

Timbur, Margareta

Article

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CES Working Papers

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Suggested Citation: Timbur, Margareta (2012) : Multilateral Environmental Agreements and the Trade Measures Contained in These Agreements, CES Working Papers, ISSN 2067-7693, Alexandru Ioan Cuza University of Iasi, Centre for European Studies, Iasi, Vol. 4, Iss. 2, pp. 256-273

This Version is available at:

<https://hdl.handle.net/10419/198174>

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MULTILATERAL ENVIRONMENTAL AGREEMENTS AND THE TRADE MEASURES CONTAINED IN THESE AGREEMENTS

Margareta **Timbur**
Alexandru Ioan Cuza University of Iași, Romania
timmar12@yahoo.com

Abstract: *The environmental problems which the society is facing, ozone depletion, biodiversity loss, the spread of persistent organic pollutants, are a result of human activity with a worldwide impact, requiring immediate resolution. In this context, negotiation, signing and implementation of several multilateral environmental agreements (MEAs) are one of the best solutions, affordable and reliable. The aim of this study is to analyze the commercial measures, which to some extent, ensure stability, security, and expansion of MEAs. The paper discusses, also, the efficiency, necessity and the influences of trade measures in MEAs and the WTO role in signing these agreements.*

Keywords: multilateral environmental agreements, trade measures, TBT and SPS Agreements, WTO
JEL Classification: F18, Q34, Q56, Q57

INTRODUCTION

In last times, the international community becomes more interconnected, and the most important role in solving the security, migration, trade, environmental, etc. issues, is held by the international cooperation. The problems faced by the society, ozone depletion, biodiversity loss, the spread of persistent organic pollutants, are a result of human activity with a worldwide impact; require an immediate resolution by strengthening the international cooperation. In this context, negotiation, signing and implementation of several multilateral environmental agreements (MEAs) would be an optimal, feasible and reliable solution. In this article I will discuss about the MEAs which contain commercial measures, their necessity, effectiveness and impact.

1. MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAs)

The environmental problems are considered to be the most serious issue facing humanity today. Due to its international scale, it requires an international solving tool. Nowadays, the multilateral environmental agreements prove their capacity of being the most appropriate instrument to settle these concerns. Currently, there are more than two hundred multilateral environmental agreements, whose goals are to anticipate and prevent environmental problems.

Multilateral environmental agreement is “an intergovernmental document intended as legally binding with a primary stated purpose of preventing or managing human impacts on natural resources. (Mitchell, 2012) In other words, it is an agreement between few states that pledge for limitation of human negative environmental impacts. Taking into account that environmental issues are a form of market failure, it requires a powerful authority which would implement and enforce the environmental policies up to the national levels. As this authority does not exist, the MEAs take over some of that authority functions, including auto-execution.

In the MEAs designing process, the intrinsic feature required is the scientific basis, especially in the identification of the environmental issue process. Besides this, the agreement must be accepted by many countries, which means it should be profitable for all countries and must hold some sort of stability constraint (Ioannidis, Papandreou and Sartzetakis, 2000, p. 2).

Over the years, MEAs became a dynamic tool with flexible capacity for improvement and development. In order to extent the credibility of this tool, it includes commercial measures, which also, guarantee stability and safety of its functionality.

According to Palmer and Tarasofsky (2007, p. 4), trade-related measures are used in multilateral environmental agreements to:

- Discourage the unsustainable exploitation of natural resources that are internationally traded;
- Discourage environmentally harmful processes and production methods for goods and services that are internationally traded;
- Create market opportunities and incentives to use and dispose goods in an environmentally sound manner;
- Prevent or limit the entry of harmful substances into a country;
- Reduce the incentives for countries to remain outside the agreement and become “free riders” which can benefit competitively from the absence of MEA standards; and
- Enhance compliance with MEA rules.

These measures not only have direct environmental consequences (e.g. preventing environmentally harmful emissions), but, also, act to enhance the integrity of multilateral environmental agreements by providing incentives for universal participation and compliance. Trade measures should not be considered the “first best instrument” to achieve the objectives of the MEAs. These measures should only be used simultaneously with positive incentives, such as financial assistance and technology transfer, especially in southern countries (less developed),

where they are vital. The relationship between environmental technology transfer and the incentives for signing MEAs, gives rise to very interesting questions presented by Qiu and Yu (2001, p.1). First, will technology transfer induce the South to sign the MEAs? Second, will the South's participation in the MEAs increase the market incentives for technology transfer? Signing MEAs, the southern countries must increase environmental taxes to an optimal level, higher than that specified in MEAs, instead, they will receive financial transfers as compensation from Northern countries.

