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Contesting Global Governance: The Doha Negotiations on the WTO–MEA Relationship

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I. The Mutual Supportiveness Debate: "Big Chill" or "Quantum Leap"?

When the World Trade Organization was launched in 1995, the Committee on Trade and Environment (CTE) was established to identify the relationship between trade measures and environmental measures in order to promote sustainable development.(1) The 1996 Singapore ministerial declaration confirmed continuing examination of "the scope of complementarities between trade liberalization, economic development and environmental protection." At the Doha ministerial conference of 2001, it was agreed to start multilateral negotiations, for the first time, on some of the identified issues on trade and environment.(2) It aims to make interna-tional trade and environmental policies "mutually supportive." For many in the environmental community, it should have been a long-awaited starting point for sustainable development governance. By the time of the Cancun ministerial conference of 2003, however, initial hopes had been dashed.(3) The environmental issue was, in substance, marginalized in the July 2004 package, which included frameworks for establishing modalities in agriculture and other market access issues. The package had just one sentence on the environment, that the General Council "takes note" of the report by the Special Sessions of the Committee on Trade and Environment (CTESS). From the environmentalist perspective, that was very bleak treatment.(4) Many observers came to recognize that the WTO's neoliberalism has had "big chill"

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effects on implementation and negotiation of the multilateral environmental agreements (MEAs).[5] From another perspective, however, the discussion of ways to avoid future conflicts between the WTO and MEAs looked like a "quantum leap" from the CTESS mandate.[6] How can we account for this difference? What is happening, or is not happening, to the Doha negotiations on the WTO–MEA relationship?

My paper addresses and answers the following questions: How did international trade and environmental regimes emerge and evolve, and with what norms? What kinds of WTO–MEA relationship can theoretically be postulated? Despite both the WTO and MEAs sharing the goal of sustainable development, why has this issue faced political impasses without a major breakthrough? How can the "mutual supportiveness" of the WTO and MEAs be attained, if at all? What are the prospects for the Hong Kong ministerial meeting to be held in December 2005 and beyond?

I offer an argument that the parochial conception of trade and environment not only hardens current negotiating positions, but also leads to a wide variety of unfortunate consequences for the WTO–MEA relationship. Instead, "mutual supportiveness" needs to be understood in a more dynamic way. In so doing, the biological concept of co-evolution and the ecological concept of symbiosis help a deeper understanding, if these are combined with the changing structures of norms, power, and interest priorities of the WTO members in global governance. The data used in this paper cover the CTESS from its first meeting in March 2002 to its eleventh meeting in February 2005.

II. Co-evolution of International Trade and Environmental Regimes

International trade and environmental regimes have evolved in separate historical contexts, and yet it seems that they show similar patterns of evolution with the four types of governance stages that I call national, international, world, and global. Each stage adds to, rather than replaces, the previous stages. The trade and environmental regimes have encountered each other at the crossroad of

their respective fourth stages, where an interface for both potential conflict and cooperation can be found.

Evolution of Trade Regimes

International trade regimes have evolved from mercantilism to liberalism, then to "embedded liberalism," and then to global trade with non-trade concerns, over more than three hundred years. The first stage is mercantilism, which was dominant during the seventeenth and eighteenth centuries. It is the idea that unilateral interventions by the state can increase the nation's wealth. The twin forms of mercantilism are exemplified by protectionism in the import side, and industrial policy in the export side. These approaches can still be found in today's "new protectionism" and "strategic trade policy." Thus, claims about protecting the environment appear to be disguised "green protectionism" in the eyes of developing countries. For developed countries with a competitive edge in environmental technology, liberalization of environmental goods and services can be accompanied by their industrial promotion.

The dominant idea at the second stage is liberalism. Liberal international trade under *Pax Britannica* was spread in the nineteenth century with the most-favored nation principle within a larger but selected number of countries. However, liberal trade did not always mean impartial exchange. Imperialism with unequal treaties resulted in the world resolving into mercantilism and protectionist blocs when the world wars and depressions occurred.

The post-WWII world economic order with the General Agreement on Tariffs and Trade (GATT) was normally regarded as a force for "free trade." Yet actually it was the third trade regime stage that John G. Ruggie called "embedded liberalism," that is the compromise of mercantilism and liberalism.(7) It was an attempt at "free and fair trade" in a multilateral world, although it was virtually a plurilateral club of industrialized countries. The concept of fair trade in the GATT context referred to reciprocity in tariff reduction, and later, in the Uruguay Round negotiations, fairness could refer to "market access." At the same time, fairness also referred to the procedural aspect by strengthening

the dispute settlement mechanism. However, these conceptions of fairness are still distant from the same term used in civil society. It can refer to social and environmental justice in equitable trade as well as democratic participation in trade negotiations.

