



# Lessons from GATT/WTO for enhancing UNEP

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## 1. Introduction.

This document analyses some implications of the GATT/WTO regime, as well as of the process of transformation from GATT to WTO, for the environmental governance and for an eventual upgrade of the UNEP. It particularly addresses some questions to help Stakeholder Forum (SF) take a position on the validity of GATT/WTO model as a reference for that eventual upgrade, possibly in the form of a World Environment Organization (WEO).

After a short history review about GATT, section 3 gathers three different relationships between GATT/WTO and climate change (CC) negotiations: as a tool for enforcement of environmental decisions (3.1), as a reference for nine different aspects of decision-making processes (3.2) and as an organization with often conflicting objectives (3.3). Section 4 is dedicated to a fourth interrelationship: the 'GATT-to-WTO' process is often said to be a useful benchmark for an eventual upgrade of the UNEP to a hypothetical General Agreement on International Environmental Governance (GAIEG), as a previous step for a World Environmental Organization (WEO). In particular, this section tries to address three issues of interest for SF: the role of the US Congress in the set up of the GATT (4.1), how did the GATT develop its committee structure (4.2) and what lessons can be learnt from GATT/WTO for an upgraded environmental governance institution (4.3). Section 4.3 analyses eight different aspects: process and structural formality Procedural and structural formality.

Hepburn and Stern (2008) explain that building a deal upon formal structures such as WTO's, where nothing is implemented until everything is agreed and no one is bound until the full deal is done, appears to be a dangerous route. Negotiations on emissions reflect a complex and asymmetric prisoner's dilemma where nations are more interested in doing little more than observe while other nations bear the cost of reducing their emissions. They rather propose processes based on a looser set of cooperative arrangements between states, built on a shared appreciation of the scale of the challenge. These arrangements should seek to minimize the costs of emission reductions, and ensure that the burdens are shared equitably in ways which take account of wealth, ability, and historical responsibility.

**Centralization**centralization (4.3.2), integration of MEAs as WTO integrates committees (4.3.3), clustering MEAs (4.3.4), scope (4.3.5), orientation (4.3.6), dispute settlement (4.3.7) and size of the governing council (4.3.8). The last section proposes a debate to establish a 'GATT 1947'-like provisional institution to advance on climate governance while a global agreement on an enhanced UNEP is met (section 5). The study does not intend to provide with conclusions. It is fully based on literature review.

## 2. Short history to put it in context: the GATT years

The General Agreement on Tariffs and Trade (GATT), was negotiated in three conferences during 1947 (last of which in Havana) and signed in January 1948 by 23 countries. GATT became both a set of rules and a negotiating forum. A series of ad hoc negotiating rounds to foster free trade (removal of trade barriers such as tariffs and export bans) followed, setting rules for international trade and trade disputes. It was argued that if trade was unimpeded by trade barriers and tariffs, global economic growth would be accelerated and each country would prosper as a result of the relative comparative advantage (IAC 1989)

The Havana UN Conference on Trade and Employment intended to set up an International Trade Organization (ITO) as a third world economic pillar alongside the World Bank and International Monetary Fund. The ITO was to be a UN specialized agency and would address not only trade barriers but other issues indirectly related to trade, including employment, investment, restrictive business practices, and commodity agreements. A charter for it was drawn up at the Havana Conference. However there was serious business opposition to the idea even in the US, who had promoted the idea. Some business people were suspicious of an international bureaucracy that would lay down the rules of trade. Others feared the loss of tariffs and subsidies that protected their business (Cowhey and Aronson 1993; Dryden 1995). On the other side, many developing countries argued that industrialized nations had protected their own industries as they developed. Latin American countries felt the ITO charter as a way to serve US' interests, damaging Latin American countries' legitimate aspirations (Dryden 1995).