Cleaner technology decreases the “negative effect” of environmental taxes growth, which stimulates the South to sign MEAs. In the same time, the decision to sign MEAs belongs to the governments, while the technology transfer is performed at the companies’ level. Due to financial compensation, the South governments may be willing to sign MEAs, but the pollution tax increase, decreases the companies’ benefits. Thus, the only solution to get a convenient draw is to allocate financial compensations as subsidies for the transfer of environmental technologies.

2. EFFECTIVENESS, NEED AND IMPACT OF TRADE MEASURES IN MEAs

Trade measures is considered “any policy instrument that attaches requirements, conditions, or restrictions on imported or exported products or services themselves, or the process of their importation or exportation” (OECD, 1999, p. 11). They have tended to become more sophisticated over time, along with the better understanding of economic and environmental mechanisms and the establishment as the prime priority the sustainable development. (Potier and Tébar Less, 2008, p.20)

Why would these measures be *necessary* or what *functions* they fulfill? Is it possible that domestic measures would achieve the objectives without controlling the imports and the exports? What type of consequences might appear from not using trade measures in MEAs? Effectively, the trade measures are re-regulation of international trade, which is used to prohibit or restrict trade in products that might affect the environment or the human, animal, plants’ health and lives. This is particularly important for developing countries, where the lack of regulatory and institutional capacity to control the domestic products dangerous for the environment, require the involvement of international institutions. We can say that trade measures secure the humanity of unwanted goods.

According to Neumayer (2000, p. 2), trade measures in MEAs fulfill four functions: “first, they can be used to deter non-compliance by members to the agreement (deter internal free-riding); second, they can be used to encourage, persuade or push countries into becoming members to the

agreement (deter external free-riding); third, they can mitigate problems with so-called emission leakage, which describes the phenomenon that a decrease in emissions by the participants to an agreement is counter-acted by an increase of emissions by non-members; finally, they can be used to directly further the objectives of a MEA in restricting trade in specified substances or species.”

There is general agreement that, in terms of environment, trade measures should be used when they are the only effective means to achieve an environmental objective and in terms of trade, they must be the least restrictive and not a disguised form of protectionism (Kavikumar, 2006, p.133), in addition, it should not be unnecessary, arbitrary or unduly discriminatory.

Trade measures used in various MEAs are classified into several types:

- Reporting requirements on the extent of trade of a particular product/item,
- Labeling or other identification requirements,
- Requirements related to notification and consent procedures,
- Market transformation measures - such as taxes, charges and other fiscal measures, and non-fiscal measures such as government procurement,
- Targeted or general export and/or import bans.

Another distinction can be made between specific and nonspecific trade measures (Brack and Gray, 2003, p.6). Specific measures are explicitly described in MEAs and are binding on all parties. Nonspecific measures are not explicitly described, but can be implemented by the parties, as a tool of conformity of their duties to accomplish the objectives of MEAs. For example, the Montreal Protocol includes specific trade measures as prohibition of trade (products controlled by the Protocol) with non-parties. Many countries have introduced, nonspecific measures, such as labeling requirements or excise taxes, for fulfilling their obligations for elimination from consumption of ozone-depleting substances.

If we refer to the *effectiveness* of trade measures is practically impossible to measure their contribution to the efficiency of MEAs because none of them depend exclusively on trade measures. Indeed, it is impossible to assess the effects of trade measures, but they are not negligible especially, since they are achieving coordination between MEAs and WTO rules.

The inclusion of trade measures in MEAs has a considerable *impact*. As I mentioned above, the lack of regulatory capacity for controlling products in developing countries, might do these countries importers of hazardous waste or genetically modified products. In this situation, trade measures become regulations for developing countries which help to avoid the risk of becoming the trash can of the world. (Brack and Gray, 2003, p. 16) Also, these measures have an important role

in excluding illegal trade and ensuring that producers are not undermined by illegal operators and involved governments are able to collect tax revenue, otherwise stolen.