When the WTO was established, the world trade regime had already reached the fourth stage of global trade governance. This regime requires cooperation with non-trade concerns, non-state actors, and preventive actions. By this stage, the liberal trade idea was and is being applied to services and agriculture as well as industrial goods, while the matters of non-trade concerns, including protection of intellectual property rights, core labor standards, the environment, and investment, were negotiated or studied. In terms of process, global trade is at a crossroad transcending a multilateral state-to-state forum. Steve Charnovitz called this "WTO cosmopolitics," in which non-state actors are more involved.(8)

Evolution of Environmental Regimes

As compared to the long history of international trade regimes over three hundred years, global environmental regimes have a short history, over only the last three decades. Despite this sharp contrast, the evolving patterns of environmental regimes appear quite similar to that of trade regimes: national, international, world, and global. Since the 1970s, the environmental regime has quickly followed a similar four-stage ladder.

In the first stage, environmental issues were conceived as a public nuisance at the national level. The dynamism of environmental destruction was well explained by Garrett Hardin as the "tragedy of the commons."(9) Overpopulation of cattle in the village common was the cause of this archetypical tragedy. One solution is "enclosure," or privatization of the commons, by which the cost of conservation is internalized via the institution of private property. Another strategy is nationalization, by which the commons are transformed into public or government assets. Many of today's environmental policies fall somewhere between market-oriented mechanisms and government regulation.

The second environmental regime stage emerged in response to

internationalization of pollution, partly because of strengthened regulations at home. Environmental issues joined the international agenda in the 1972 United Nations Conference on Human Environment held in Stockholm. The main Swedish concern was acid rain, which was a transboundary environmental issue "exported" from industrial Europe. The so-called brown issues—pollution at the domestic level—required transboundary, or international, environmental governance. However, the Convention on Long-Range Transboundary Air Pollution was almost exclusively a North-oriented venture, because at that time acid rain pollutants were concentrated in developed countries and not yet in many developing countries.

It is the third stage where environmental issues in developing countries were recognized as world problems. A world-wide conception of natural resources is exemplified by the New International Economic Order and the concept of "the common heritage of humankind" in the United Nations Convention on the Law of the Sea. The United Nations Environmental Program (UNEP) was headquartered in Nairobi, Kenya, where the special session of the UNEP Governing Council was held in 1982. The World Charter for Nature was also adopted in 1982 by the initiative of the leaders of the developing countries. However, these leaders also revealed that their main concerns were poverty eradication and economic development, rather than protection and conservation of natural resources. Financial and technological transfers as well as capacity development for developing countries are emphasized in many MEAs adopted or revised during the 1980s.

A mutually supportive relationship between development and environment was instituted with the concept of sustainable development. It was a globally recognized norm at the United Nations Conference on Environment and Development held in Rio de Janeiro, attended both by government representatives and by many non-governmental organizations and civil society players. It was the starting point for the fourth stage of global environmental governance. *Agenda 21* adopted in Rio says that "Environment and trade policies should be mutually supportive."(10) In the post-Rio context, the preamble

of the WTO agreement recognizes sustainable development as an integral part of the multilateral trading system. By the 2002 World Summit for Sustainable Development (WSSD), the three pillars of the sustainable development concept were widely recognized: economic, environmental, and social. Thus, four main norms can be found in the current debate on the WTO–MEA relationship: economic liberalism, environmentalism, labor/social/human rights, and developmentalism.

An Ecological Model of the WTO–MEA Relationship

The historically evolved four norms stated above can be found in the current Doha Development Agenda negotiations. In order to analyze possible consequences of the “mutual supportiveness” debate, the present paper applies the ecological models suggested by Alfred James Lotka and Vito Volterra to the theoretical relationships of these norms in the WTO.[11] Since the Lotka–Volterra model deals with two-part relationships, let us consider the relationship between the two main norms: liberalism (or the economic pillar of sustainable development) as exemplified by the WTO; and environmentalism (environmental protection or conservation, or the environmental pillar of sustainable development) as promoted by MEAs or the UNEP.

It is important to note that symbiosis in ecology does not always refer to harmonious cooperation. When two species of plants or animals interact with one another, several interactions can be identified (Table 1). The first is mutualism, where benefits can be received by the both interacting species (plus vs. plus). The mutually supportive relationship between the WTO and MEAs is expected to fall into this category, although ecology suggests that it may be better viewed as mutual exploitation rather than as cooperation. The second is commensalism, which is a relationship that directly helps one species but does not affect the other much (plus vs. null). The third category is divided into predation and parasitism. Predation occurs when a larger species preys or grazes on a smaller species (plus vs. minus). A similar relationship can be found in parasitism, although the preying parasite may not die as a result of

the interaction. Mutualism, commensalism, and parasitism are all cases of the ecological concept of symbiosis.

Predation and the following three categories are not symbiosis. The fourth is neutralism. In the neutral relationship, two species are linked only indirectly through the interaction with other species and have no direct effect on one another (null vs. null). The fifth is amensalism, which is detrimental to one species and neutral to the other (minus vs. null). The sixth is competition, in which two-way negative effects flow to both species, although the superior competitor may not be greatly affected (minus vs. minus).

