



## Trade and Environment: WTO and MEAs

*This is one of a series of position papers on trade and environment. BirdLife International is focusing on key environmental issues that are significant to the 5<sup>th</sup> Ministerial Session of the WTO in Cancún, Mexico, September 2003.*

*We believe that mutually reinforcing and supportive multilateral systems for international trade and environmental protection are essential to sustainable development and well-being. Without positive outcomes for both the environment and developing countries, the so-called 'Doha Development Round' of the WTO will fail to meet both its own sustainable development mandate and the needs of present and future generations.*

### **Summary position:**

**BirdLife International believes that the Doha Round must deliver a multilateral trade system that reflects the concerns of civil society and works for the common good - people and the environment. It must support poverty eradication and have sustainable development at its heart.**

To ensure this, BirdLife believes that:

- The WTO's rules and operations have to date been skewed towards pursuing trade liberalisation as an *end in itself* rather than a *means to an end*. International trade policy must now concentrate on how to *manage* trade for human and environmental benefit.
- For mutual supportiveness, the environment must NOT be subordinated to trade. Trade rules and trade concerns must not be used by governments to have a 'chilling effect' on the interpretation and implementation of existing Multilateral Environmental Agreements (MEAs) or on the development of new MEAs
- To achieve sustainable development:
  - (i) Greater coherence and cooperation must be sought within and between all multilaterally agreed systems;
  - (ii) Trade frameworks must themselves be 'greened';
  - (iii) WTO negotiations must become more transparent and inclusive of key stakeholders, specifically MEA Secretariats and UNEP, to ensure policy coherence and due weight to environmental concerns.
  - (iv) Any trade and environment conflicts must be addressed in an open, inclusive and transparent way. Sustainable development, fully addressing environmental concerns, should be central to conflict resolution.
- *Under Paragraph 31(i) of the Doha Declaration*, governments should formally agree a legal interpretation of WTO rules clarifying that the use of trade-related measures in MEAs is consistent with WTO rules.
- The WTO does not have the core competencies and should not have final jurisdiction over the compatibility of trade measures in MEAs with WTO trade rules.
- *Under Paragraph 31(ii) of the Doha Declaration*, MEA Secretariats and appropriate United Nations bodies (e.g. UNEP) should be offered an active and participatory role in WTO decision-making.
- Trade decisions should be guided by full and effective use of the Rio Principles including the Polluter Pays, Precaution and Common but Differentiated Responsibility, and by other multilaterally agreed environmental imperatives such as the ecosystem approach.

**1.0 BirdLife believes that mutually reinforcing and supportive multilateral systems for international trade and environmental protection are essential to sustainable development and well-being.** This has been recognised by both the Doha Declaration (Paragraphs 6 and 31) and the Johannesburg Plan of Implementation (JPOI) (Paragraphs 97 and 98) and must be put into practice. Several obstacles and challenges need to be overcome to actualise this.

**2.0 The Doha Declaration states that:** (Paragraph 31) *With a view to enhancing the mutual supportiveness of trade and environment, [WTO members] agree to negotiations, without prejudging their outcome, on:*

- (i) *the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited 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;*
- (ii) *procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;...*

**2.1 As we live in a world of increasing interdependence whereby trade, the environment and sustainable development are inextricably linked, we welcome the recognition of the need to clarify the relationship between the WTO and MEAs.** However, we have several concerns with the current WTO mandate and process, notably:

(a) It is unfairly biased towards WTO trade rules in specifying that *'negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements... nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries'*. (Doha Declaration, 2001)

(b) Discussions to date, despite impacting on and concerning the environment, MEAs and areas outside of trade competence, have not been open and participatory, actively engaging MEAs' secretariats and others with necessary expertise.

(c) Discussions to date have generally focused on areas of conflict; they should also address positive synergies and areas of mutual support, such as technology transfer and capacity building, which are integral to MEAs.

(c) The scope of these negotiations ignores two key but difficult issues in the WTO-MEA relationship, notably measures taken against non-parties to an MEA, and trade-related measures that are permitted but not specified in MEAs.

**3.0 Currently, the relationship between the WTO and MEAs display a number of imbalances which need to be redressed,** specifically:

(a) Trade interests are represented by a single global decision-making and adjudicating body, while the impetus for environmental protection has (for good reason) been segmented among a range of specialised entities, typically Conventions and other agreements. The legal and political status of trade and environmental regulation has evolved independently, and differences are less a result of coherent consensus about an order of precedence, than the outcome of each special interest sector championing its own advantage. The greater weight given to trade objectives when conflicts occur often reflects the general power imbalances between environmental and economic sectors. To ensure sustainable development, environmental concerns should be fully addressed in decision-making and conflict resolution.