With pressure from business lobbies such as the National Association of Manufacturers (NAM), the US Chamber of Commerce began to oppose the ITO (Dryden 1995). The ITO treaty was not approved by the US and a few other signatories and never went into effect. The GATT became over the years a *de facto* international organization (Van den Bossche 2007), since legally it was not a treaty requiring ratification but rather an executive agreement that could be implemented without legislative support (Van Horn and Schaffner 2003).

The GATT was the only multilateral instrument governing international trade from 1945 until the World Trade Organization (WTO) was established in 1995. Seven rounds of negotiations occurred under GATT, the last of which was the Uruguay Round (1986-1994). On the agenda was reform of the existing GATT system, as well as expansion of rules to cover new areas such as trade on services and the trade aspects of intellectual property rights (Ferguson 2007). The Uruguay Round concluded establishing the WTO through the Marrakesh Agreement.

The GATT still exists as the WTO's umbrella treaty for trade in goods, updated as a result of the Uruguay Round. A distinction is therefore made between *GATT 1994* and *GATT 1947*. GATT 1994 is not the only legally binding agreement included via the Final Act at Marrakesh, where a long list of about 60 agreements, annexes, decisions and understandings was adopted. The agreements fall into a structure with six main parts (WTO nd): the Agreement Establishing the WTO, Multilateral Agreements on Trade in Goods (including the GATT 1994), the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Dispute settlement (DSU) and the Reviews of governments' trade policies (TPRM).

Following WTO's website<sup>1</sup>, it has 153 members -who take decisions-, and 31 observer governments (most of which have applied for membership). Members represent over 95% of world trade. The highest-level decisions are made at the Ministerial Conference, which is the meeting of trade ministers from member countries. The Ministerial Conference must meet at least every two years. The General Council is the body of national representatives that oversees the day-to-day operations of the WTO. The General Council meets approximately monthly. It also meets in two other capacities: it reviews national trade policies, and oversees the dispute settlement process. Under the General Council are numerous committees, working groups, and other bodies. Assisting the members is a WTO Secretariat that numbers about 594 and

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<sup>1</sup> [www.wto.org/](http://www.wto.org/)

is located in Geneva, Switzerland. The top official of the Secretariat since September 2005 is Pascal Lamy of France.

The WTO agreements are based on the principle of non-discriminatory treatment among countries. Some exceptions are allowed, such as preferential treatment for developing countries. Other basic principles of the WTO are open information on rules and regulations, negotiated limits on trade barriers, and settlement of disputes under specific procedures.

### 3. How GATT/WTO relates UNEP/WEO

Several authors have claimed for a supranational authority to which nations would **cede sovereignty** in environmental regards (see Etchart 2009). Helm (2009) proposes that such supranational authority could function analogically to the WTO. Membership and compliance could then be linked to wider international issues such as trade. For Hepburn and Stern (2008), a response to CC will be more effective if it is organized globally and when it involves international understanding and collaboration.

There are at least 4 ways through which WTO has implications to CC negotiations within UNEP. The first three below are analysed in this section, and the fourth is in section 4:

- WTO as an instrument for environmental commitment enforcement
- WTO as a benchmark for decision making
- WTO as a rival in operations
- 'GATT-to-WTO' process as a benchmark for upgrading UNEP.

#### 3.1. WTO for enforcement

Stoddart (2011) reflects that the main divergence among WEO proponents is in its role in enforcement of global environmental norms, and the extent to which it would mirror/challenge the WTO.

Many authors have proposed the WTO to be used as an enforcement mechanism to participate or comply with CC negotiations. Barrett (2009) does it through an assessment of the Kyoto Protocol (KP) as follows. A CC global deal must **meet three requirements** at a time, while the KP fails not only globally, but in each of the three:

- 1) It must attract **broad participation**. This is not only because all countries emit greenhouse gases, but also because, should only some countries reduce emissions, comparative advantage in the carbon-intensive industries might shift to the other countries, causing their emissions to increase—a phenomenon known as 'carbon leakage'. Kyoto failed to deter the United States from not participating, partly because of US concerns about leakage. China, India, and the other developing countries only participated in the KP because the agreement does not require that they reduce their emissions. Similarly occurs with Russia, whose participation was only achieved by offering them 'hot air' (surplus of emission entitlement to trade with) and by facilitating their access to the WTO (Hepburn and Stern 2008).
- 2) It must create **incentives for compliance**. The cases of Canada and Spain (52% and 53% deviation from target, both by 2005 -even though Spain will meet the target through the EU global target) evidence the lack of compliance, as also

occurred with Japan, New Zealand and Denmark. The economic recession started in 2008 has pushed the developed countries onto a lower long-term economic growth trajectory. This and other factors will result in lower underlying emissions growth in developed countries, –which, in any case, is fully offset by stronger emissions growth in the developing world (Garnaut 2011)

- 3) It must somehow get countries to participate in and to comply with an agreement in which global emissions are to **be reduced substantially**. Even if participation in Kyoto were full and compliance perfect, global emissions of greenhouse gases could keep on rising if ambition is low.

Opposite, there is the case of the **WTO, which does work** because injured parties are allowed to impose counterbalancing measures against those who have violated the rules (Barrett 2008). As an example, in 2002 G.W. Bush Government unfairly imposed tariffs on steel imports, in non-compliance with WTO principles. The EU reaction was to threaten with imposing barriers against citrus fruits from Florida (a critical state in US elections). Bush had to retire his barriers before EU's threat became active. At no point during this dispute did the USA (or the EU) contemplate withdrawing from the WTO. This is attributable to the very substantial reduction in trade barriers agreed by the WTO, which could be denied to non-parties.

So, why not use **trade restrictions to enforce agreements on emissions**? The idea is alluring (Stiglitz 2006). Would it work? Trade restrictions in a climate agreement have two justifiable purposes (Barrett 2008): to neutralize leakage -through, e.g. border tax adjustments- and to deter non-participation directly. Which approach is best? Border tax adjustments would need to be comprehensive and based on how products were made. It would be difficult to calculate the emissions embedded in individual products. Two identical products manufactured in the same country might have very different carbon footprints. Sector-specific taxes would also be hard to calculate. On the other side, crudely designed trade restrictions may also be less effective at reducing leakage (see Oliveira-Martins *et al.*, 1992). Trade restrictions intended to deter free riding can be blunt by design. Their aim, after all, would be to coerce.

Ghosh and Woods (2009) dissert on whether the enforcing regime for environmental measures should be **centralized**. The authors analyse three options:

- **Centralized adjudication with decentralized enforcement**, leaving it up to individual members to pursue redress actions against an erring party. But whether the complainant actually imposes sanctions or not depends on several factors such as market-size (Nottage 2009). The market restricting sanctions of many small economies are not sufficient to impose the pressures needed to change the behaviour of larger powers. Second, small economies, heavily dependent on trade, suffer potentially severe welfare losses if they try to impose sanctions on their larger trading partners. For many of these countries, the WTO's retaliation rules are therefore virtually meaningless (Footer 200). However, even without retaliation compliance is high (Davey 2005). Thus, enforcement also depends, in part, on the domestic political economy within countries, as well as the desire for members to maintain their reputations in a rule-based global regime (Hudec 2002).
- **Centralized adjudication combined with centralized enforcement**. It is the case of the EU's Stability and Growth Pact, under which the European Commission and Council monitor the fiscal policies of member countries. States failing to limit their budget deficits to 3% and national debt to 60% of GDP could be subject to sanctions, after several warnings. However, in this centralized system, the application of sanctions has not proven easy when powerful states are involved, as happened

with France and Germany for violating the pact. Other examples include the Board of Governors of the International Atomic Energy Agency and the UN Security Council. However, in these cases enforcement relies on getting all necessary states to agree to resolutions which indicate non-compliance, or in the case of the Security Council can mandate enforcement measures. This has proven extremely difficult.

