Reconciling Trade and Sustainable Development

Aaron Cosbey

In November 2001, trade ministers of the 142 countries that were then members of the World Trade Organization (WTO) gathered in the Sheraton Intercontinental Hotel in Doha, capital of the desert kingdom of Qatar. They were there to try to forge a framework for a new round of global trade negotiations—the tenth such round since the multilateral trading system came into being in 1947. Efforts to launch these rounds begin when a crucial mass of economically powerful member states agrees that there is cause for further improving the rules that govern international trade.1

The protest on the food-growers in Doha was intense. Their previous attempt to launch a new round had failed spectacularly in Seattle in 1999, amidst accusations of bad faith by developing-country delegations, transatlantic discord on agricultural issues, and unprecedented angry public demonstrations, all of which shook the confidence of the trade community. Many observers speculated that if the member countries failed yet again, the multilateral system would be totally discredited and would dwindle into irrelevance, eclipsed by the rise of regional and bilateral trade agreements.2 The talks came down to a thirteen-hour wrangling among deep-depressed negotiators who pushed out all the steps to achieve the mandates they had been given by their capitals. In the end there was an agreement, embodied in the Doha Declaration (see Box 8-1)—a document that laid out the elements of a broad round of talks that is now known as the Doha Round of negotiations. The Doha program of work has occupied the energies of the trade community ever since. (See Box 8-1.) It was slated to be completed by 2005, but the inability to reach agreements on key issues has meant that it will continue until at least late 2006, following a WTO

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Ministerial Meeting in Hong Kong in December 2005. In part due to pressure from the European Union, the drafters included a strong statement in the preamble of the Declaration committing the WTO to working toward sustainable development as an objective: "We strongly reaffirm our commitment to the objective of sustainable development….We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development are and must be mutually supportive."

The framework for the talks also included a number of environment-related elements, such as talks on eliminating environmentally damaging fisheries subsidies and setting the relationship between the rules of the WTO and international environmental law. But the key question, as the talks progress to the final stage, is whether they have achieved the lofty goals they set for themselves at the start. Have the Doha talks in fact managed to forge an agreement that will help achieve sustainable development? Do the results reflect a mutual supportive- ness between trade objectives and protection of the environment?

It is not possible to say with certainty until the talks actually conclude. The modern rounds work for the most part on the principle of the single undertaking: all aspects of the negotiations must be agreed to by all countries before anything is finally agreed, so changes can take place up to the last minute. But it is possible to look broadly at the current state of the negotiations, and at the nature of the trade-environment interaction, to reach a sound preliminary judgment.

**BOX 4.1: THE DOHA DECLARATION**

The Doha Declaration is infused with commitments, in action on matters of environmental importance. Key elements include affirmations of sustainable development as an objective of the trading system and the mutual support of trade and environment. There are also commitments to:

- Reduce agricultural subsidies, with a view to phasing them out, and reduce domestic agricultural support (para. 13).
- Liberalize trade in services (including water provision, treatment) (para. 15).
- Reduce non-tariff barriers (such as environmental standards) in non-agricultural goods (para. 16).
- Continue work on trade-related intellectual property rights, including the relationship to the Convention on Biological Diversity (para. 17).
- Work on reducing fisheries subsidies (para. 28).
- Agree to certainty on relationship between WTO rules and international environmental agreements (Agree to the criteria for granting observer status to the secretariats of multilateral environmental agreements (MEAs) and others) (para. 29).
- Work on reducing barriers to trade in environmental goods and services (para. 31).
- Continue talking about the impacts of environmental measures on market access, the environmental benefits of liberalization, and environmental labeling requirements (para. 32).
- Have the WTO Committee on Trade and Environment identify and debate environmental elements of the negotiations and help ensure that the objective of sustainable development is reflected (para. 51).

SOURCE: See en-Note 3.
The "trade community" is highly diverse, both geographically and in terms of background and occupation. The WTO itself is made up of representatives of its 148 member states. Generous-based embassies and their staff. Each member has one vote in a consensus-based system, but the actual power to set the terms of negotiations and alter their course varies with members' economic strength. Thus, while the WTO is dominated by developing-country members, the numbers do not give the real picture; it is not unheard of for a developing-country ambassador to be brought into line by calls from rich-country officials to his or her capital.

The WTO, unlike the International Monetary Fund or the World Bank, is very much run by its members rather than by the Secretariat, which is deliberately kept minimal. The ambassadors are given mandates by their trade and finance ministries back home, though smaller developing-country ambassadors typically have minimal policy perimeters to barrack them up. In some countries the ministries have processes for public input to the negotiating process, but in most they do not. In all countries the usual traders-compatriots who import and export—wield the strongest influence on government trade policies. Civil society organizations such as environmental nongovernmental organizations (NGOs) try with varying degrees of success to influence the policy process through informal public pressure by working within the consultative mechanisms.

Academia is also part of the broadly defined trade community. Trade economists and lawyers influence the agenda and process of negotiations through their scholarly work, by calculating the damage done by rules, for example, or by analyzing the legal implications of disputes panel. They also influence students—the next generation of bureaucrats and diplomats. And they may vocally serve on dispute settlement panels.