On the other hand, trade measures, creates a conflict with WTO rules, because MEAs allow restriction of trade with certain products or countries. The relationship between WTO rules and MEAs is complex and controversy, with political, legal and practical elements. The debates over this subject in the WTO Committee of Trade and Environment (CTE) were not able to come up with operational solutions. Since the WTO and MEAs are two different bodies of international law, Knigge (2005, p. 7) believes that their relationship should be based on mutual recognition and support. “Most proposals on the interface between WTO rules and MEAs aim at enhancing synergies by improving the exchange of information and strengthening co-ordination”

MEAs and international trade might influence each other directly or indirectly. For example, the Montreal Protocol on Substances that Deplete the Ozone directly affects trade in certain types of products; including changes in production processes previously used ozone-depleting substances. This type of impact on trade is a natural result of the environmentally harmful products process ban or restricts and is the central goal of these measures. In such way the trade liberalization influence the objectives of MEAs.

The relationship between WTO and MEAs is characterized by many inequalities that need to be corrected. Trade system is managed by a single global institution (WTO), while the environmental functions are spread between few types of entities, usually, conventions and agreements. The international trade and environmental regulations have evolved independently, and the divergences are the result of the race to their advantage. When conflicts arise, greater weight is given to trade objectives, which means that economic prevails over environment.

The role of trade measures in the MEAs is great, but many of these are incompatible with WTO rules. From this reason “trade liberalization should be developed in parallel with measures which strengthen environmental governance, including compliance with dispute settlement mechanisms within MEAs. But in this relationship, the environment should not be subordinate to trading system, but must be mutually reinforcing and recognizing the interconnection of these two areas.” (Brack and Gray, 2003, p. 19)

Most of the MEAS's, explicitly, limit trade between the parties and nonparties. These restrictions violate the “most favored nation treatment” art. I GATT. If these restrictions take the form of import or export bans, export certificates or access restrictions, then they violate the “elimination of quantitative restrictions” art. XI GATT. If countries under MEAs rules apply

different charges for imported products than for domestic products, then they violate the principle of “national treatment” art. III GATT. If there are applied the product standards or sanitary and phytosanitary measures, then it is violated TBT and SPS Agreements. Thus, apparently, the trade measures contained in MEAs violate one or more principles of GATT. Although, the exceptions may be covered by art. XX, we can say that trade measures in MEAs are in a passive conflict with WTO rules and principles. In the same time, the environmental agreements cannot be effective without coordinating with trade regimes; equally multilateral trade agreements cannot ignore environmental impacts of sustaining free trade. MEAs, always, have to choose the appropriate means for environmental protection, and WTO, to counter protectionist abuse of trade measures. This division of rules shows what attempts have been made to accommodate both the WTO and MEAs in their interaction area, and proposes how future trade and environmental regimes’ different norms should reshape trade and environmental agreements.

Environmentalists from developing countries consider the trade measures from MEAs having a negative economic impact by restricting market access. They also argue that the compliance costs can not be recovered by the environmental and developmental benefits. The economic reality is that through signing MEAs, developing countries obtain an international market access, which can improve the ecological processes production and quality for some products directly regulated in agreements. Also, MEAs can provide to developing countries financial assistance, technology transfer and other incentives to overcome the difficulties of implementation.

Another difficulty in the WTO – MEAs relationship is the application of trade measures against non-signatory countries, but which, in the same time, are WTO members. These countries, by not signing MEAs, do not agree the modifications of their obligations under the WTO, which make complicated the trade relations with the signatory countries. Some of the MEAs, as the Montreal Protocol, CITES and the Basel Convention don't discriminate against non-signatory parties. This allows them to have all the commercial advantages as member countries.

In the same context of ideas, another type of problems might appear concerning the “nonspecific” trade measures implied individually by the parties in order to achieve the MEAs objectives. In this way may result a tightening of national environmental regulations, (Tarasofsky, 2004, p. 4) which is not prohibited by the MEAs and can lead to different consequences with direct impact on international trade, particularly through trade restrictions or prohibitions.

Although, there is an evident contradiction between MEAs provisions and trade liberalization actions coordinated by the WTO, there were not registered disputes between these two institutions.

This happens due to creation under the Committee on Trade and Environment (WTO), of informative sessions, where environmental agreements secretariats are invited to submit relevant explanations of the Agreement rules. These meetings have certainly facilitated mutual understanding of the links between environment and trade agendas and the importance of trade measures in MEAs.

3. RELEVANT MEAs FOR INTERNATIONAL TRADE

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

CITES* aims to conserve the species, which may become endangered on the international markets. This provides the framework for the management of trade with wild fauna and flora on the base of biological information that reduce the negative effects of trade in endangered species. CITES requires that all imports, exports or re-exports of the species referred in the Convention must be authorized through a licensing system. The species covered by CITES are listed in three Appendices, according to the degree of protection they need.