Table 1: Ecological Model of the WTO–MEA Relationship

WTO/MEAs	+	0	–
+	mutualism	commensalism	predation/parasitism
0	commensalism	neutralism	amensalism
–	parasitism/predation	amensalism	competition

In addition to the above relationships suggested by the Lotka–Volterra model, this paper will take into account the realist–liberal debate on relative vs. absolute gains.(12) Realists assume that individual agency acts in seeking relative gains, while liberals normally assume that cooperation is possible since the benefits of trade liberalization can be measured by absolute gains. As already seen in the above categories of predation/parasitism and competition, it is important to consider the relative size of the two species populations and their gains in relative terms. Thus, for example, it is possible that a norm embodied in one institution receives a larger gain, while the other idea embodied in another institution receives less (but positive) gains in the actuality of “mutual supportiveness” of the WTO–MEA relationship (larger plus vs. smaller plus).

Taken together, a complex variety of consequences of the WTO–MEA relationship is possible, especially when we also take account of the four main norms that can be found in the Doha Development Agenda negotiations. It is important to consider the WTO–MEA relationship in a wider context of

global governance, especially the developmentalist norm embodied in the United Nations Conference on Trade and Development (UNCTAD) and labor/social/human rights concerns promoted by other UN organizations, such as the International Labor Organization (ILO) and the World Health Organization (WHO). Theoretically, it is possible to attain the "mutually supportive" relationship at the sacrifice of developmentalism and/or labor/social/human rights concerns. The consequence of the WTO–MEA relationship will also be varied in accordance with the negotiation items. Therefore, the following sections will examine the state of play on the three negotiation items mandated by the Doha Declaration: WTO rules and specific trade obligations (STOs) in MEAs; information exchange and observer status; and environmental goods and services.

III. WTO Rules and Specific Trade Obligations in MEAs

The first negotiation item is related to legal and institutional issues. Paragraph 31 (i) of the Doha Declaration instructed WTO members to negotiate on "the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements. 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."

The assumption of this negotiation mandate stems from the criticism that international environmental regulations can function as trade barriers. In other words, it is hypothesized that MEA environmentalism is a predator against WTO liberalism. According to Konrad von Moltke, the major problem is that the MEA structure is not defined by economic impacts, although they can have economic impact.(13) This is what he calls "structural incommensurability" between international environmental and economic regimes.

As the "state of play" paper, submitted by CTESS Chair Toufiq Ali before the July 2004 package, mentions, two main logics of argumentation have

emerged to explain "structural incommensurability" under this part of the mandate.[14] One is a conceptual approach to the WTO–MEA relationship in a broader context of current and future global governance, as exemplified by the submission of the European Communities (EC).[15] It takes the view that environmentalism and STOs, set out in MEAs, are neutral to WTO rules. The other is a practical approach, identifying and discussing STOs on the basis of national experiences and a narrow mandate, as suggested by the United States (US) and others. It seems that it is a defensive attempt to limit the scope of the WTO–MEA interface as least in the status quo, so that environmentalism, which can potentially affect liberalism, does not compromise the liberal trade regime.

The EC paper on global governance started with the importance of MEAs, and argued that legal clarification in the WTO would benefit not only present but also future MEA negotiations. The EC also attempted to broaden the definitions of themes by arguing that not only global, but also regional, MEAs should be considered as potentially multilateral, and by suggesting a broader reading of STOs "set out in MEAs" in terms of desirability, which can include not only the text of MEAs but also obligations decided by Conferences of Parties or contained in annexes or protocols to MEAs.[16] The EC argued that the expression "existing WTO rules" should not be limited to GATT Article XX, because it was not sufficient to accommodate MEAs. As for the party/non-party issue, the EC as well as Canada pointed out that the practical distinction between party and non-party was not always clear, as in the case of the Ban Amendment to the Basel Convention.[17]

The EC's broader conceptualization emphasized the "deference" principle and the principle of "no hierarchy" between trade and environmental regimes. It was argued that both MEAs and the WTO should remain responsible and competent for issues falling within their respective primary areas of competence and expertise. According to international law, such principles as *Lex Posterior* (a later law precedes an earlier one) and *Lex Specialis* (a specialized treaty prevails over a general treaty) may be applied to a conflict between different norms. In reality, however, it is not always easy to distinguish between early and later

laws, and between general and specialized natures. In that case, the deference principle suggests legal parity. Thus, the deference principle is a legal expression of neutralism at best, rather than mutualism.