Finally, other international organizations have influence. The Organisation for Economic Co-operation and Development (OECD) often acts as the venue where rich countries can work out strategies and positions on trade policies that then are brought to the WTO. The World Bank and the IMF wield substantial influence over the trade policies of developing countries in fact much of the liberalization that has taken place in those countries in recent decades has been in response to conditions attached to World Bank and IMF assistance rather than in response to trade agreements.

The Context: The Trade and Environment Debates
Over the past five decades world trade has quietly grown at rates that dwarf the growth in world income. (See Figures 8–1.) But for most of that time there was no particular reason for the environmental community to notice. The increasingly complex web of international rules governing trade and investment flows. The picture changed dramatically after a trade dispute between the United States and Mexico in 1991. At that time trade was governed by the General Agreement on Tariffs and Trade (GATT), which evolved into the WTO in 1995. Agreement to in 1947 by a core group of 23 countries, GATT's original mission was to lower tariffs barriers that impeded world trade. The idea was that no country on its own would be able to free up trade in sectors where it had existing domestic industries but that a number of countries might do so as a group. The result would still cause some domestic pain, but overall everyone would benefit.

There was also a desire for fairness in international dealings. The historical backdrop
was the international war of protectionist legislation—including the notorious U.S. Smoot-Hawley Tariff Act, which raised import tariffs to record levels on more than 20,000 items—that had intensely deepened the Great Depression of 1929–30 and thereby helped set the scene for World War II. An agreed set of trade rules that all countries would abide by was seen as an essential part of the international postwar order.

By the 1990s most tariff barriers had been brought down to fairly low levels, and GATT negotiations had turned their energies to forms of liberalization that reached far behind the borders of the member states. Domestic regulations such as performance standards, labeling requirements, and rules to prevent imports from introducing new pests and diseases were seen to be much like tariff barriers in acting to unfairly protect domestic industries. To discipline these types of regulations, member countries created new specialized agreements in parallel to GATT, such as an agreement covering standard-setting (the Agreement on Technical Barriers to Trade). Along with this new focus on domestic regulation, the GATT had always had a strong presumption against import bans as a tool of domestic policy.

All these sorts of measures are staples of environmental policy, so in hindsight it seems obvious that trade and environment objectives would eventually collide. The first point of impact was the 1991 Mexican challenge of a U.S. law that aimed to protect dolphins. Tuna fishers would look for schools of dolphins to signal the presence of yellowfin tuna swimming below and would then encircle the tuna with nets that also caught and killed many dolphins. The United States banned the import of tuna from countries that could not prove they reached U.S. standards of dolphin protection, and Mexico challenged the ban as a protectionist measure, illegal under GATT. Among other things, the Mexican fishers objected to the fact that the U.S. standard they were supposed to meet was not set each year until after their own fishing season, when the U.S. kill rate for that year was finally known. The GATT panel hearing the case ruled in favor of Mexico. While the ruling was never officially adopted (the United States blocked consensus), most analysts assumed that it represented an authoritative interpretation of GATT law.

The tuna-dolphin ruling was a wake-up call for the environmental movement. Trade rules mattered. Though they were forged in a little-understood process in Geneva, Switzerland...
land, and adjudicated by tribunals that met behind closed doors, they could conflict with environmental measures, and in the event of a conflict they could triumph. The general concern, though it has become a good deal more nuanced in the intervening 15 years, was that legitimate environmental measures could be ruled illegal under trade rule, and scuttled. How far have we come toward defusing that threat? How successful has the Doha round of talks been at achieving the desired "mutual supportiveness" of trade and environment?

**Basic Concerns and Conflicts**

How economies respond to trade liberalization is one of the most intractable of the range of trade and environment conflicts, because there is not much this trade rule can do to resolve it. Put simply, trade theory predicts that freer trade will result in economic growth. And in many cases, economic growth can be bad for the environment.

To see how this works, consider two countries such as Sweden and Guatemala. It is entirely possible that both countries could be self-sufficient in producing both cars and coffee. But the resources needed to make this happen would be daunting. To grow coffee bushes Sweden would need to build massive greenhouses and heat them with scarce energy resources. And Guatemala would need to build a national auto industry that would be completely inefficient because its market size is just too small. It could be done. But everyone's standard of living would suffer; because so many resources would go into producing a smaller overall basket of consumer goods.

By moving from a self-sufficiency scenario to one of trade between the two countries, Sweden can produce cars, and sell them to Guatemala (and others), and Guatemala can produce coffee and sell it to Sweden (and others). Both are better off. Reality is a little more complex; for example, the worldwide slump in coffee prices makes it clear that some commodities are not ideal foundations for export strategies. And the workers formally employed in the Swedish coffee sector may or may not have found jobs making cars. As a general rule, though, the first trade world is clearly wealthier overall than the world of autarky.

But from an environmental perspective the picture is not so clear. To return to our example, the number of cars both countries can afford will have increased markedly. That means more people driving cars, and more car manufacturing. If the prices of gas, cars, permits, and so on do not fully reflect the environmental costs to society of driving cars (in terms of pollution), then the result will be more environmental damage. Similarly, if the environmental regulations governing automobile manufacturing are lax or enforcement is poor, then increased manufacturing will create problems in Sweden.