CITES specifies few types of rates determining the maximum number of copies that can be exported. This serves as a significant conservation measure restricting unsustainable trade, helping the countries to regulate trade and maintain market access in the situations when international trade provides positive incentives for environment conservation.

International trade is not the major cause of biodiversity loss, but international demand pressure transmitted through trade is vital for a significant number of species. For reaching CITES objectives, are used few categories of trade measures: bans in certain specimens of species, export/import permits, re-export certificates, marking (OECD, 1999, p. 19). Trade bans and export/import permits can only be effective when there is not illegal trade. Unfortunately, illegal trade exists in developing and developed countries, and usually it takes the form of false labeling of species.

The main objective of CITES is the preservation of environment and this depends on whether the net stocks of species are increasing. Here an important role it is played by the rate of natural habitat loss and poaching what affect the availability. Flora and fauna are valuable only if exist as a whole at the world level. Thus, there must be an obligation of developed countries to bear some of

* Signed in 1973, entered into force in 1975 and today is numbering 173 parties.

the costs of species conservation in developing countries. This assistance may take the form of contributions or loans from different international organizations (Sankar, 2007, p. 20).

Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol

The Vienna Convention for the Protection of the Ozone Layer is a framework convention, which established rules of procedure for future protocols that would be developed under the Convention, rather control ozone depletion (OECD, 1999, p. 63). The Vienna Convention on the Law of Treaties provides the legal base for the situations when arise conflicts between two treaties on the same subject - the most recent treaty prevails. The Vienna Convention contains two limitations. First, this does not apply when a treaty contains a clause that specifies the relationship to other international agreements. Second, it does not provide rules for signatory parties' conduit.

The Montreal Protocol* (the pylon of the Vienna Convention) on Substances that Deplete the Ozone is considered by the OECD (1999, p. 63) the first agreement using trade measures as part of a global policy package which address a truly international problem.

The Protocol bans the trade with ozone depleting substances and products containing these substances between signatory parties to the treaty. The trade control between parties is taking place through the consumption formula of these substances, namely, **production + imports - exports**. For trading these substances between parties and for controlling the illegal transfer of ozone depleting substances, the Protocol recommends using a licensing system.

Beyond the above formula, the protocol does not specify the exact steps and means to achieve the objectives. Therefore, it states to use a wide range of policy measures to fulfill the Protocol, including taxes on substances that deplete the ozone, tax incentives to substitute their production quotas, import quotas, import/export bans, manufacturing licenses, labeling, technical standards of products, prohibitions, etc. To control domestic production and consumption, trade measures were combined with policy tools (OECD, 1999, p. 68).

The trade measures have been designed in such a manner as to prevent the two situations, first, the importation of controlled substances from non-signatory countries. Secondly, the Protocol discourages the export of those products to signatory countries (UNEP, 2007, p. 8).

The Montreal Protocol is a famous example of MEAs prohibiting trade between signatories and non-signatory members. Penalties, as Barrett stated (1997, p. 346) have served to stimulate many nations to sign the protocol, by preventing competitive advantage and deterring trade in

* Adopted in 1987, entered into force in 1989 and today is numbering 196 parties.

controlled substances between the participating countries. But these sanctions discouraged the “free-riding”, not either the illegal trade.

Trade measures used in this Agreement contain more flexible mechanisms, such as: the grace period for developing countries, production of ozone depleting substances, reciprocal obligations for financial cooperation and transfer of technology from developed countries to developing ones.

Jha, Hoffman and Vossenaar (2000) analyzing the impact of the Protocol at national level in India, Korea and Thailand argue that it varies from country to country (depending if is an exporting or importing country) and from one industry to another. They argue that many developing countries have signed this Protocol hoping for financial support and transfer of clean technologies from developed countries to developing countries and especially, trade restrictions have ensured the participation of most of the parties to this Protocol. The non-signatory countries lose more (the gains from trade is diminished by trade restrictions) than benefit (gains from free-riding), and Protocol participants earn more by imposing trade restrictions to non-signatory countries, this has led many countries to join the Protocol. Normally, countries do not gain from trade restrictions. But in that case, trade restrictions limited free-riding. Ironically, although this undermines the unilateral efforts, reinforces the international multilateral efforts to protect the ozone layer.

Thus, the Montreal Protocol trade sanctions could be viewed with concern (Barrett, 1997, p. 357), because violates the nondiscrimination GATT principle. But taking into account the cause which was argued on, it is considered a success for environmental protection.