As a corollary of the deference principle, some non-EC members also argued for a broader concept of sustainable development governance. Canada mentioned the importance of sustainable development in the context of WSSD, and Brazil recalled the Singapore consensus for a broad scope for trade measures to be applied pursuant to MEAs.(18) Despite this broad consensus, the EC's global governance approach has been heavily criticized by many countries, including the US, Australia, India, Brazil and many developing countries. For instance, Ecuador explicitly claimed that to bring the abstract concept of global governance to the WTO would complicate the negotiations, and that it fell outside the Paragraph 31 (i) mandate.(19)

The US approach started with the premise that the current WTO–MEA relationship was a good one.(20) On the surface, it looks similar to the deference principle stressed by the EC. However, the practical approach to narrowing the mandate stems from the fear of environmentalism's predation against liberalism, and therefore calls for maintaining at least the currently "good" WTO –MEA relationship in the sense that there had been no formal dispute directly involving MEAs and the WTO rules. That is perhaps the reason why the US emphasized that the mandate was limited to "existing" WTO rules, rather than calling for the elaboration of any new rules.(21) The US also argued that "STOs set out in MEAs" were legally binding trade obligations set forth in an MEA, not including a decision of the Conference of the Parties.(22) Similarly, according to the Argentinean paper, the mandate is not targeting MEAs in general, but limited only to those MEAs already "in force."(23) The US also argued that there was no substitute for enhanced domestic coordination between MEA and WTO policymakers and negotiators.(24) This implies that domestic coordination is sufficient for maintaining the status quo WTO–MEA relationship.

Practically, the US argued that no definition of MEAs was needed, and identified six MEAs that included STOs.(25) Later, the US focused on three

MEAs: the Convention on International Trade in Endangered Species (CITES), the Stockholm Convention on Persistent Organic Pollutants (POPs), and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), and identified a wide variety of STOs, including export restrictions.(26) In each case, however, the number of MEAs was smaller than the number of the MEAs with trade measures that were identified by the WTO secretariat or the number of MEAs organizations invited to the MEA Information Session at CTESS.(27) It should also be noted that many MEAs were not ratified by the US.

In a manner similar to the US and Australian positions but for the purposes of development, many developing countries started the discussion with the WTO rules, rather than MEAs. For instance, Kenya suggested a three-step negotiation process: first, the identification of the WTO rules relevant for the environment; second, listing the MEAs relevant to WTO rules; and third, negotiating the WTO–MEA relationship by taking developing country concerns into account.(28) As for the definition of STOs, Malaysia suggested a distinction between mandatory STOs and non-mandatory trade measures, and India questioned the appropriateness of the EC's distinction between *obligation de resultat* (a result which had to be achieved) and *obligation de comportement* (the measures which had to be used to achieve) in the WTO context.(29) Venezuela also questioned if the EC's emphasis on the Rio Principles would produce the common but differentiated responsibility in addressing environmental problems in the WTO, with reference to the concept of special and differential treatment.(30) Similarly, the need for technical assistance and capacity building was frequently addressed by a number of developing countries. These are some examples of developing countries' worry that disguised environmentalism or a mutually supportive relationship between environmentalism and liberalism can be amensalism or predation for developmentalism. As Matsushita, Schoenbaum and Mavroidis point out, "the matter of environmental regulations and their effect on market access problems of developing countries, one of the tasks given to the CTE in 1995, has not received enough attention."(31)

IV. Information Exchange and Observer Status

The second negotiation item is related to communication issues. Paragraph 31 (ii) of the Doha Declaration mandates negotiations on "procedures for regular information exchange between the MEA Secretariat and the relevant WTO committees, and the criteria for granting observer status."

This negotiation item is a possible rebuttal to the criticism that WTO liberalism was undermining the effectiveness of MEA regimes. Such a criticism assumes WTO liberalism's predation at the expense of MEA environmentalism. It was evidenced by the reality that some MEAs allow the WTO to participate in meetings simply on request, in spite of the lack of reciprocity on the part of the WTO, with observer status.[(32)] Thus, institutionalization of the existing WTO–MEA relationship may strengthen the asymmetry of the status quo.

Among divergent views expressed, two main lines of argument can be observed. One is that quick progress, or "early harvest," in this negotiation agenda is called for, as is seeking information exchange and granting reciprocal observer status by institutionalization at the international level. When the GATT was elevated into the WTO, the idea of a World Environment Organization (WEO) as the counterpart to the WTO was also suggested by some people, including former WTO Director-General Renato Ruggiero. Now that the WEO idea looks unrealistic, it is important to, at the least, achieve or restore a reciprocal WTO–MEA relationship in this area. The other line of argument starts with neutralism in the status quo. It is argued that information exchange and coordination can be best achieved at the domestic level, and that the issue of the criteria granting observer status should be negotiated and decided in the Trade Negotiations Committee and the General Council, rather than CTESS.