The structure of the economy also matters, at least locally. If trade liberalization means a country will specialize in industries that are more pollution-intensive and phase out the relatively clean sectors, then at a national level there may be problems. There is some evidence that liberalization in Chile, for example, has led to a much greater economic reliance on mining and minerals as well as on intensive export-oriented agriculture, with the potential for environmentally damaging results.

Of course, there may also be environmental advantages to more efficient production. Consider, to go back to our example, all the energy Sweden would have been wasting in the production of coffee, and the associated greenhouse gas emissions. Thus it is not easy to predict the environmental consequences of trade liberalization. (See Box 8.3.) Much depends on the strength of each country's...
In 2004, a high-level group of Chinese and international scientists released a detailed assessment of the environmental impacts of China's WTO accession to the WTO, covering a number of key sectors. The report, some of which are surveys, underlines an important message for trade impacts on the environment are not straightforward.

In agriculture, trade liberalization has meant a dramatic shift away from resource-intensive crops such as wheat and rice (since China's water and energy requirements are scarce) and toward labor-intensive sectors such as vegetables and horticultural (since labor is plentiful). China is now the world's largest importer of wheat. The result is perceived to be a lowered use of water, pesticides, and chemical fertilizers in China and potential spillover effects. Of course, the net global effect will depend on the production methods in the countries now exporting wheat and rice in China.

WTO accession has brought a dramatic expansion of aquaculture exports as investment barriers drop and domestic investment shifts from traditional agriculture to new areas. This has meant increased severity of a number of associated environmental problems, especially in coastal waters, destruction of seagrass and mangroves (used as breeding grounds for marine fish stocks), and marine deposition of zinc, copper, and other chemicals used in aquaculture production. Aquaculture's growth is suspected of contributing to toxic red tides.
where resources for environmental management are typically scarce.\textsuperscript{4} Indeed, one of the clearest concerns of the environmental community in the trade and environment debates was that lax environmental laws or enforcement would lure firms from high-standard countries away to foreign pollution havens.\textsuperscript{5} The result would be just as much (or more) global pollution, lost jobs in the high-standard countries, and pressure on regulators in the high-standard countries to loosen existing standards or enforcement and to avoid imposing new standards (so-called regulatory chill).\textsuperscript{6}

One proposed solution was to demand that imported goods be produced according to rules that internalized environmental costs in the production process or, if they did not, to impose taxes on them at the border that made up the difference—leveling the playing field for domestic producers. Proponents of this strategy argued that foreign producers who did not incorporate full environmental costs in their production processes were “ecologically” goods in domestic markets at below the true costs of production. The problem was that such taxes were widely seen as illegal under GATT/WTO rules, setting up a grand conflict.\textsuperscript{7}

This line of argument has more or less faded, for a number of reasons. First, study after study has failed to find any actual evidence of pollution havens. Companies, it seems, take a lot of factors into account when considering relocating (labor costs, political and macroeconomic stability, resource availability, transportation infrastructure, and so on), and environmental costs are a very small part of the total production costs for most sectors (typically 2-3 percent, although much higher in specific cases).\textsuperscript{8}

Second, developing-country exporters and governments argued strongly that particularly the pollution in question were purely local, it was none of the importer’s business how the goods were produced. A pragmatic variant of this argument asked who exactly was going to determine, good by good, what the external costs of production were in foreign countries and whether they were being internalized. There was far too much scope in such schemes, the argument went, for protectionism masquerading as environmentalism. Another variant pointed out that rich countries got rich by plundering the environment, and only subsequently seen to have gotten serious about environmental concerns—just in time to demand that poor countries not walk the same path. According to this argument, if rich countries want clean production in poor countries, they should see some of their ill-gotten gains to help make it possible.\textsuperscript{9}

In the final analysis, it cannot really be said that the trade regime, notwithstanding the language of the Delta Declaration, has done anything to address this type of concern. On the other hand, although liberalizing in the face of inadequate environmental capacity is likely to actually reduce welfare in important ways, the job of protecting the environment arguably belongs to the environmental regimes of the world, not the trade regime. If trading countries all internalized environmental costs and set safe minimum environmental standards, this would go a great distance toward defusing trade-environment conflicts.

Remaining Areas of Concern

Does the trade regime still threaten environmental regulations in the way it did in the days of the U.S.-Mexico tuna-dolphin dispute? The answer seems to be: not in the same way, but no thanks to the negotiators. The immediate threat is gone, thanks to a ruling from another trade dispute, again over
mature wildlife. The tuna-dolphin ruling had been widely held to say that it was GATT-illegal to discriminate against goods at the border based on how they were produced (as opposed to discrimination based on differences in the final product). That is, tuna caught in ways that kill dolphins is just the same as tuna caught in dolphin-friendly ways, so it is predicated on discriminate between the two. This sort of logic obviously cramps the ability of environmental regulators to do their job, since how a good is produced is one of the key questions determining its environmental impact.

