
Trade-Related Multilateral Environmental Agreements

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Outline of Presentation

- Part I** **General Principles of
International Environmental
Law**
- Part II** **Selected Trade-Related MEAs
signed by Yemen**



PART I:

General Principles of International Environmental Law

MEAs and Trade

- **Over 200 MEAs, but only 20 have trade-related provisions**
- **Relationship between WTO and Trade-related MEAs part of regular work program of the WTO Committee on Trade and Environment (CTE)**
- **No collective mechanisms exist for formal coordination between MEAs or trade-related MEAs, although UNEP houses most global agreements; thus MEA Secretariats assess their relationship to WTO on an individual basis**
 - **However, trade-related MEAs have collectively sought to secure standing before the CTE to at least observe proceedings within the CTE and WTO that may impact the implementation of MEAs**

Environmental Principles that have implications for International Trade

Apart from the Marakesh Agreement mandate to support “Sustainable Development,” environmental principles are not included in the GATT/WTO, which focuses exclusively on trade.

However, international environment principles that often guide MEAs and may run contrary to WTO principles, or viewed differently depending on their application. For example, the:

- Pollution prevention
- Precautionary approach
- Polluter-pays principle
- Preferences for developing countries

Why ?

Soft Law Principles

- **Precautionary approach (Rio, Article 15)**
 - More conservative approach to risk assessment
 - Shifts the burden of proof by requiring potential polluters to demonstrate that their actions do *not* damage the environment
 - Implications for SPS and TBT Agreements.
 - SPS Agreement allows for precaution to be exercised only when pending collection of technical information needed to justify the measure
- **Polluter-pays principle**
 - Raises issues of liability and responsibility for environmental degradation
 - Begs the question if those who pollute the global commons more should pay more, and how.

Trade Principles that have implications for MEAs

Some basic principles of international trade are not necessarily compatible with measures applied in MEAs.

- **Principle of Non-Discrimination** – can not differentiate between like products based on PPMs
- **Most Favored Nation Clause** – if trade in a certain product is only restricted to some countries
- **National Treatment** – if differentiation is allowed between like products that are domestically produced or imported

A Couple International Law Fundamentals

1. One international agreement can not be subject to the terms of another agreement, unless specified and agreed to by the Contracting Parties
 - Therefore: International trade agreements do not have supremacy above international environmental agreements signed by the same Member States.
 - Recently MEAs referring to WTO work... *could be problem*
2. Chronology doesn't count
 - International agreements are equally valid over time, and are amended through agreements among the Contracting Parties (which may chose or decline to sign on to amendments or follow-up protocols)
 - An international agreement that is signed first does not have supremacy over another agreement signed later, or the inverse, unless a clause in the most recent agreement stipulates otherwise.



PART II:

Trade-Related MEAs Signed by Yemen



Trade-Related MEAs signed by Yemen

- International Plan Protection Convention (1979)
- Convention on the International Trade in Endangered Species of Wild Fauna and Flora & Bonn Amendment
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
- Convention on Biological Diversity
- Vienna Convention & Montreal Protocol, London Amendment, Copenhagen Amendment, Montreal Amendment
- UN Framework Convention on Climate Change & Kyoto Protocol
- Stockholm Convention

International Plant Protection Convention

- Purpose: Establishes **licensing system** for the entry of plants and pests into national territories to prevent the spread and introduction of pests and plant products (natural or cultivated). Linked to FAO.
- IPPC recognized in WTO SPS agreement as a source of international phytosanitary standards that WTO members are encouraged to use as the basis for their technical regulations. Measures should be applied in a manner that is **not discriminatory**.
- **1997 amendment to the IPPC sought to become more compatible with WTO agreements signed in 1994.**
 - e.g., 1997 agreement calls on countries to adopt phytosanitary measures when “**technically justified**,” while in 1979 **was more liberal** saying measures should not adopt measures unless “necessary by phytosanitary considerations.” Plus transparency component.

Convention on the International Trade in Endangered Species of Wild Fauna and Flora

- **Precautionary principle fundamental to this MEA**
- Seeks to manage trade in wildlife across countries through **restrictions, licensing + quotas**
- Encourage use of impact assessment of trade in wildlife
- **Caviar example** (contained in decisions):
 - Recommends import quota of 250g/person for imports
 - Requires compliance with universal labeling regime to authorize imports of caviar
 - Notification system to secretariat regarding exports
 - Also subject to CITES-wide export **quota controls**, which establishes four different sources of export quotas.

Montreal Protocol on Ozone Depleting Substances (ODS)

- Protocol of the Vienna Convention. Yemen signed Convention & London, Copenhagen, Montreal Protocols.
- Bans imports and exports of ODS controlled substances by Parties (CFCs, HBFCs, Methyl Bromide, etc.), and discourages export of technologies to produce ODS to countries that are not party to protocol...puts controls thus on NON-Member of the Agreement
 - Technology transfer encouraged for production of ODS alternatives or emission reduction technologies, exception allows sale of ODS recycling technology.
- BANGKOK (1993) recognized that could not ban/restrict trade in products MADE WITH, but not containing ODS (product v/s PPM issue)
 - PRAGUE (2004) invites countries to **NOT** restrict trade in products/commodities that have been TREATED with MB or grown in soil treated with MB if country ratified the Montreal Protocol

Convention on Biological Diversity + Cartegena Biosafety Protocol

- Convention+Protocol recognize that the agreements provide way for developing countries with voice to protect their biodiversity, particularly those who are not WTO Members
- Overlap with Trade principles and agreements on: TRIPs, SPS and TBT Agreements, precautionary principle
- TRIPs – supports application of *sui generis* regimes to protect indigenous knowledge, but such regimes should also take into consideration customary law (not only principles enshrined in TRIPs)
- Requires labelling of products destined for food, feed or products that may contain Living Modified Organisms (LMOs)
- Supportive of elimination of subsidies that may lead to the over exploitation of fishery resources

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

- Bans on export and transport of hazardous waste to countries unable to dispose/recycle it in an environmentally-friendly way. Duty to re-import if importing country can't do that. (TBT & quota conflict)
 - Issue regarding what is hazardous, recyclable (e.g, copper, zinc, lead ashes, zinc ashes)
- Includes **Prior Informed Consent** / control system clause requiring Governments to be notified of export or import of product
- Non-Parties to agreement still subject to its terms due to measures governing actions of parties.
- Geneva 2004-Recycling/Waste Minimization statement: See EC Directive on Electronics+Hazardous Waste

Rotterdam Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade

- PIC Convention NOT signed by Yemen (convention has 80 members)
- Provides framework for Governments to notify regarding chemicals for which PIC required
- Linkage to Basel Convention
- What is interesting here is that this MEA **Recognizes its Relationship to WTO** and seeks to avoid potential conflict

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Thank you.



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