The former view was advocated by such countries as Canada, Switzerland, and the EC. Canada and Switzerland called for environment-mainstreaming in the WTO, and suggested that information exchange should be formalized not only at the CTE but also other WTO bodies, such as the Council for Trade-Related Aspects of Intellectual Property Rights, the Council for Trade in

Services, the Committee on Technical Barriers to Trade, the Committee on Sanitary and Phytosanitary Measures, and the Committee on Agriculture.[33] The Committee on Trade and Development could also be included. It is difficult to limit the scope of not only the WTO bodies but also the MEAs to be covered. For example, Japan attempted to renew the ad hoc invitation to the International Tropical Timber Organization, but Malaysia objected.[34] It is also important to consider the WTO–MEA relationship in this area from a wider perspective. Some countries, like Norway and Brazil, called for enhanced cooperation between UNEP/UNCTAD/MEAs/WTO.[35] The EC called for close cooperation and increased information flows at national and international levels as an integral part of improved global governance that could translate into outcomes.[36] The EC also proposed the possibility of including regional environmental regimes and of involving NGOs in information sessions, but Kenya responded that it fell outside the mandate.[37]

Both the US and the EC called for early action in this area. However, it seems that the US and Australia looked for more coordination between trade and environmental officers at the national level. While some members, such as the US, New Zealand, and Japan, argued that progress in Paragraph 31 (ii) would spill over to Paragraph 31 (i) negotiations, others did not have that understanding. Rather, Pakistan argued that progress on MEA observer status in CTESS would have to await progress on 31 (i).

On information exchange, many suggestions were made, including formalizing information sessions with MEAs on a regular basis, holding information sessions on specific themes by grouping meetings between WTO committees and MEAs, parallel events, collective events, and cooperative events for technical assistance and capacity building, document exchange, and electronic databases. Mexico and Malaysia drew members' attention to the integrity of the rule on the de-restriction of documents newly adopted by the General Council. Cuba and Egypt argued that institutionalization of information exchange was not in conformity with the mandate parameters.[38] However, joint, collective, or cooperative activities between the WTO and MEAs for capacity

development and other concerns, rather than their own policy objectives, will constitute a helpful basis in searching for a Win-Win-Win-Win solution to the four norms and concerns.

As for observer status, the EC suggested that all core MEAs that had participated in previous ad hoc information sessions should be granted observer status, while the US mentioned the possibility of a narrower range of MEAs to be granted observer status, based on defined indicators. The US addressed two different WTO forums on the existing procedures: the Trade Negotiations Committee, with respect to negotiating bodies, and the General Council, with respect to non-negotiating bodies.(39) The understanding of the mandate by Egypt, Cuba, and some other countries was different from that of either the EC or the US proposal. For them, the criteria for granting observer status have to be negotiated.(40) Switzerland favored reciprocity between the WTO and the MEAs. However, the observer status issue is pending for not only environmental organizations but also other organizations, such as the General Council for the Arab States of the Gulf and the Organization of the Islamic Conference. Thus, the issue has become politically sensitive, and it has become difficult to treat the MEA secretariats differently from other international organizations. It is widely supported that observer issues should be horizontal and that decisions be made by the Trade Negotiation Committee and the General Council, but there is also an emerging consensus that CTESS has a role to play.

V. Environmental Goods and Services

The third negotiation agenda is on environmental goods and services. Paragraph 31 (iii) of the Doha Declaration mentions “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”

The assumption for this negotiation item is that enhanced WTO liberalism, which will spread and diffuse environmentally friendly products, services, and technologies, does contribute to environmental conservation.(41) In other words,

it is to verify the effectiveness of market-oriented environmentalism in the sense that the WTO liberalism can provide MEAs with mutualism. Procedurally, CTESS's monitoring role in the Doha negotiations was stressed and generally agreed by members to do so. Another line of argument is the criticism of the above market-oriented environmentalism as disguised environmental mercantilism, seeking adjustment for relative gains, so that developing countries can also secure absolute gains. To avoid environmentalism's predation against developmentalism, some members argued that environmental goods and services need to be undertaken in other WTO bodies, such as the Negotiating Group on Market Access for Non-Agricultural Products and the Council for Trade in Services Special Session. The ongoing negotiations take a two-track approach, in which both list-driven specific examples and criterion-driven conceptual definitions are discussed.

It should be noted that mutualism in this area was suggested mainly by the members with industrial competitiveness in the designated goods and services. This was directly reflected in the definitional problem of what "environmental goods and services" are. For instance, the US, Canada, and New Zealand suggested starting discussion on the basis of the definitions and the lists of environmental goods made by the Asia-Pacific Economic Cooperation (APEC) or the Organization for Economic Cooperation and Development (OECD), to which they belonged. While the US proposed the end-use criterion, the EC, which was not a member of APEC, was eager to consider the process and production methods (PPMs) criterion in identifying environmental goods and services. A number of members opposed the PPMs criterion, because it could conflict with the "like products" definition in the national treatment principle of the WTO. Qatar and other members of the Organization of the Petroleum Exporting Countries (OPEC) cautioned against both PPMs and end-use criteria, because energy, such as natural gas, had to do with processes of production and the end-use criterion may also imply the life-cycle approach.[42] Qatar argued that relative economic and environmental merits could also be used as the criterion.[43]