In 1996, India, Malaysia, Pakistan, and Thailand complained to the WTO about a U.S. measure to protect endangered sea turtles. In this dispute sea turtles were the bycatch of shrimp trawlers, and the United States had banned imports of shrimp from countries that did not mandate an escape hatch for turtles in their fishers' nets. The measure was found in a number of ways—for example, it gave the complaining countries almost no advance notice of the impending ban and it specified a particular technology rather than a desirable result—and it was ruled against by both the dispute panel and the Appellate Body. But the Appellate Body did not base its ruling on the logic of the tuna-dolphin dispute; it even went so far as to reject that logic.15

In other words, environmental regulators are now in principle free to dictate what goods shall enter their markets based on how the goods in question are produced. There are, of course, a number of stringent caveats, such as that the environmental damage in question must actually affect the regulator's country. For example, if a measure is aimed at protecting a migratory marine species, the mitigation path should include the regulator's territorial waters. This may seem like scant progress, but it defuses the most exploitive issue in the trade-environment debate: and, significant, is the issue that initially raised concerns in 1991. It should be noted, however, that this advance was not something the WTO members negotiated, so no credit goes to them. Rather it was something that a WTO dispute panel handed down as an interpretation of existing rules. In fact, many countries were actually angry with the panel decision and, given the chance to reverse it in negotiations to amend WTO law, would gladly do so.16

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There are actually several areas of the Doha talks that may yet yield such a reenchantment. One is in talks on nonagricultural market access. These are about freeing up trade in all goods except those covered by the WTO's Specialized Agreement on Agriculture. One area of those talks aims to reduce "dual-tariff barriers" to such trade. The talks have yet to define precisely which barriers they have in mind, but for many countries this includes environmental regulations of the type (eventually used by domestic) regulators. Table 8-1 lists a sample of the more than 100 measures various countries have officially submitted in these talks as examples of the types of regulations they would like to see prohibited because of their detrimental impacts on exporters. None of these complaints may yield any results in the final agreement, but the fact that these sorts of measures have been targeted makes the outcome uncertain, and troubling to those concerned about the environment.17

Another area of concern is environmental labeling, which the Doha Declaration states for
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<tr>
<th>Sector</th>
<th>Regulations</th>
<th>Opposing Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemicals</td>
<td>Forced registration of new and existing chemicals under the European Union's groundbreaking REACH system of chemicals management to protect health, safety, and the environment.</td>
<td>Japan</td>
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<td></td>
<td>Measures on the control and use of the pesticide ethylene dibromide</td>
<td>Argentina</td>
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<tr>
<td>Electronics</td>
<td>A voluntary initiative of the Electronics Information Technology Industry Association to equip environmentally-friendly computers.</td>
<td>Malaysia</td>
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<td>Measures banning the use of hazardous heavy metals such as cadmium, lead, and chromium during production.</td>
<td>Thailand</td>
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<td>EMS standards</td>
<td>Voluntary requirements for some purchase to comply with ISO 14000.</td>
<td>India</td>
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<tr>
<td>Environmental Management System standards</td>
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<tr>
<td>Energy</td>
<td>Standards for minimum levels of thermal efficiency in imported water heaters and requirements for information on efficiency levels.</td>
<td>Argentina</td>
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<td></td>
<td>Standards for average fuel efficiency in automobiles.</td>
<td>South Korea</td>
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<tr>
<td>Fish</td>
<td>Labeling requirements for presence of genetically modified organisms in canned and preserved seafood.</td>
<td>Thailand</td>
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<td>Dolphin protection measures for jumbo fish.</td>
<td>Venezuela</td>
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<tr>
<td>Footwear</td>
<td>Scobbling of footwear based or recognized environmental management schemes.</td>
<td>Uruguay</td>
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<tr>
<td>Forestry</td>
<td>Quarantine and certification rules, including environmental certification requirements.</td>
<td>Australia</td>
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<tr>
<td>Health</td>
<td>Restrictions on and complicating procedures for authorizing use of new food additives.</td>
<td>Malaysia</td>
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<td>Oncotrophic testing sensitivities for the carcinogenic antibiotic chloramphenicol in dairy and other livestock.</td>
<td>India</td>
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<tr>
<td>Recycling</td>
<td>Labeling requirements to show recycled content in paper products. An EU requirement for manufacturers to take back and recycle waste electrical and electronic equipment.</td>
<td>Korea</td>
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<td>Malaysia</td>
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*Source: See note 13.*
tal efforts. This is not likely to happen in the foreseeable future, but if it did it would subject those efforts to WTO legal challenges.

A final area for concern in the Doha talks is the negotiations on the relationship of WTO law to the international environmental treaties. Multilateral environmental agreements such as the Kyoto Protocol, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Cartagena Protocol on Biosafety constitute a body of international law that has potential conflicts with trade law, since parties to MEAs may use trade-related measures such as labeling restrictions or trade bans to implement them. In the case of the Montreal Protocol, for example—an MEA to protect the ozone layer—that party is committed to banning imports of ozone-depleting substances from countries that are not party to the Protocol. The bar is there for at least two reasons. First, it gives countries incentives to join the Protocol, since otherwise they will lose export markets for their ozone-depleting substances. Second, and most important, it protects the integrity of the agreement itself; it is a regime dedicated to capping and lowering the production and consumption of ozone-depleting substances, allowing countries outside the system to freely boost usage of those substances by parties to the Protocol through trade would completely undermine the agreement's effectiveness.17

But this kind of import ban arguably runs afoul of the basic WTO law on nondiscrimination because it bars imports from some parties (those not party to an MEA) but not others. It may also breach WTO obligations on quantitative restrictions by using the import ban in the first place. The basic issue is that there is no problem with parties to an MEA agreeing to use trade measures among themselves, but there may be problems if those measures are used by one WTO member against another WTO member that never signed up to the MEA. The letter could argue that its negotiated WTO rights were being violated.