- **Through linkage.** It was originally conceived as negative sanctions: countries failing to adhere to commonly agreed standards could lose access to export markets. A frequently cited example of such linkage design was the NAFTA side-agreements. However, developing countries fear that linkage will too easily become a backdoor through which protectionist measures are introduced against them. More recent proposals have pushed for positive linkage, whereby countries committing to and delivering on higher standards would be rewarded with greater market access as well as direct financial transfers (Barry and Reddy 2008). The main attraction of such proposals is that they create a potential win-win opportunity.

The discussion on the role in enforcement of a new environment governance institution remains (Stoddart 2011)

### 3.2. WTO as benchmark for decision making processes

GATT/WTO can serve as a reference for environmental governance institutions in a number of aspects regarding decision making processes:

- 3.2.1. **Majority system in the GATT.** When GATT was first formed in 1947, decisions were passed by majority vote, with each country having one vote. Major amendments required a two-thirds majority to pass and those countries that voted against them were not bound by them. From 1959, after many developing nations had joined GATT, decisions required a consensus rather than a majority vote, so as to prevent any block of nations, in particular developing nations, taking control of GATT decision-making (Steinberg 2002). Although the US had originally preferred some form of weighted voting where countries with larger economies had more votes, it soon recognized that this would have deterred many countries from joining GATT. As US economic power grew it saw that it could 'influence' voting without a formal and obvious weighting mechanism. Countries that didn't accept the wishes of the major economic powers could lose access to International Monetary Fund (IMF) and other loans and suffer from trade sanctions (Barker and Mander 1999; Steinberg 2002)
- 3.2.2. **Voting requirements, interpretation of consensus.** Within the WTO, consensus comes to reflect the mood of those *present at the meeting*. This prevents decision-making being held hostage by those not present. However, it excludes those who cannot be present or who cannot afford to have a delegation at negotiations. A further variation on consensus decision-making within the WTO concerns decisions being made in lower councils which had rules of procedure of their own. The practice emerged of ignoring these rules when consensus was not reached and instead decisions were 'bumped up' until consensus was reached at a higher level, if necessary going as far as the General Council. (Ghosh and Wods 2009).
- 3.2.3. **Notifications:** In the GATT and WTO, notifications were considered a principal way to improve transparency and promote compliance. But the system of notifications, which the WTO inherited, has become increasingly problematic. Even rich countries, with fewer capacity constraints, fail to submit notifications on

time. A recent review of agricultural subsidies resulted in an unprecedented number of questions on delayed notifications by developed countries. Developing countries fear that gaps in notifications are no longer an issue of administrative capacity, but deliberate strategies to withhold information. (Ghosh and Wods 2009)

- 3.2.4. **Poor countries mistrusting due to high capacity-building costs.** In the trade regime, poor countries were shocked to discover the actual costs of improving their domestic regulatory capacities (Ghosh and Wods 2009). Costs linked to implementing agreements on intellectual property, customs valuation, and sanitary and phytosanitary standards measures exceeded the annual development budget of a typical least-developed country (Finger and Schuler 2000). That experience has made them wary of agreeing to new obligations within the WTO (Ghosh and Wods 2009). A survey of 70 countries (just under half the WTO's membership) found that only a fifth of them had independent agencies for policies reviews. Even fewer had the ability to publish reports on other countries' trade barriers. Some of the larger developing countries have sought to build analytical capacity at home, but they, too, are forced to make trade-offs about which issues they can analyse (Ghosh 2008).
- 3.2.5. **Political power of NGOs versus the capacity of developing countries.** During the KP negotiations NGOs used activist and advisory strategies to ensure that they would have a significant role in Enforcement Branch deliberations (Andresen and Gulbrandsen 2003). Developing countries oppose NGO participation in multilateral institutions (such as the WTO) when their interests clashed with those of developed country-based organizations. Even for aid-for-trade, where interests converge, the WTO's role in monitoring was considered paramount. Similar apprehensions could be expected to prevail even in the climate regime. (Ghosh and Wods 2009).
- 3.2.6. **Assessment and verification at the international level.** An effective climate regime needs to distinguish verification and review processes. The former is a technocratic certification of the validity of data; the latter is inherently a political process. Even without reference to legal judgments on compliance, peer reviews can potentially apply sufficient pressure on members to change their policies. (Ghosh and Wods 2009).
- But restricted mandates can hamper even technocratic verifications. Trade policy reviews in the WTO, or IMF Article IV consultations suffer from the same weakness -namely that the assessments do not verify the quality and accuracy of the data. A new monitoring mechanism for Regional Trade Agreements also deliberately forsook examination procedures and the WTO Secretariat only got the mandate to prepare 'factual presentations'.
- 3.2.7. **Evaluation of GHG-mitigation policies of Annex I parties.** The issue of causality is critical. It is easier to measure changes in policy rather than establish the causal impact of the said policy. This is what makes the promotion of compliance via MRV mechanisms harder. The review process for national communications has no clear guidelines and is only facilitative: expert teams liaise with national officials but do not have the capacity to credibly verify the reported information (Breidenich and Bodansky 2009). Part of the problem relates to the high cost of sending large teams for in-country missions, as the WTO has discovered (see Ghosh and Woods 2009). By contrast, the Trade Policy Review Division only accounts for 6 per cent of the WTO's staff. Given the small size of the teams and the range of countries to review, individual economists do