Basel Convention on Control of Transboundary Movements of Hazardous Wastes and their disposal

The Basel Convention on Control of Transboundary Movements of Hazardous Wastes and their Disposal* aims to protect human and environment from adverse effects that may result from generation and management of hazardous waste.

Since there is not a specific requirement, obligation with respect to trade in hazardous waste under WTO, the Basel Convention is the only institution dealing with this distinct class of products. (Brack and Gray, 2003, p. 21)

Trade measures included in this Convention mainly refers to control of trade with hazardous waste based on the information and prior's consent principle. This means that a country can export the materials to another country only, if it has acquired prior written consent from the importing

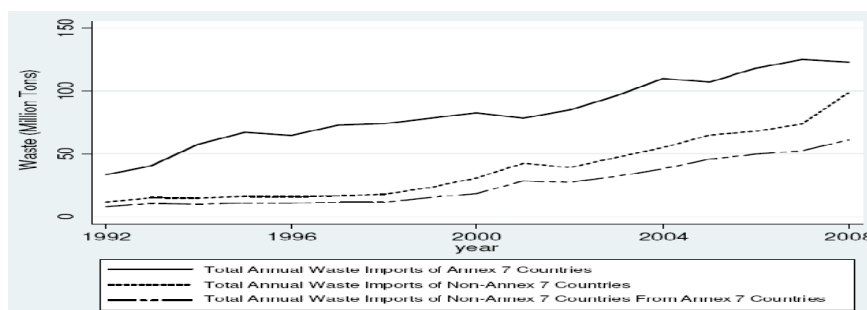
* Signed in 1989, entered into force in 1992 and today is numbering 175 parties.

country and any transit countries. Trade with non-signatory countries is prohibited, except if there exists a separate agreement between them separately. (Krueger, 1999, pp.106-108) A signatory country has the right to refuse the entry or disposal of hazardous waste from foreign territory. In addition, an amendment to the Convention prohibits the trade in these materials between OECD countries and those that are not part of OECD.

Although, Basel Convention aims to reduce the waste production and transport, the basic tool is the ban of trade with waste (Kellenberg and Levinson, 2011, p. 7), which increased transparency and created incentives for other countries to join the convention. But critics argue that these tools were more likely to legitimize international trade with wastes than to decrease it. For example, a country that previously was not signatory, couldn't trade waste with a member of the Convention. If it is simply ratifying the accession to the Convention it accepts the shipments of waste. In this case, once both countries have ratified the Basel Convention, it has been an increase rather than decrease of the bilateral trade with waste.

In response to critics, it was introduced in 1995 the Basel Ban Amendment which stipulates that all countries from Annex VII (OECD, EU and Lichtenstein) are prohibited to export hazardous wastes and other wastes in the non Annex VII countries. If the amendment would be effective would have to see a reduction of trade with waste from Annex VII countries to other countries. But in Figure 1 we see that the total annual amount of waste imports (in tones) for both types of states have increased substantially between 1992 and 2008. Notable is the fact that imports of waste in non Annex VII countries grew at a faster rate than imports in Annex VII countries. What seems more surprising is the fact that imports in non Annex VII countries come from the Annex VII countries. Considering that the number of countries that have ratified the Basel Convention has grown significantly, it is not inconsistent with the Basel ban amendment.

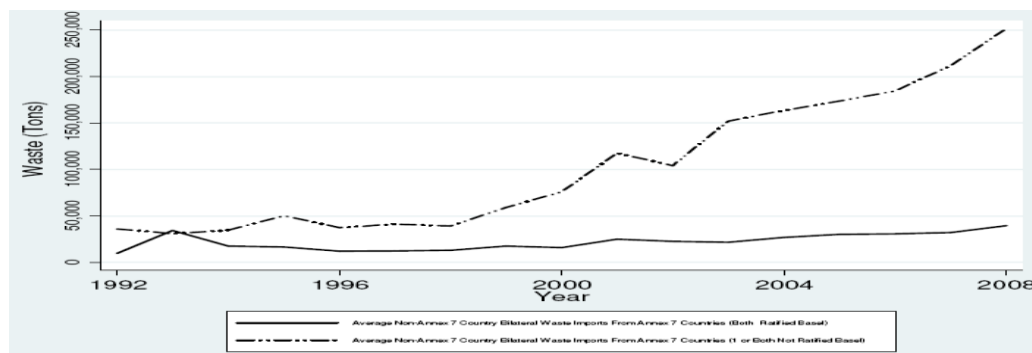
Figure 1 - Total Annual Imports of Waste



Source: Kellenberg, D., Levinson, A., 2011, *A Waste of Effort? International Environmental Agreements and Trade*, Conference of Association of Environmental and Resource Economists, Seattle.