The WTO does have exceptions to its rules, including exceptions designed to allow for environmental measures, but it is not clear whether these would be useful in the event of a challenge. While there has yet to be such a challenge, many in the environmental community are not content to wait and see; they want some certainty that WTO rules will not be used to trump the rules agreed to by countries when negotiating their MEAs. Some certainty would also be welcomed by negotiators of future MEAs, as they struggle with the perpetual assertion that when they are seeking is in contrast to WTO rules.

Those demands, pending for over a decade, led to language in the Doha Declaration that committed the WTO to negotiating agreement on the relationship: "With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be focused in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question."18

It should have been cause for rejoicing in the environmental community that the WTO was finally addressing this core issue after years of dithering, but nobody was celebrating after reading this text. In the first place, it does not address the real issue; it only talks about resolving WTO-MEA conflicts between parties to the MEA in question. 'To use the example of CITES, where Parties use trade restrictions among themselves to control
trade in endangered species, this would be a non-issue for CITES parties, as they have already consented to let each other trade in endangered species. It would be unacceptable for a party to CITES to claim that another party's use of measures would violate its WTO rights. The real issue, as already noted, is whether countries that are not part of CITES can complain that their WTO rights are being violated because they cannot ship endangered species to CITES-parties.

The current negotiations do not do much to mitigate the kinds of threats that many environmentalists fear the WTO poses to legitimate environmental regulations.

In fact, the outcome of these discussions may make things worse. The Doha Declaration pledged that the outcome will not prejudice the WTO rights of non-parties to MEAs. If this is an agreement that affirms the rights of non-party WTO members with respect to MEAs, there may be incentive for WTO members not to join current or future MEAs for fear of losing important WTO rights in the process. While the final outcome of the talks is still uncertain, the narrow scope of the Doha text, along with the final assurance clause, makes this environmental aspect of the negotiations more dangerous than welcome.

The other area of the Doha mandate related to MEAs calls for the members to negotiate procedures for regular information exchange between the MEA secretariats and the relevant WTO committees and to decide criteria for observer status. It seems a fairly straightforward proposition that better communication between the WTO and the MEAs, and MEA participation at relevant meetings, would be a good way to foster mutual supportiveness. For example, the WTO-Environment Synergies

The Doha Declaration affirmed, in language that had been used many times before, that the objectives of the trading system and the objectives of environmental protection should be mutually supportive. As noted earlier, this kind of dynamic might prevail if trade liberalization replaced wasteful production methods with more efficient methods. It may also be that rising incomes can create the foundation for a public demand for higher environmental quality, so many in the trade community argue that the increased wealth created by trade liberalization will also bring environmental improvements.
Those arguments are not without problems. First, they rely on the uncertain link between trade liberalization and rising incomes. But more important, they are too often irresponsibly misappropriated to justify a policy of palliative now (while industrializing), clean up later (when rich). This ignores the reality that prosperity and environmental quality cannot be traded off one for the other, misses the central problem of irreversibility of environmental damage, and advocates cleanup action that are many times more expensive than pollution prevention.

Nevertheless, the Doha talks might contribute directly to a synergy between trade and environmental objectives in at least two ways: in the area of subsidies and in the negotiations on environmental goods and services. Subsidies are one of those rare subjects whose economies and environmentalists find common ground. Subsidies for forestry and fisheries contribute to overexploitation of those renewable resources. Subsidies for fossil fuel exploration, research, and production make polluting fossil fuels cheaper than clean alternatives. And subsidies in general have had name with atomism, who fear that they distort price signals in the market and result in inefficiency. So there is a clear potential for synergy if trade rules can manage to reduce "counterproductive" subsidies: those that are both economically and environmentally damaging.

The most likely possibility for this is the Doha talks is the area of fisheries subsidies, which the Declaration commits members to clarifying and improving WTO disciplines on. This reference marked a milestone as a long effort by a few dedicated nongovernmental organizations to get the fisheries subsidies issue on the WTO agenda. The need is unquestionable: global fisheries subsidies have been estimated at some 30 percent of the value of the catch, at a time when three quarters of the world's stocks are being fished at or beyond their biological limits.

The Doha promise may yet amount to very little: the talks to date have not been particularly fruitful, and there is no strong constituency for demanding concessions on the subject in the negotiations. In the trade negotiation process, every victory comes with a price, and the question is, "Who is really wiling to pay for this one?" At the failed Seattle meeting in 1999, the fisheries issue was too easily swept from the table in the last-minute bargaining of the mid game negotiations. In the case of the Doha talks the issue cannot simply be ignored, as it is part of the agenda. But the challenge remains to get an agreement with some teeth.