not have the expertise needed to engage with each country in depth. If expert teams in the UNFCCC had to verify reported emissions by Annex I and NAI parties and also review and assess their mitigation activities, there would have to be a proportionate increase in technical and financial resources in addition to an expanded political mandate to conduct in-depth reviews. Resource constraints would also affect any attempts to establish international reviews of non-target mitigation activities (*ibid.*).

- 3.2.8. **Reluctance before highly legalized regimes.** In highly legalized regimes (such as international trade), members have been reluctant to give much authority to the Secretariat, subsequently undermining follow-up procedures (Ghosh and Wods 2009). The WTO's TPRM aimed to institutionalize peer pressure and improve adherence to trade rules (Curzon Price, 1992). At the same time, its mandate restricts the use of information from trade policy reviews in dispute settlement proceedings. But a perverse outcome has been that, thanks to the greater domestic capacity of rich countries to monitor others, the pressure on poor countries to comply is greater. Developing countries are unable to apply similar pressure because they do not have the requisite information and the review meetings are ineffective. These dynamics have reduced the confidence of poor countries in trade policy surveillance (Ghosh, 2008).
- 3.2.9. **Participation in reviews at the Compliance Committee.** The Compliance Committee of the KP has balanced geographical representation. Representatives of NAI parties are also in a position to review the implementation of commitments by Annex I parties. But if NAI parties take on commitments in a post-2012 regime, then, drawing on the experience of the IMF and the WTO, developing countries would be concerned about which countries participate regularly in reviews, which ones ask questions, and which countries become the targets of peer pressure. They would also want to establish strong review procedures for evaluating rich countries' performance with commitments to transfer financial and technological resources. The asymmetry of peer pressure and pressure from non-state actors in the WTO are key reasons why many members have stopped actively engaging with its monitoring mechanism, or why they have opposed opening up review processes to non-state actors. (Ghosh and Wods 2009).

### 3.3. WTO as a 'rival'

The view that **WTO agreements impede** the ability of governments to protect the environment and their citizens' health is widespread among non-governmental organisations and also some critical scholars (De Ville 2011). Following Stoddart (2011), many of the commitments from global summits on sustainable development (SD) are hard to achieve without reform in other areas of the system. For example, a number of legally-binding environmental obligations sometimes come into **conflict with WTO rules and regulations**. The WTO is often criticised for lack of effective implementation of environmental policies as part of its work on trade. The lack of a strong political base has contributed to a failure to integrate environment into the wider macro-economic arena, and particularly within the World Trade Organization, (WTO) (Dodds and Strandenaes 2010)..

WTO outcomes and desired agenda are **contradictory with** Green Economy (Stoddart *et al.*2011), New Economy 20+20 (EOI 2010) or a 'local economies

paradigm' -an imperative to SD as proposed by many authors (see Etchart 2009; Bermejo 2008).