I now turn to the definitional issue, with a possible list based on the criterion

originally developed at CTESS and/or other WTO bodies. The US proposed a framework with a core (with consensus) and a complementary (without consensus) list of environmental goods, which would allow some flexibility.[44] The EC argued that the two-list approach would not lead to environmental benefits, and that flexibility could be achieved in other ways, for instance different levels of commitment and timeframes.[45] Developing countries, such as Malaysia and Kenya, viewed neither the APEC nor the OECD lists appropriate as the basis for negotiation. Brazil argued that the US had only included high value-added products, in which they had a competitive advantage, on its core list. In addressing export interests of developing countries, they would favor UNCTAD's approach to environmental goods.[46] China indicated the possibility of developing a "common" list and a "development" list.[47] Other developing countries suggested the need to reflect agriculture and forestry interests in developing countries, as well as the need for capacity building and technology transfer, and special and differentiated treatment for developing countries.[48]

VI. Conclusion: Prospects for Hong Kong and Beyond

The negotiation impasse in the Doha negotiations on the WTO–MEA relationship arose out of a rift between the conceptual and practical approaches to "mutually supportive" relationships between the international trade and environmental regimes. It should be noted that a Win-Win solution to the relationship between WTO liberalism and MEA environmentalism may result in a losing battle for developmental and social concerns. Toward a sustainable mutual supportiveness, a Win-Win-Win-Win solution to the four norms must be searched for from a wider perspective. Drawn from the analysis above, prospects for Hong Kong and possible negotiation results influencing the future WTO–MEA relationship are summarized in Table 2. Actual negotiation results may be influenced by a range of factors, including the role to be played by the newly appointed WTO Director-General, Pascal Lamy, and may differ from the forecasts presented here.

Table 2: Possible Negotiation Results of the WTO–MEA Relationship

	UNCTAD Development	WTO Liberalism/Econ.	MEAs/UNEP Environmental	ILO/WHO Social
Paragraph 31 (i)	0/–	0	0	0/–
Paragraph 31 (ii)	+/0	+	+/0/–	0
Paragraph 31 (iii)	+/0	++	+/0	0

First, as for Paragraph (i) of the WTO rules and specific trade obligations in MEAs, the principles of deference and no-hierarchy would maintain and reproduce neutralism between the WTO and MEAs, although the CTESS mandate only focuses on the smaller component of MEAs. The same situation could apply to the relationship between the WTO and other international organizations, like UNCTAD and ILO. Another possibility is that WTO–MEA neutralism would be maintained at the cost of social and development concerns.

Second, as for information exchange and observer status, the institutionalization of the status quo without reciprocity would not benefit MEAs at all. While acknowledging that cooperation with other international organizations contributes to better global governance, the Report submitted by the Consultative Board to Director-General Supachai suggests that observer status be granted "solely on the basis of potential contribution to the WTO's role as a forum for trade negotiations."(49) It will be commensalism in favor of the WTO. Alternatively, MEAs can be the parasites. The parasitizing by a small number of MEAs at the CTESS on only an ad hoc basis is not expected to open up a route toward mutualism. However, the granting of observer status is likely to be treated as a horizontal issue, and therefore it could improve not only MEAs but also development organizations and social welfare organizations, if their requests are to be approved at the same time in the WTO.

Third, the outcome for environmental goods and services depends on what kind of list is to be agreed on. A WTO list would to a greater extent benefit liberalization of environmental goods and services, which could provide asymmetrical gains for MEAs/UNEP, which may or may not lead to positive

gains. The UNCTAD approach may also be integrated in the negotiation result; however, the UNCTAD definition of environmental goods and services may not be compatible with the preferences of MEAs/UNEP and the environmental community. For all three negotiation areas, the social dimension, as represented by ILO and WHO, is underrepresented.

As compared to quick, efficient legalization by a dispute settlement system, the rule-making function of the WTO is slow. As compared to the modality negotiations on market access, the negotiations on non-trade concerns, including trade and environment, are deadlocked or postponed to future negotiations. While the dispute settlement mechanism and the formula and modalities could proceed efficiently, there are limitations to these mechanical solutions. While conflicts in power and interests may be settled within a limited time, conflicts between norms and values would remain unresolved. Despite slow progress, there will be many opportunities for effective solutions to value-laden conflict through rule-making negotiations.

Theoretically, the realist concepts of "power," "conflict," "balance," "frictions," and "interface," all of which are borrowed from physics, are less useful in accounting for the Doha round negotiations on the WTO–MEA relationship.(50) Methodological individualism, on which liberal institutionalism relies, is based on an atom-like individual and a molecule-like group. Marxist dialectics looks like a chemical response or a mathematical integration. The concepts of "co-evolution" and "symbiosis," which the present paper has suggested, are more useful than the existing explanations in detailing the WTO–MEA relationship, when these biological concepts are used in combination with norms that social constructivism emphasizes to account for human behavior. This is because objectivity in natural sciences undermines the subjectivity or inter-subjectivity on which constructivism is based. Urs P. Thomas called for "ecolomics" analyzing the complex interactions between ecology and economics.(51) In a similar manner, ecolopolitics is also needed.

