral Environmental Agreements

Author and Publishing Information

Robert Houseman *et al*, eds. Geneva: UNEP, 1995.

Physical Description

330 pages.

Abstract

This book provides a comprehensive view on trade measures in MEAs. There are chapters focusing in detail on the main MEAs including the Montreal Protocol, the Basel Convention, the Convention on Biological Diversity, CITES and the Framework Convention on Climate Change. Each of the chapters provides a description of the MEA and its significance for environmental protection. As well, an analysis of the trade measures contained within the MEA and its relationship with the Multilateral Trading System is provided. Trade with parties to the agreement and trade with non-parties is discussed. The final chapters look at the legal principles to resolving conflicts between MEAs and the WTO and various proposals on how the two systems can be successfully integrated.

ANNEX I

RELEVANT WTO DOCUMENTS ON MULTILATERAL ENVIRONMENTAL AGREEMENTS

WT/CTE/W/4	Approaches to the relationship between the provisions of the multilateral trading system and trade measures pursuant to Multilateral Environmental Agreements - Note by the Secretariat
WT/CTE/W/12	Trade measures for environmental purposes taken pursuant to Multilateral Environmental Agreements: recent developments - Note by the Secretariat
WT/CTE/W/15	Trade measures for environmental purposes taken pursuant to multilateral environmental agreements: recent developments - Note by the Secretariat - FAO Code of Conduct for Responsible Fisheries
WT/CTE/W/18	Convention on Biological Diversity: recent developments - Note by the Secretariat
WT/CTE/W/19	Trade measures for environmental purposes taken pursuant to multilateral environmental agreements: recent developments - Seventh meeting of the Parties to the Montreal Protocol - Note by the Secretariat
WT/CTE/W/20	Item 1: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements (MEAs) - Submission by New Zealand
WT/CTE/W/31	The relationship between trade measures pursuant to MEAs and the WTO Agreement – Proposal by Japan
WT/CTE/W/39	The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements (MEAs) – Proposal by ASEAN
WT/CTE/W/44	Multilateral environmental agreements: recent developments – Note by the Secretariat
WT/CTE/W/48	Results of the ad hoc Intergovernmental Panel on Forests - Note by the Secretariat
WT/CTE/W/55	Recent trade-related developments in the Basel Convention - Communication from the Basel Convention Secretariat
WT/CTE/W/57	The Montreal Protocol and trade measures - Communication from the Secretariat for the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer
WT/CTE/W/58	Nature and extent of GEF projects in assisting in the implementation of Multilateral Environmental Agreements - Communication from the GEF Secretariat

WT/CTE/W/59	The proposed Prior Informed Consent (PIC) and Persistent Organic Pollutants (POPS) Conventions - Communication from UNEP Chemicals
WT/CTE/W/60	Nature and extent of projects supported by the Multilateral Fund - Communication from the Multilateral Fund for the implementation of the Montreal Protocol
WT/CTE/W/61	The United Nations Framework Convention on Climate Change - Communication from the UNFCCC
WT/CTE/W/62	The 1994 Agreement relating to the implementation of part XI of the 1982 UN Convention on the Law of the Sea - Communication from the United Nations Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs
WT/CTE/W/63	The Convention on International Trade in Endangered Species of Wild Fauna and Flora - Communication from the CITES Secretariat
WT/CTE/W/64	The Convention on Biological Diversity and its relation to trade - Communication from the Executive Secretary of the CBD
WT/CTE/W/68	The Montreal Protocol on Substances that Deplete the Ozone Layer - recent developments – Note by the Secretariat
WT/CTE/W/71	Convention on International Trade in Endangered Species of Wild Fauna and Flora – Note by the Secretariat
WT/CTE/W/74	United Nations Framework Convention on Climate Change – Note by the Secretariat
WT/CTE/W/84	Communication from the Secretariat of the Intergovernmental Forum on Forests (IFF)
WT/CTE/W/86	Recent developments in Multilateral Environmental Agreements (MEAs) – Note by the Secretariat
WT/CTE/W/87	Communication from the Secretariat of the International Commission for the Conservation of Atlantic Tunas (ICCAT)
WT/CTE/W/88	Communication from the Secretariat of the UN/ECE Convention on Long-Range Transboundary Air Pollution
WT/CTE/W/89	Communication from the Secretariat of the International Tropical Timber Organization
WT/CTE/W/90	Communication from the Secretariat of the Basel Convention
WT/CTE/W/91	Communication from the Secretariat of UNEP Chemicals (IRPTC)
WT/CTE/W/92	Communication from the Secretariat of the Convention on Biological Diversity (CBD)
WT/CTE/W/95	The International Commission for the Conservation of Atlantic Tunas (ICCAT) - Communication from Brazil