Figure 2 illustrates the average of bilateral flows of waste (in tones) upon the ratification of the Basel Convention. The result is quite striking. When both countries are members of Basel Convention, the average of bilateral exports of waste is constant throughout the time. However, when one or both countries are not members of the Basel Convention, the average volume of bilateral flows of waste between countries increased by more than 500% over the same period. This suggests that much of the increased waste imports from non Annex VII countries come from the partners who are not members of the Basel Convention.

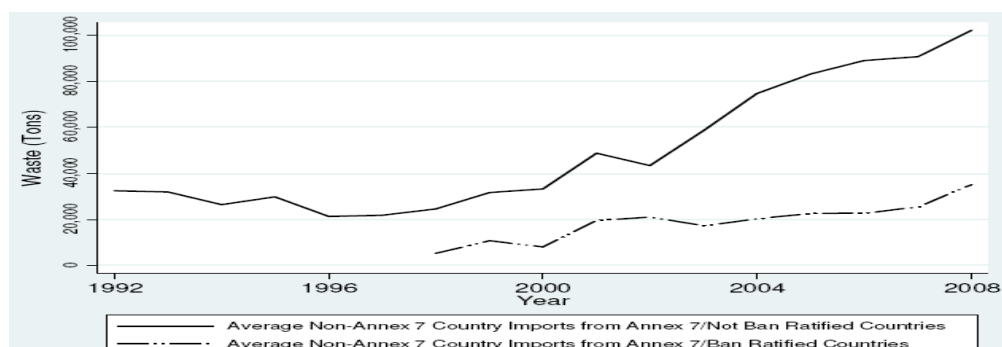
Figure 2 - Annual Average Bilateral Waste Imports of Non-Annex VII Countries Exported from Annex VII Countries (By Basel Ratification Status)



Source: Kellenberg, D., Levinson, A., 2011, *A Waste of Effort? International Environmental Agreements and Trade*, Conference of Association of Environmental and Resource Economists, Seattle.

In Figure 3, we note that the average of bilateral waste trade from Annex VII countries that have ratified the ban amendment was substantially lower than the average flow of waste from Annex VII countries which have ratified the ban amendment.

Figure 3 - Annual Average Bilateral Waste Imports of Non-Annex VII Countries Exported from Annex VII Countries (By Basel Ban Amendment Ratification status)



Source: Kellenberg, D., Levinson, A., 2011, *A Waste of Effort? International Environmental Agreements and Trade*, Conference of Association of Environmental and Resource Economists, Seattle.

Basel Convention does not contain provisions concerning the financial assistance required in developing countries for implementation. This was considered (Krueger, 1999, p. 27F) as one of the major reasons, why the deployment of trade in hazardous waste failed and illegal trade flourished.

In terms of efficiency, Krueger (1999, p. 62) suggests that “insofar as the goal was to eliminate the worst forms of hazardous waste dumping in developing countries, trade restrictions of the Convention can be considered a success.” However, it is not clear whether these restrictions were necessary to achieve this effect.

United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol

United Nations Framework Convention on Climate Change* aims to stabilize concentrations of greenhouse gases in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. UNFCCC does not prohibit international trade in certain products, but countries actions to implement the Convention may have trade implications. The measures taken to combat climate change should not constitute a means of arbitrary and unjustifiable discrimination or a disguised restriction to international trade. In the same time the trade regime should not be in contradiction with the climate change mitigation.

Kyoto Protocol† is the most representative and proposes to reduce greenhouse gases emissions. To achieve this protocol objectives, the most effective tool available to governments, is the introduction of carbon tax.

This MEA has a range of conflicts points with the WTO rules. Among the main conflicts, it is noted: the basic constitutional principles conflict, regulation methods conflict, conflict of the means adopted to ensure efficiency, and conflict arose from the implementation of domestic commitments. Conflict to which we refer further envisages the implementation of the Kyoto Protocol commitments domestically. This occurs due to: the imposition of carbon taxes and tax adjustments, allocation of government grants, development of energy efficiency standards, eco-labeling, the establishment of government procurement policies and explore possible interactions between domestic policies and WTO rules (Assuncao and Zhang, 2002, p. 2).

* Signed in 1992, entered into force in 1994 and today is numbering 194 parties.

† Elaborated in 1997, entered into force in 2005 and today is numbering 192 parties.