Another area with potential for synergy is the reform of agricultural subsidies. Agriculture is the most critical issue in the negotiations, and reform of export subsidies and domestic support are two of the most contentious elements. On these, the Doha Declaration commits to "reductions of, with a view to phasing out, all forms of export subsidies; and substantial reduction in trade-distorting domestic support." If this result is actually obtained, it might yield a significant environmental gain. OECD countries support their farmers to the tune of over $200 billion per year, and much of that ends up encouraging overuse of chemical inputs such as fertilizers, pesticides, herbicides, and fuel for machinery; cultivation on unsuitable land, leading to erosion and soil degradation; and problems of effluent management and other issues associated with over-intensive and inappropriate agricultural production. If we could squeeze these kinds of distorting support (and particularly if there were also action on fossil fuel subsidies for transport), more sustainable practices such as local greenhouse production and organic farming would be...
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fat more price-competitive. As with fisheries subsidies, there is slated to be some agreement, but it is not clear how strong it will be; there are many ways that these complex talks might dress up the status quo as new and improved. Unlike in the fisheries case, though, there are strong champions for subsidy reform in agriculture among the WTO members—primarily from middle-power agricultural exporters that cannot compete in the subsidy wars—so there are likely to be some real results.

A key question from an environmental viewpoint is, which subsidies will be reduced, and how? Not all subsidies are harmful. One of the major pillars of the European Union’s Common Agricultural Policy, for example, is support for improving agri-environmental performance and for promoting rural development and structural adjustment. This includes compensation to producers for promoting biodiversity, conserving and improving soil, and generally acting as good environmental stewards. The challenge is to reduce perverse subsidies while preserving those that compensate farmers for protecting the environment. Unfortunately, the Doha agricultural talks have no formal link between reducing subsidies and the environmental results (as there is in the fisheries subsidies talks, for example).

A final area of potential synergy is in the Doha promise to reduce or, as appropriate, eliminate tariff and non-tariff barriers to environmental goods and services. Intrinsically, it seems likely that the more such trade we have, and the cheaper the goods and services, the better for the environment. This is probably true, but the key question is what exactly we mean by environmental goods and services.

In fact, the talks to date have centered on this sticking point. In the case of environmental goods, the question is whether to focus on a good’s use, its production, or in characteristics. A smokestack filter is unquestionably an environmental good because of its intended use (though many such goods have dual uses). But some argue that organic agricultural products are also environmental, because of the way in which they were produced, and that hybrid cars are as well because of their characteristics. The potential for environmental benefits from this sort of definition is huge, but there are some daunting practical obstacles. Would the WTO get into the business of deciding what organic standard to use internationally? Or of deciding on an ongoing basis which particular cars are “green” enough to warrant being listed? Designating and administering eco-labels is hardly the WTO’s current mandate, and many would not welcome it adopting such a role.

In the end, there seems to be good potential for the Doha round to deliver on its promise to help make trade and environment mutually supportive. But if a great ecotone, the devil will be in the details of the final deal. It will be challenging to come anywhere near exploiting the full potential for trade-environment synergies.

Trade and Sustainable Development

The Doha Declaration extends beyond the trade-environment relationship to affirm that sustainable development—simultaneous progress on environmental, economic, and social issues—is an objective of the trading system. To those who have worked for some time on the issue of sustainable development, this can hardly be surprising. That is, if countries are not trading and making trade rules in order to increase human well-being sustainably, then why else are they doing it? What other objective could we contemplate? And, yet, before the statement to this effect

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in Doha and the weaker statement in the preamble to the 1995 agreement establishing the WTO, it was understood that the WTO was about facilitating international trade, on the implicit understanding that doing so would work out to better the human lot worldwide. Indeed, to most this is still the understanding, whatever the wording of the Doha Declaration.

What in fact would it mean to have a trading system that seriously strove to foster sustainable development? Take a country like Madagascar, for example. Madagascar is a WTO member, and sorely in need of the development that should come from trade liberalization. Over 70 percent of the population survives on less than $1 a day; malnutrition is rampant, and access to basic medicines and sanitation is extremely limited.8

But Madagascar is also typical of the poorest countries in terms of facing serious obstacles to actually achieving the potential gains from trade liberalization. Private access to credit—a staple of small entrepreneurs—is extremely limited and the financial system is immature, with some 2.5 million people per bank (for context, this would mean roughly eight banks to serve all of New York City). Electricity provision is inefficient, expensive, and irregular, particularly outside the capital. Getting exports out of the country is a challenge; the transportation infrastructure is mostly in terrible condition, and moving goods along the older roads can double the factory-door price of the shipped goods. A customs service is sore need of training and resources holds up shipments that are time-sensitive. The publicly owned telecommunications service is inefficient. And the bureaucracy that oversees taxation and approvals is non-transparent and unpredictable, with too much discretionary power; businesses can devote up to a quarter of their administration's effort to simply dealing with government bureaucracy.9

What can the WTO offer Madagascar? In such a situation entrepreneurship is difficult, to say the least. When trade liberalization puts down the tariff barriers, instead of the growth of domestic exporters we see the growth of imports from more-efficient foreign producers. The only exception is in the growth of exile exports produced in special export zones; that offer extended tax holidays, which have sparse spin-off development benefits for the country as a whole.10

There are strong champions for subsidy reform in agriculture among the WTO members, so there are likely to be some real results.