(b) In practice, WTO rules which promote more 'liberalised' trade systems effectively outweigh other international laws because WTO rules can ultimately be enforced with trade sanctions. Despite the vital role that trade measures play in many MEAs, there is still uncertainty as to whether trade measures taken pursuant to MEAs are compatible with the WTO. Such measures are potentially open to challenge and hence the aims of the MEAs concerned could be undermined by the actions of the WTO. Trade liberalisation should be paralleled with measures to strengthen environmental governance, including strengthening of compliance and dispute settlement mechanisms within MEAs.

**4.0 For mutual supportiveness, the environment must NOT become subordinate to trade.** There must be an aim of striving to achieve a level playing field between the legitimate concerns of both trade and environment, nationally and internationally, and also recognition of their interconnectedness, for example, environmental conditions affect productivity, and market incentives shape cultural landscapes. Negotiations in Cancun must ensure that the relationship between trade and environmental protection systems is mutually supportive and not conflicting, whilst not subordinating environmental protection instruments.

4.1 **'Enhancing mutual supportiveness' must ensure that trade rules and trade concerns are not used by governments to have a 'chilling effect' on the interpretation and implementation of existing MEAs or on the development of new MEAs.** This is important as pressure from some countries due to trade concerns and/or the threat of WTO challenge has been seen to undermine environmental protection processes (e.g. in the Biosafety Protocol and Persistent Organic Pollutants); this will work against the achievement of sustainable development.

5.0 **To achieve sustainable development: (i) greater coherence and cooperation must be sought within and between all multilaterally agreed systems; (ii) trade frameworks must themselves be 'greened' and, (iii) they must become more open and transparent.** Governments should ensure full cooperation and coordination, as well as better mutual understanding, between trade and environment officials both at the national and international level, specifically between those attending WTO and MEA negotiations. Greater transparency and openness is required within the WTO. To this end, civil society stakeholder participation should be encouraged and/or further developed at both the national and international level, with appropriate facilitation and resource provision to address potential power gaps between voluntary and corporate sectors and to ensure inclusion of minority groups.

6.0 *With specific reference to Doha Declaration Paragraph 31(i), we believe:*

6.1 **Governments should formally agree a legal interpretation of WTO rules clarifying that the use of trade and trade-related measures in MEAs is consistent with WTO rules.** Negotiations should not be overly prescriptive (e.g. detailing each specific trade obligation (STO) in every existing MEA), which would be inappropriate, burdensome and problematic. Outcomes must ensure that adequate recognition is given, in all appropriate fora, to trade related decisions made by states acting as the sovereign decision-makers in MEAs.

6.2 **We believe that the WTO does not have the core competencies to decide the compatibility of trade measures in MEAs with trade rules.** Whilst we welcome the WTO's recognition and awareness of environmental issues, the WTO is not an environmental policy making body and does not have the core competences to enable it to negotiate environmental specificities. It should not attempt to undermine the functions of MEAs or other international environmental governance structures. As such, the WTO should not define MEAs or trade measures within or pursuant to MEAs. The WTO could usefully participate in the development of trade measures in MEAs, but this should be executed through MEA Secretariats and appropriate United Nations bodies (e.g. UNEP).

6.3 **It is essential that trade measure continue to be used where appropriate by MEAs, and that they are respected within the WTO and by WTO members.** To date there are some 200 MEAs agreed by governments as necessary to protect the environment and the natural resource base upon which all life depends. Several MEAs employ measures that may impinge on trade as a means to achieve their objectives. These means, often in the form of 'specific trade obligations', have been both negotiated and deemed necessary by governments, often the same governments who are party to the WTO rules.

7.0 *With specific reference to Doha Declaration Paragraph 31(ii), we believe:*

7.1 **MEA Secretariats and UNEP should be offered an active and participatory role in WTO decision making.** This should be not only in the WTO's Trade and Environment Committee, but also in other Committees, such as Trade and Development, Trade-Related Aspects of Intellectual Property Rights (TRIPS), Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT).

At present, most MEAs do not have even observer status. To develop mutual supportiveness and policy coherence, is vital that MEA Secretariats and appropriate United Nations bodies (e.g. UNEP) can participate at the negotiating level and are not merely invited as observers to 'special sessions'.

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All position papers have been written and produced by the RSPB in consultation with BirdLife International's Secretariat (Cambridge).

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***BirdLife International** is a global Partnership of conservation organisations, working in more than 100 countries worldwide. The BirdLife Partnership strives to conserve birds, habitats and global biodiversity, joining local communities around the world to achieve awareness of our natural resources and how to use them sustainably.*

***The Royal Society for the Protection of Birds** is Europe's largest wildlife conservation organisation with over a million members and the UK partner of BirdLife International. Through research, advocacy and land management, we strive to link national and international policies for sustainability with local concerns in both the South and the North. We have extensive programmes of work in many policy areas including agriculture, trade, climate change, energy, transport, the marine environment, fisheries, education and capacity building.*

***The RSPB and BirdLife International** are working to ensure that international trade and international trade rules provide a positive contribution towards achieving sustainable development and thus do not adversely affect the environment.*

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