International Chamber of Commerce
The world business organization

Policy statement

Trade measures for environmental purposes

Prepared by the Commission on International Trade and Investment Policy and by the Commission on Environment

Introduction

As the world business organisation and the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world, the International Chamber of Commerce (ICC) is of the view that a major private sector contribution is essential to help define the agenda and outcome of the first World Trade Organisation (WTO) Ministerial Conference scheduled for December 1996 in Singapore.

In April 1996, the ICC issued a general statement on behalf of world business, on the present and future agenda of the WTO. This statement suggested that in the area of trade and environment, drawing on the work currently being carried out by the WTO Committee on Trade and Environment (CTE), WTO Ministers at Singapore should decide to clarify or modify WTO rules in relation to some of the issues which appear ready for such an approach. Chief among these in the ICC's view should be the relationship between WTO rules and the provisions for using trade measures contained in MEAs. In this context, the ICC considers it timely to issue this statement of business views on the relationship between the provisions of the multilateral trading system and trade measures pursuant to Multilateral Environmental Agreements (MEAs).

The ICC firmly believes that there is no inherent conflict between preserving the earth's environment and fostering economic growth. Indeed, the technological innovation and financial resources generated by global economic growth must be increasingly harnessed to bring about environmental improvements. Economic growth is necessary in order to generate the resources needed to develop and invest in clean technologies. Therefore, environmental improvements require a positive development of the multilateral trading system. Conversely, sound environmental policies can contribute to avoiding trade frictions.

International intergovernmental co-operation will be essential to the development of environmental measures which promote sustainable development, while safeguarding an open, equitable and non-discriminatory multilateral trading system, by guaranteeing the integrity of WTO disciplines.

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Integration and mutual compatibility of environmental and trade policies will enable governments to achieve more fully the beneficial effects of trade liberalisation for both economic development and the environment.

1. The WTO Trade and Environment Committee

Among the matters addressed in the mandate of the WTO Committee on Trade and Environment which will be reviewed at the WTO Ministerial Conference in Singapore, the ICC considers the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes pursuant to MEAs as an issue of central importance to world business. The CTE is currently examining informal proposals from WTO members on this issue, including possible criteria for clarifying this relationship.

The ICC hopes that WTO Ministers at Singapore will extend the mandate of the CTE to pursue its important work in this area, and on the basis of this work, that they may decide to enter into more formal negotiations with a view to clarifying or modifying WTO rules with respect to the use of trade measures in MEAs to achieve environmental objectives.

2. Business principles governing the use of trade measures in MEAs

The ICC considers that international co-operation among countries in the form of MEAs is the preferred means of addressing transboundary or global environmental problems. The ICC also recognises that such initiatives may involve the use of specifically-agreed upon provisions for trade measures in MEAs to achieve the environmental objectives of the agreements. However, the ICC subscribes to the widely accepted view that trade policy measures should not be the first-choice option for enforcing MEAs.

The ICC believes that the use of trade measures in MEAs to achieve environmental objectives should be subject to a number of basic disciplines set out below.

As a matter of principle, the use of trade measures in MEAs to achieve environmental objectives should only be contemplated as a last resort, following the proper consideration of all alternative policy options. Whenever other policy options are feasible to achieve the same objectives, these should be used in preference to trade measures. Trade measures should only be used when alternative measures would be ineffective in achieving the environmental objective without the complementary use of trade measures.

When considering the inclusion of trade measures, states negotiating an MEA should:

- Demonstrate that the proposed trade measures are directly related, necessary, and proportional to the achievement of the environmental objective they are addressing;
- Resort only to trade measures that are no more trade restrictive than required to achieve the environmental objective, and which do not discriminate arbitrarily or unjustifiably;

- Ensure that the MEA specifies as precisely as possible what trade measures it calls for;
- Base any trade measure adopted for the purpose of meeting environmental objectives in MEAs on sound science, and also take into account public health objectives;
- Ensure that trade measures are permitted only in MEAs on which there is a genuine multilateral consensus, and which address broad transboundary and global environmental concerns;
- Allow for truly global participation, defined as "participation by countries which account for a substantial proportion of the activity giving rise to the agreement";
- Consult representatives of business in the process by which trade measures to be included in MEAs are considered, designed and negotiated; and
- Conduct this process in an open and transparent manner.

Private sector participation would allow negotiators of the MEA the benefit of the insights and expertise of those enterprises and industries which engage in the activity affected by the proposed trade measures. This private sector input would also help to secure the necessary level of business support for the proposed MEA.

3. The process for developing WTO-consistent trade measures in MEAs

The ICC strongly believes there is a need to develop further internationally agreed criteria for the use of trade measures within the context of MEAs, in order to minimise opportunities for protectionist and trade-disruptive measures. This may be achieved by applying clearly defined presumptions of WTO consistency to specific trade measures considered for inclusion in MEAs. Such criteria would provide an effective guide for the development and design of trade measures in MEAs, and ensure mutual consistency between international environmental and trade law. The ICC is of the view that the WTO is the best suited negotiating forum for developing such criteria.

The process for developing such criteria should be transparent and open to all stakeholders – and in particular to the international business community – so that the stakeholders may be informed and involved in an effective manner. These criteria should be brought up for periodic review within the WTO, so that they reflect both new developments and experience.
Finally, there is a need for closer coordination in the negotiation of MEAs between departments of national governments responsible, respectively, for environmental policy and international trade policy.

4. The form and applicability of criteria for the use of trade measures in MEAs

The ICC favours an "ex-ante" approach to determine the WTO consistency of trade measures pursuant to MEAs. MEAs and the trade measures they contain which meet the criteria (including those outlined in section 2 above) should benefit from a presumption that such MEAs serve a legitimate environmental purpose and that these measures are necessary to achieve it. The "ex-ante" approach should be complemented by periodic and limited "ex-post" reviews to verify that the criteria continue to be adhered to. It would also be desirable for the WTO members to develop

further criteria to assist panels convened to hear disputes about the measures – including disputes in which one of the parties is a WTO member but not a signatory of the MEA in question – to determine whether such measures are arbitrarily or unjustifiably discriminatory or constitute a disguised restriction on trade. Existing MEAs which either meet the criteria or are amended to do so should also benefit from these presumptions.

As a first step towards the development of legally binding WTO criteria governing the use of trade measures in MEAs, discussions on this issue currently underway within the WTO Trade and Environment Committee should lead to the formulation of a set of guidelines, prepared and issued by the CTE. These guidelines could then form the basis of an "Understanding", or interpretative statement, which would need to be formally adopted by the Council of the WTO.

The ICC considers that this process is the most likely at this time to allow rapid and substantial progress in the development of WTO criteria on the use of trade measures in MEAs.

Some have recommended that trade measures pursuant to MEAs be accommodated by the WTO through an outright amendment of Article XX of the original GATT. The ICC feels that further consideration should be given to the potential unforeseen consequences of amending the basic text of existing trade law. Furthermore, such an amendment may not be necessary or achievable at this time. The development of guidelines, and the experience gained from their application in the form of an "Understanding", could prove extremely valuable in considering the most effective and efficient way in which the GATT might be amended in due course.

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