It does not take a high-priced international development consultant to see that simple trade liberalization à la WTO is not going to be sufficient to bring sustainable development to Madagascar. In fact, trade liberalization introduced without regard for the domestic situation in such countries may actually make matters worse, lowering tariff revenues and allowing privatization of financial services such as banking and insurance where there may not be capacity to regulate them. In order to properly exploit the potential gains from trade liberalization, Madagascar needs massive investment in its transportation, communications, and energy infrastructure. It needs a serious upgrading of its civil service, including the regulatory regimes for environmental protection and financial services. It needs a functioning system of finance and law.

In short, Madagascar, and many other countries like it, needs help from the international community—development assistance devoted to capacity building, technical assistance, infrastructure upgrading—before it
undertakes the kind of liberalization that the WTO demands. But the WTO has no way to assess what individual economies need or to tailor the liberalization package to suit. Although developing countries are given “special and differential treatment” in all WTO agreements, this usually amounts to nothing more than longer time frames for implementing the very same commitments taken on by countries with completely different capacities to benefit and implement from those agreements.

Trade and environment issues can be fundamentally domestic issues of resource management, industrial policy, and environmental regulation.

This failure means the WTO will have trouble meeting the economic and development elements of the sustainable development challenge. But it has serious environmental implications as well, for environment, economy, and development are tightly linked. To use the example of Madagascar yet again, the country is one of the world’s biodiversity hotspots: mega-diverse areas under extreme threat. The country harbors a wealth of varieties of flora and fauna found nowhere else in the world, with an estimated 80 percent of its plant species being endemic. But grinding poverty forces people into environmentally destructive behavior such as slash-and-burn agriculture, deforestation for charcoal, illegal logging, and overhunting and over-collection of species from the wild. Highland deforestation causes so much annual erosion that astronauts viewing the country from orbit have compared Madagascar’s mud-filled rivers to open veins bleeding the country to death. In some areas the country loses 400 tons of soil per hectare annually. Every year up to a third of the country burns in fires deliberately set for agricultural clearing—a phenomenon that affects the rest of the world as well by releasing massive amounts of atmospheric greenhouse gases. Of course, the loss of Madagascar’s forests also means the loss of its rich biodiversity—another global problem.

All told, if the WTO is serious about achieving sustainable development, it will have to address a much wider variety of concerns than it does at present. It will have to work closely with other organizations with similar mandates, such as the World Bank, the United Nations Development Programme, the United Nations Environment Programme, and others to help ensure that countries that liberalize are ready to do so and able to gain thereby. And it will need a significantly more nuanced approach to “special and differential treatment.”

This is obviously a significant challenge and would involve unparalleled institutional change in the WTO. It is unlikely to happen in the foreseeable future. But it is the inescapable conclusion of committing the organization to the objective of sustainable development.

Beyond the WTO

The trade and environment debates range more widely than the issues covered by the WTO. Doha negotiations, which are used here as a salient and convenient framework for graphically illustrating the issues. Even as concerns trade and investment liberalization, the WTO seems ever farther from the furious action regional and bilateral agreements are being developed at an astounding rate. The number of such agreements under negotiation or consideration is for all intents and purposes incalculable, changing on a weekly basis. Of the 273 regional trade agreements
that the WTO received notice of as of December 2003, only 120 predated 1995. If planned agreements conclude as anticipated under WTO notification, the end of 2005 will see almost 300 regional trade agreements in force.12

The rush to regionalism has been particularly newsworthy in Asia, where, for example, an agreement between China and the Association of Southeast Asian Nations is set to create the world’s largest trading bloc by 2010, covering nearly 2 billion people. Even traditionally reluctant India has, in the past two years alone, signed trade and investment agreements with Afghanistan, Chile, China, India, Singapore, and Thailand.13

Most of these bilateral and regional agreements, where they are between developing countries, have few to no environmental provisions. They typically do not impose environmental protection or sustainable development as objectives, nor do they have provisions such as environmental exceptons, environmental enforcement mechanisms, or requirements for environmental impact assessment of the agreements themselves—despite the fact that these agreements will have serious environmental consequences, despite the fact that many of the countries involved have signed agreements with environmental provisions when negotiating with OECD countries, and despite the fact that these same countries actually signed on to the language of the Doha Declaration, which holds them to higher standards. As such, many analysts are surprised to find themselves wistfully making comparisons to the relatively “green” WTO agreements.14

A major area of trade and environment interaction outside the WTO occurs at the domestic level, where trade and investment policies that have little to do with trade law may foster or frustrate sustainable development and environmental protection. Unilateral liberalization or domestically driven export promotion policies may, for example, rely too heavily on depletable natural resources and thereby undercut their own success. After Argentina unilaterally liberalized in the early 1990s, and with the entry of foreign investors and concessions in the sector, its fisheries exports exploded, with catches rising some 240 percent between 1990 and 1997. But the sector was poorly regulated, with many fisheries routinely reporting catches of one third above the total allowable catch and with high bycatches in a number of important fisheries. The shrimp fishery, for example, was estimated to have a bycatch of hake of up to 62 percent of the total catch. In 1997 the reported hake catch was 47 percent over allowable limits. If estimated bycatch and unreported catch are included in the calculations, the total allowable catch for hake was exceeded that year by more than 100 percent.15