Notes

(1) For a detailed analysis of how mercantilist interests of WTO members predominated the CTE process, see Gregory C. Shaffer, "The World Trade Organization under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environment Matters," *Harvard Environmental Law Review*, vol. 25 (2001), 1-93.

(2) The Doha Declaration mentions the issues of trade and environment in Paragraphs 31, 32, and 33. Among them, Paragraph 31 only calls for negotiations.

(3) For instance, the WWF (formerly known as the World Wildlife Fund) suggested that the WTO negotiations on MEAs "may even lead to a worsening of the situation." *WWF Briefing Series, Environmental Governance*, 5th WTO Ministerial Conference, WWF in Cancun, 2003.

(4) Eric Neumayer, "The WTO and the Environment: Its Past Record is Better than Critics Believe, but the Future Outlook is Bleak," *Global Environmental Politics* 4, no. 3 (2004): 1-21.

(5) Robyn Eckersley, "The Big Chill: The WTO and Multilateral Environmental Agreements," *Global Environmental Politics* 4, no. 2 (2004): 24-50.

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(8) Steve Charnovitz, "WTO Cosmopolitics," *New York University Journal of International Law and Politics*, vol. 34 (2002): 299-354.

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(13) Konrad von Moltke, "Institutional Interactions: The Structure of Regimes for Trade and the Environment," in Oran R. Young, ed., *Global Governance* (Cambridge: MIT Press, 1997), p.271.

(14) WTO, TN/TE/9, (28 June 2004), par. 3.

(15) WTO, TN/TE/W/1, (21 March 2002) and TN/TE/W/39, (24March 2004).

(16) WTO, TN/TE/R/5, (14 April 2003), p. 13.

(17) WTO, TN/TE/R/5, (14 April 2003), p. 14.

(18) WTO, TN/TE/R/2, (25 July 2002), par. 17.

(19) WTO, TN/TE/R/9, (16 July 2004), par. 45, and TN/TE/R/8, (13 May 2004), par. 57.

(20) WTO, TN/TE/R/1, (19 April 2002), par. 40.

(21) WTO, TN/TE/R/2, (25 July 2002), par. 10.

(22) WTO, TN/TE/R/2, (25 July 2002), par. 10.
(23) WTO, TN/TE/W/2 (23 May 2002); TN/TE/R/2, (25 July 2002), par. 31.
(24) WTO, TN/TE/R/2, (25 July 2002), par. 9.
(25) Those MEAs were: CITES, Montreal, Basel, PIC, POPs, and Biosafety. WTO, TN/TE/R/3, (31 October 2002), par. 30.
(26) WTO, TN/TE/W/40, (21 June 2004); TN/TE/R/9, (16 July 2004), par. 3.
(27) The updated version of the matrix prepared by the WTO Secretariat covers fourteen MEAs. WTO, WT/CTE/W/160/Rev.2, (25 April 2003). The former CTESS Chair sent letters of invitation to UNEP and the thirteen MEA secretariats that had previously participated in MEA Information Sessions in the regular CTE, and the following seven organizations participated in the MEA Information Session in the CTESS held on 12 November 2002: The UN Framework Convention on Climate Change; the Convention on Biological Diversity and its Biosafety Protocol; the UNEP; the Rotterdam Convention and the Stockholm Convention; the International Tropical Timber Organization; the United Nations Forum on Forests; and the Basel Convention. WTO, TN/TE/R/4, (1 January 2003).
(28) WTO, TN/TE/R/1, (19 April 2002), par. 53.
(29) WTO, TN/TE/R/5, (14 April 2003). par. 14.
(30) WTO, TN/TE/R/9, (16 July 2004), par. 59.
(31) Mitsuo Matsushita, Thomas J. Schoenbaum, and Petros C. Mavroidis, *The World Trade Organization: Law, Practice, and Policy* (N.Y.: Oxford University Press, 2003), p. 483.
(32) For instance, requests for observer status from ITTO and the Montreal Protocol were still pending in the CTE. WTO, TN/TE/R/4, (21 January 2003), par. 6.
(33) WTO, TN/TE/R/1, (19 April 2002), pars. 59-60.
(34) WTO, TN/TE/R/10, (3 December 2004), par. 96.
(35) WTO, TN/TE/R/2, (25 July 2002), par. 75.
(36) WTO, TN/TE/W/39, (24 March 2004), Part IV.
(37) WTO, TN/TE/R/3, (31 October 2002), par. 67.
(38) WTO, TN/TE/R/6, (12 June 2003), par. 67.
(39) WTO, TN/TE/R/2, (25 July 2002), par. 92.
(40) WTO, TN/TE/R/5, (14 April 2003), par. 102.
(41) However, some developing countries, such as India, challenged this assumption. WTO, TN/TE/R/11. (30 May 2005), par. 75.
(42) WTO, TN/TE/R/3, (31 October 2002), par. 98. Furthermore, Switzerland argued that the life cycle approach went beyond the PPM issue since it included disposal. WTO, TN/TE/R/8, (19 April 2004), par. 7.
(43) WTO, TN/TE/W14, (9 October 2002).
(44) WTO, TN/TE/R/8, (13 May 2004), par. 2.
(45) WTO, TN/TE/R/8, (13 May 2004), par. 13.
(46) WTO, TN/TE/INF/5, (6 May 2004).