In order to support industries that are affected by the Kyoto commitments governments could allocate subsidies, which could simultaneously promote and strengthen the measures to mitigate climate change and climate technology development, for example, renewable energy production.

It also can set standards and/or energy efficiency regulations for both domestic products and imported, to ensure compliance with the Kyoto Protocol: emission reduction requirements, requirements to promote policies for sustainable development and maintain the competitiveness of domestic products with imports from non-signatory states. Since TBT Agreement restricts the use of standards and regulations confining trade and discriminates unduly against certain people, the energy efficiency requirements conflict with the most favorite nation principle of GATT, affecting WTO members what didn't sign the Kyoto Protocol.

Often, conflicts arise due to carbon tax, which is “an excise tax imposed on the carbon emitted in the manufacturing process of a product according to the carbon content of fossil fuels and is thus restricted to carbon-based fuels only” (Assuncao and Zhang, 2002, p. 10). Also, carbon tax is the most effective national policy to address climate change, which reduces energy demand and promotes efficient and cleaner technologies.

These, in addition to environmental effects, have significant implications for international trade. In the absence of a uniform international tax, imposing a carbon tax in each country lead to loss of economic competitiveness of domestic industries vis-à-vis foreign competitors not subject to taxation. Domestic producers bear the burden of increased taxes, which increase the production costs while foreign producers will not be affected by it. Consequences of such asymmetries are particularly severe for energy-intensive sectors such as iron and steel, aluminum, chemicals, glass and paper. In these sectors, electricity prices comprise a significant part of total production costs, making them particularly vulnerable to the competitive disadvantage of a carbon tax. Since those measures would disrupt trade flows, these compensation policies are the focus of tension between the objectives of the Kyoto Protocol and WTO rules.

The ideal way to impose a carbon tax, without the need to impose trade barriers is to harmonize national carbon taxes in different countries. An internationally harmonized tax would reduce losses in competitiveness. The insurance that all trading partners face the same carbon tax would strengthen efforts to reduce carbon dioxide emissions, involving all countries.

In addition, imposing carbon taxes creates problems of competitiveness on the international markets. Domestic products are subject to a carbon tax, may face unfair competition. First, they are disadvantaged compared to imports which have not been subject to similar charges before export.

Second, they are competitive disadvantaged in relation with similar products from the international market.

The scholars propose at least three different methods that could be used to correct competitiveness problems associated with carbon tax. First and most commonly used is the exemption from the carbon taxes the energy intensive industries that export (Assuncao and Zhang, 2002, p. 12). However, the solution is not accepted by the WTO, nor is pro environment. Such an exemption could be seen as a subsidy rule inconsistent with the Subsidies Agreement. In addition, this solution greatly reduces the efficiency of carbon tax in terms of denying its ability to encourage reductions in carbon dioxide emissions by converting to alternative energy sources.

The second option is reinvesting tax revenue back into the economy. For example, carbon taxes could be recycled back into the industry by reducing other taxes, such as business or employment taxes, or as grants for encouraging the energy efficiency improvements (Brack, Falkner and Goll, 2000).

A third solution would be adoption of the border tax adjustment. This solution requires complex and problematic analysis of commercial law (Charnovitz, 2003), but may alleviate competition problems arising from domestic carbon tax. In the adjustment, a government would exempt exporters from the carbon tax, while subjecting imported products to a carbon tax, similar to that applied domestically. This would maintain the competitiveness of domestically manufactured products, both in terms of imports and exports.

In terms of procurement costs, they constitute 8-25% of GDP in OECD countries (OECD, 2000, in Assuncao and Zhang, 2002, p. 9). Therefore, public procurement decisions have the potential to affect the ability of member countries to achieve greenhouse gas reduction. Thus, based on environmental characteristics of products, procurement decisions will determine the appearance of three conflict scenarios. First, as already procurement policies vary widely among nations, "green" procurement policies will create asymmetry, and unnecessary obstacles to international trade.

Second, in order to maximize transparency and fairness of green public procurement policies, it will focus on the technical characteristics of products that will lead to differential treatment between domestic and foreign producers. And last but not least, procurement decisions will consider the methods and processes of production of goods. (Assuncao and Zhang, 2002, p. 10)

Convention on Biological Diversity (CBD) and Cartagena Protocol on Biosafety

Convention on Biological Diversity* states the biodiversity conservation. This does not include special trade measures; even the covered issues might have trade impacts. The used measures include: access and benefit-sharing arrangements; alien species; incentive measures for the conservation and sustainable use of components of biological diversity; provisions concerning knowledge, innovations and practices of indigenous and local communities; impact assessment, liability and redress; sustainable use; agricultural biodiversity, etc. (Brack and Gray, 2003, p. 22).