The result, predictably, has been a near-collapse of a number of important fish stocks. The point is that trade and environment issues are not only a matter of international trade law but can also be fundamentally domestic issues of resource management, industrial policy, and environmental regulation. In most countries, but particularly in the poorest ones, there is not enough appreciation among government policymakers of the integral links that bind trade policies and environmental results or of the impacts of both on well-being. Even where the links are appreciated there is often a shortsightedness of financial and administrative resources to devote to the issues. Another facet of the trade-environment relationship that lies outside the WTO is voluntary eschewing of fair trade labeling. These labels are awarded to products that perform according to a set of criteria that distinguishes them from others in their class. Fair trade labels traditionally deal with a broader set of
issues than simply the environment, also cov-
erning workers' conditions of employment, fair payment to producers, and so on. But most fair trade labels will include some sort of environmental criteria as well. For exam-
ple, labeled coffee—the largest fair trade product, with about a third of fair trade sales in most markets—is typically organically grown or grown under shade trees that pro-
vide for bird habitat and thereby maintain or increase biodiversity (as compared with shrub plantations). Many fair trade purchasing orga-
nizations will work with producers to mini-
mize environmental impact where it is a rele-
vant concern.35

While fair-traded and ecolabeled goods are a small portion of the total market, growth of that share is high, fueled by increasing availability of labeled goods in conventional retail outlets. North American fair-traded products in 2002 were worth $180 million, up 44 percent from the previous year. Euro-
pean networks are the most established and widespread, however, with sales totaling over $2 billion annually.36

These sorts of labeling schemes help con-
sumers act directly to help ensure that trade and sustainable development principles are mutually supportive. As noted earlier, such schemes are outside WTO law but there is some controversy—unlikely to be resolved in the foreseeable future—about whether they in fact ought to be.

While more and more of the major trade and environment issues play out beyond the WTO framework, that framework is still important. When regional and bilateral deals are cut, the WTO forms a sort of backbone around which they are built. Even where such deals are in force, WTO rules remain in force as well. Furthermore, liberalization ini-
tiatives such as Argentina's occur in the con-
text of wider liberalization worldwide—a trend to globalization in which the WTO is one of the key actors. Some even see the WTO getting involved in voluntary non-
governmental labeling, though that is unlikely. The bottom line is that while it is important to be aware of and engaged on the non-
WTO issues of trade and environment, par-
ticularly at the regional and bilateral levels, the WTO is still the biggest player in the game.

A Final Grade: Needs Improvement

In the end, the WTO's Doha agenda does not get high marks for its efforts on sus-
tainable development. In fact, in areas such as nonagricultural market access, labeling, and the relationship to MEAs, the challenge is to ensure that the negotiations do not end up making things worse. On the broader promise of achieving sustainable develop-
ment through trade talks, it is clear that actu-
ally doing this will demand a significant reorientation of the WTO and unprecedented effectiveness in cooperating with other orga-
nizations. There is no discernable movement in this direction on the horizon.

In fact, one of the only bright spots in the trade-environment nexus comes out from the WTO negotiations but from the rulings of WTO's Appellate Body. It is ironic that the week of reconciling trade and environment should fail to this institution, which has a mandate to interpret, but not actually amend, WTO law. Amending the text of the agree-
ments would clearly be preferable to leaving it to dispute-settlement panels, not least because while panels do tend to take strong guidance from past rulings, they are not offi-
cially bound to do so.

There are, however, a few potential areas for progress in the Doha agenda, including agricultural subsidies, fisheries subsidies, and environmental goods and services. In these last two areas the concern is that there is no.
champion for these issues at the negotiating table, and that real progress might be sacrific-
ified in the tough final-hour negotiations over issues where there is already strong inter-
est. In agriculture there is certainly going to be some progress, but care must be taken that it is environmentally friendly; there is no mechanism in the talks to ensure such a result.

Yet the Doha process does have a mecha-
nism that was intended to play just such a role for the talks as a whole. Paragraph 51 of the Declaration reads: "The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected." 37

This is an unprecedented commitment to have the Committee on Trade and Environ-
ment—the body responsible for environmental matters in the WTO—act as a watch-
dog on areas of the negotiations that have environmental repercussions and make rec-
ommendations on how the talks might bet-
ter foster outcomes supportive of sustainable development. Unfortunately, this commit-
ment has been ignored. While there are reg-
ular special negotiating sessions in the committee, they do not come near to fulfill-
ing this type of mandate, focusing narrowly on only a few explicitly environmental aspects of the talks. This is a pity. Taking the para-
graph 51 language seriously would be an excellent first step toward addressing the concerns described in this chapter. In the end, there are a number of ways the Doha talks could bring an unprecedented positive result for the environment and sustainable development, but it will take unusual polit-
ical will to get there.