(47) WTO, TN/TE/R/8, (13 May 2004), par. 33.

(48) WTO, TN/TE/R/8, (13 May 2004), pars. 29-31.

(49) Peter Sutherland, et al., *The Future of the WTO, Report by the Consultative Board to the Director-General Supachai Panitchpakdri*, (WTO, 2004), p. 79.

(50) A physical metaphor may be useful to explain other aspects of the Doha negotiations. For example, WTO rules on regionalism may be explained by the conservation of mechanical energy. Assuming that the total manpower level of trade negotiators of WTO members are constant, the dynamism between WTO multilateralism (globalism) and regionalism appears like the transformation of mechanical energy in a pendulum of resonance. That is, the more active is regionalism, the less active is globalism.

(51) Urs P. Thomas, "Trade and the Environment: Stuck in a Political Impasse at the WTO after the Doha and Cancun Ministerial Conferences," *Global Environmental Politics* 4, no. 3, (August 2004), p.11.

貿易と環境をめぐる WTO ドーハ開発アジェンダ交渉

＜ 要 約 ＞

毛利　勝彦

世界貿易機関（WTO）ドーハ開発アジェンダ交渉における貿易と環境の相互支持性論争に進展が見られない。WTO での環境交渉は多国間環境協定 (MEAs) にとって負の効果を及ぼすとの懸念がある一方で、WTO と MEAs 間の将来的対立の可能性を論じることは交渉任務から逸脱しているとの意見も根強い。貿易と環境の相互支持性は広く動態的に捉える必要があり、そのために「共進化」概念と「共生」概念を援用したい。さらに WTO 加盟国間の権力構造の変化、利害関係の優先順位を併せて考慮する必要がある。

環境レジームと貿易レジームの発展過程は歴史的文脈が異なるが、ガバナンスの理念型には似た段階的展開が見られ、共進化していると考えられる。貿易レジームでは、重商主義（開発主義）、自由主義、人間・社会開発、生態系的に持続可能な開発という 4 規範が歴史的に形成された。環境レジームでは、公害問題への国内対策、越境環境問題への国際対策、人類共同財産への世界的対処、地球環境ガバナンスという 4 段階の進化をたどった。

自由主義と環境主義の 2 種規範に限定して、ロトカとボルテラによる共生モデルを援用すると、「相利共生」、「片利共生」、「捕食被食／寄生」、「中立関係」、「片害関係」、「競争関係」という類型が想定される。さらに絶対的利得と相対的利得を考慮すれば、どちらか一方の規範がより多くの利益をうる相利共生も考えられる。実際には UNCTAD の開発主義や ILO や WHO に代表される社会的側面など少なくとも 4 つの規範を射程に入れる必要がある。

第一に、WTO 協定と MEAs の特定貿易措置をめぐる交渉前提には、MEAs の特定措置が自由貿易にとって障害となる懸念がある。つまり、環境レジームが貿易レジームを捕食する想定がある。交渉では、EU の概念的アプローチのように、レジーム間

にヒエラルキー関係を作らず相互尊重せよとの立場と、アメリカの実践的アプローチのように、WTO における MEAs の関与を限定化する立場が対立している。前者の結末は双利共生というよりも、せいぜい中立関係であろう。WTO 交渉での妥協が片害関係を生みだすおそれもある。

第二に、情報交換とオブザーバー資格の供与問題は、貿易と環境が捕食被食関係にあるとの批判を払拭するために設定された。とりわけ、WTO には MEAs 会合のオブザーバー資格が供与されているのに、MEAs には WTO 会合の定期的オブザーバー資格が供与されていない。この問題は他の国際機関との関係にも関わるので、貿易交渉委員会や一般理事会の議題とされうる。自由主義を損なわない範囲で MEAs に対するオブザーバー資格が認められる場合には、MEAs が WTO 機関に寄生することになりかねない。UNCTAD や ILO などの国際機関にも同様にオブザーバー資格が与えられると、より広範な視点から相利関係を形成する前提に近づく。

第三に、環境関連物品•サービスの自由化問題については、相利関係が前提にある。しかし、国際産業競争力を持つ国はより大きな相対的利得を得ることが見込まれる。そのため環境関連物品・サービスの定義をめぐって、先進国と途上国の対立、地域間対立、途上国間対立が見られる。交渉結果によっては、非対称的な相利共生をはじめ、さまざまな帰結がありうる。