

Environment: Greening the GATT or GATTing the Greens??

Presentation Summary and Comments

MARK LINSKOTT,* DAN MAGRAW,** BOB HEINE,*** L. BRENNAN VAN DYKE,****
AND DAVID WASKOW*****

Mark Linscott: The link between trade and the environment has been a topic of discussion since the establishment of the World Trade Organization (WTO), but the WTO's new Doha Round of negotiations is novel in that it established a specific negotiating agenda on trade and the environment. Additionally, the environmental implications of domestic policies and international rules may come up in other areas during the Doha Round, for example, in the industrial market access and agriculture negotiations. Two issues that did not make it into the Doha negotiations on trade and environment are the precautionary principle and eco-labeling.

The outcome of the Doha trade and environment negotiations is unclear, but at the very least it seems likely that the resulting package could include significant new disciplines on fishery subsidies to avoid over-fishing. From the U.S. Trade Representative's (USTR) perspective, two additional issues would be vital components: (1) new market access commitment for environmental goods and services and (2) improved institutional linkages between multilateral environmental agreements and the WTO.

Dan Magraw: Magraw has three basic arguments. First, Magraw believed that it is important to realize that the WTO rules already interact with environmental issues, and numerous aspects of Doha negotiations deal with the environment. Magraw noted that within the Doha Ministerial Declaration, there are fifteen explicit mentions of the environment, and many other areas clearly—even if implicitly—involve human health or the environment. In each of these areas, Magraw asserted, the negotiations should fully integrate social and environmental concerns into the rules of further trade liberalization. The rules should allow countries to set their own health and environmental protections.

*Office of the U.S. Trade Representative, Washington, D.C.

**Center for International Environmental Law, Washington, D.C.

***Dupont, Washington, D.C.

****United Nations Environmental Program, Washington, D.C.

*****Friends of the Earth, Washington, D.C.

Second, Magraw asserted that sustainable development must be the goal of trade. Magraw questioned the WTO's capacity to achieve this goal. On the one hand, there is institutional momentum in the WTO toward using trade and investment liberalization as a means to achieve sustainable development. On the other hand, however, the WTO's delegates and dispute settlement panelists have little background and knowledge on issues pertaining to human health and environment.

Third, Magraw argued that transparency and broader avenues for public involvement are necessary conditions for effective, sustainable development. To date, Magraw said, the WTO and the United States have both been weak on transparency—a reality that has been cause for American embarrassment. Stronger educational programs to facilitate public understanding and promote public involvement are important. During the NAFTA negotiations, for instance, the USTR understood the need to bridge differences of opinion about the relationship between trade and the environment. Accordingly, USTR conducted seminars which helped diverse parties to better understand one another's viewpoints and the impact of international agreements.

Bob Heine: Domestic industry has usually been supportive of an open trading system and of the link between environment and sustainable development, despite some lack of clarity on the issue.

Heine noted that a popular view among many seeking to clarify the relationship between the rules of the WTO and multilateral environmental agreements have argued that multilateral environmental agreements (MEAs) should be able to override the WTO rules if two conditions are met: (1) the MEA is based on sound science; and (2) the MEA focuses on a trans-boundary or global problem and was negotiated in an open and transparent system with participation by a broad variety of countries.

It may seem counterintuitive for the business community to support MEAs, but the business community is very concerned about the precautionary principle and unilateral actions by a country based on that country's unique notions of environmental protection. A possible benefit of MEAs is that they may promote a more rational, science-based approach to risks and may help ensure that government regulations treat similar risks similarly.

The business community supports the efforts in the WTO negotiations to abolish harmful subsidies, which should apply to not only subsidies in the fisheries sector but also in other sectors such as steel. Subsidies may be harmful to the environment and waste resources that could be better used in other areas, including improving the environment.

The business community also supports capacity building and technology transfers, both at the government level and through foreign direct investment (FDI). The potential importance of FDI to enhance development and promote environmental protection was implicitly recognized at the launch of the Doha Round, which included negotiations on rules to protect foreign investment.

L. Brennan Van Dyke: According to Van Dyke, agreement has slowly emerged over the last decade that sustainable development should be the clear goal of globalization. For globalization to achieve this goal, tools like trade rules and capacity building must be properly designed and used.

The WTO needs to further internalize its commitment to sustainable development. At Doha, many of the negotiators still believed that the function of the WTO was merely to negotiate additional rules for trade liberalization. The view that the organization should also promote capacity building has been growing inside the WTO, but there is still some ways to go. Additionally, more needs to be done to integrate the WTO's work with the work of other institutions, including key institutions of the United Nations.

David Waskow: Waskow argued that the wide scope of WTO rules, which encompass many complicated issues, may lead to direct conflicts with domestic environmental regulations and MEAs. Accordingly, Waskow argued that the limited and belated focus of the “Trade and Environment” negotiations in the WTO was like tinkering around under the hood of a car while the car is speeding downhill.

Waskow expressed skepticism about the WTO to adequately take into account environmental issues and he thought it unwise to address the MEA-WTO issue at the WTO. Waskow believed that WTO panels should not have oversight over a country’s implementation of its commitments under an MEA. MEAs are equal and autonomous international regimes that should not be subject to WTO oversight or the limits of WTO rules (for example, the “least trade restrictive test”). Waskow suggested, however, that the narrow mandate in the WTO negotiations on MEAs may allow for a more focused negotiation of the contentious issues. Given that the mandate deals only with situations where both countries are a party to the MEA in question, it may be possible to negotiate an agreement to limits on the “least trade restrictive test” or to explicitly provide an exception from trade rules for actions taken under an MEA under article XX of the General Agreement on Tariffs and Trade.

Waskow also noted that the momentum of the WTO directly conflicts with domestic environmental regulations and MEAs in three areas: investment, services, and TRIPS.

Waskow argued that the investment area should not be negotiated at the WTO for two reasons. First, the WTO is already overburdened by regimes beyond the competence of the institution. Second, trade and investment involve very different issues. Experience under chapter 11 of the NAFTA—where investors have challenged environmental regulations—demonstrates some of the problems that have arisen under investment agreements.

With regard to the negotiations on services, it is unclear whether these will yield net harms or benefits. On the positive side, trade in environmental services might be liberalized. To date, however, these negotiations have focused on waste disposal, and the EU has proposed to include water under environmental services. How this will all turn out is not clear.