WT/CTE/W/104	The Montreal Protocol on the Substances that Deplete the Ozone Layer - recent developments – Note by the Secretariat
WT/CTE/W/112	Draft International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPS) – Note by the Secretariat
WT/CTE/W/113	Communication from The Commission for the Conservation of Antarctic Marine Living Resources
WT/CTE/W/115	Communication from the Secretariat for the Vienna Convention and the Montreal Protocol, UNEP
WT/CTE/W/116	Communication from the Secretariat of the Convention on Biological Diversity
WT/CTE/W/117	Convention on Biological Diversity (CBD), Draft Protocol on Biosafety, Recent Developments - Note by the Secretariat
WT/CTE/W/119	Communication from the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
WT/CTE/W/120	Communication from the Secretariat of the International Tropical Timber Organization (ITTO)
WT/CTE/W/122	Communication from the Secretariat of the Intergovernmental Forum on Forests (IFF)
WT/CTE/W/123	Communication from the Secretariat of the United Nations Framework Convention on Climate Change
WT/CTE/W/124	Convention on Biological Diversity (CBD) – Draft Protocol on Biosafety - Note by the Secretariat
WT/CTE/W/128	Recent Developments in Multilateral Environmental Agreements (MEAs) – Note by the Secretariat

Non-Papers submitted under Items 1 and 5 of the CTE's work programme

Non-paper (19 February 1996)	Submission by the European Community on Item 1
Non-paper (20 May 1996)	Submission by Switzerland on Item 1
Non-paper (12 June 1996)	Submission by Korea on Item 1
Non-paper (23 July 1996)	Submission by Hong Kong on Item 1
Non-paper (23 July 1996)	Submission by India on Items 1 and 5
Non-paper (11 Sept. 1996)	Submission by the United States on Multilateral Environmental Agreements

ANNEX II

WEBSITES RELEVANT TO TRADE AND ENVIRONMENT AND MULTILATERAL ENVIRONMENTAL AGREEMENTS

OECD	Environmental Issues homepage http://www.oecd.org/env/
UNEP	Multilateral Environmental Agreements: includes the Basel Convention, the Montreal Protocol, UNFCCC, CITES and the Convention on Biological Diversity http://www.unep.ch/index.html
UNEP	Information Unit for Conventions: includes a newsletter on environmental treaties, <i>Synergies</i> http://www.unep.ch/iuc/index.html
UNEP	Trade and Environment http://www.unep.ch/trade.html
Earth Negotiations Bulletin http://www.iisd.ca/linkages/voltoc.html	
Environmental Treaties and Resource Indicators (ENTRI) for MEA country searches and Convention texts on-line http://sedac.ciesin.org/pidb/pidb-home.html	
International Institute for Sustainable Development Trade and Sustainable Development homepage http://iisd1.iisd.ca/trade/trdhome.htm	
Multilaterals Project – Comprehensive collection of MEAs http://www.tufts.edu/fletcher/multilaterals.html	
Sustainable Development Gateway http://sdgateway.net/noframe/start.htm (go to TRADE under site index)	
United Nations Treaty Collection Web site http://www.un.org/Depts/Treaty/	