Given that countries have sovereign rights over their natural resources, national legislation must provide the access conditions. The main reasons for including some restrictions are to prevent bio-piracy and to encourage the benefits arising from the use of resources and knowledge to be transferred to providers, ensuring in this way the fair trade. Because most of these resources and knowledge are under public property regimes, state intervention is needed to reduce transaction costs and to facilitate the implementation of contracts.

The Cartagena Protocol on Biosafety, signed under the auspices of the CBD is the first international treaty dealing with transboundary movements of genetically modified organisms (GMOs). It provides the opportunity to assess environmental risks associated with GMOs before performing the import (Brack, Falkner and Goll, 2003, p. 2).

Overall, this protocol is a disappointing one, because it does not encourage the international cooperation in biotechnology management for biodiversity conservation. Instead, it allows the parties to take unilateral action to exclude or limit GMOs imports. Also, there is no commitment to cooperate for the development of harmonized international standards in using GMOs, or to develop the common risk assessment procedure for GMOs. Environmentalists consider that the only way to manage the GMOs in environmentally way, is to ban their production and consume, but the Cartagena Protocol objectives allow it, reaping, in the same time the benefits, while protecting biodiversity. Imposing a ban on GMOs imports must be preceded by a risk assessment, determining the potential adverse effects on biodiversity (Rivera-Torres, 2003, p. 311).

The Biosafety Protocol does not prohibit trade with non-signatory parties, in the same time, none of the Protocol objectives require trade measures for managing trade with GMOs products. (Rivera-Torres, 2003, p. 267) But it should be taken into consideration that any action under the Biosafety Protocol is subject, also, to SPS Agreement, what causes conflicts between these two agreements. The most often conflict is caused by the existence of scientific evidences of negative

* Signed in 1992, entered into force in 1993 and today is numbering 193 parties.

effects on the environment or human health for justifying the restriction of GMOs trade. Protocol allows countries to impose trade restrictions on GMOs without scientific justification, while SPS agreement, requires strong scientific evidence to justify such a restriction and moves the focus on trade concerns. Thus, once a country accepted to import GMOs products, later can be extremely difficult if not impossible, to revert to conventional production, because, given the risk of export markets loss, the exporting country, will not opt for production of GMOs and later to give up the benefits of this technology.

This biosafety treaty differs from other multilateral environmental agreements. First, the protocol does not seek to reduce or eliminate the use of controlled substances, such as the Montreal Protocol or the Basel Convention. Cartagena Protocol avoids similarities with the Basel Convention, by adopting the principle of “prior informed consent” - a precautionary tool which helps to manage the international risks and establishes principles and rules for making decisions on trade with GMOs. Second, the treaty allows a form of decentralized decision making system, which strengthens the prerogative of the importing countries. Although, the information provided by GMOs exporters, are available to all parties, the decisions concerning the GMOs imports remain under the authority of each State.

CONCLUSIONS

In nowadays, it is hard to imagine solving environmental problems without international cooperation and without MEAs. It is, also, difficult to accept that in new MEAs will not be included direct or indirect commercial measures. Trade measures in MEAs have become more frequent, and seem to be a logical response to the transboundary nature of environmental issues and business models. In many cases, trade measures are the only realistic enforcement measure of MEAs provisions. They can support a real cost (especially if trade restrictions are used against non-signatory parties), and should not be taken in isolation from other instruments, such as financial assistance or capacity consolidation.

Continuous use of trade measures in MEAs and the compliance with WTO rules, confirms once again the importance, necessity and indispensability of trade measures. To achieve their objectives, MEAs employ several types of measures, but trade measures are the most effective and should be considered since the designing of MEAs.

Since the WTO is a body that does not develop environmental policies, and has no powers to negotiate them, it should not seek to undermine the functions and role of MEAs and other international environmental governance structures. The conflicts what occur between MEAs and WTO (the case of carbon taxes), might limit the success of both institutions to solve some environmental problems. To avoid this type of situations, the international community must reconcile the discrepancies through enhancing the consistency and compatibility.

Regarding Romania, it signed over 250 bilateral and multilateral environmental agreements on air quality, nature protection, water quality, waste management, chemicals, prevention and mitigation of nuclear accidents, etc., which are implemented through horizontal and vertical national laws.

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