One of the leading drivers to set a WEO would be the need for an international agency that could **stand up to the GATT**. This is, in fact, indicative of the threat to environmental measures that the GATT often adopts. This argument, to stand side by side with organizations strong such as WTO and WHO is recently being defended by environmental ministers and consultative groups (Stoddart 2011 :47). Stoddart (2011) points that the global SD process has little jurisdiction over the economic pillar for SD area. Opposite, economy is the preserve of less open but much more powerful intergovernmental constellations, such as the G8 and G20, the Major Economies Forum (MEF) and the WTO.

Charnovitz (2002) offers **criticism** on the argument that an enhanced UNEP is needed to counterbalance the WTO. He argues that the efforts by UNEP to undertake trade-related issues had little effect due to their poor execution and to the difficulty of the challenge, and not at all to UNEP's status as a programme rather a specialized agency.

On the opposite side, also following Charnovitz (2002), GATT/WTO officials and national delegates have claimed for years that coordinating with the environment regime is hard because it is so disparate, but this might not be wholly right. The WTO does not cooperate well with other agencies because it is hard-wired to be insular and parochial, and to resist other values beyond commercial reciprocity. If organizational unity were sufficient for WTO coordination, then one would expect the WTO to have very tight relations with the WHO and the ILO, whose headquarters (unlike that of UNEP) are located within a kilometre or two from the WTO. But the WTO has less interaction with the ILO than it does with UNEP. The trade camp also wonders whether a better environment regime might spur the use of appropriate instruments for environmental protection rather than inappropriate instruments such as discriminatory trade measures.

#### 4. Benchmarking the GATT-to-WTO process

The process to transform the GATT into the WTO could include useful lessons to convert UNEP into a World Environmental Organization. Following subsections try to address particular questions from SF.

##### 4.1. The US Congress in the set up of the GATT

When the Uruguay Round was completed with the proposed WTO) as a key outcome, most governments –including US- did not consult their citizens for approving it (Barker and Mander 1999). In the US, environmental, consumer, religious, family farm, and labour groups **campaigned against GATT approval** by the Congress, arguing that it would damage jobs and undermine US environmental and safety legislation. Some conservatives also joined the campaign against what they called an international interference in US sovereignty. For example the US Business & Industrial Council began a campaign in May 1994 referred to as "Save Our Sovereignty" (SOS) (Stone 1994a).

Beder (2010) makes a well referenced description (Lewis 1977; Stone 1994a, b; Wheat 1994; Lipowicz 1994; Beder 2006) of the moves around the US Congress that **led to the approval of the GATT** in early 1995, and to the set up of the WTO to administer GATT. Beder refers how lobbies used Public Relation consultancies to campaign for the Congress approval.

#### 4.2. How did GATT develop its committee structure

The majority system used in the GATT is described in section 3.2.1.

Many more states now participate in international negotiations than did in the GATT rounds of earlier decades (Drahos and Tansey 2008). Wolfe (2007) lists more than 30 negotiating clubs that are active in WTO negotiations of one kind or another. **More developing countries** participate and more developing country coalitions exist than ever before, reflecting their diversity and different interests. Developing countries can organize coalitions quickly and effectively. Bragdon *et al.* (2008) draw attention to a number of developing country coalitions in the context of the CBD.

Michalopoulos (1999), as Senior Economic Advisor at the World Bank, analysed the **role of chairmanships** in the GATT/WTO for the period 1982-1997, thus covering three important periods: 1982 is before the beginning of the Uruguay Round, 1987 is a year after the Uruguay Round was launched, and 1997 is when the WTO was established and the implementation of the Round was in full swing.

Committee structures have traditionally played an **active role** -not purely cosmetic- in the GATT/ WTO. An organization like the GATT, or later WTO, which works with consensus despite the fact that the countries represented are very different in their economic size, presents complex challenges in designing decision making structures that result in an equitable representation of the interests of all participants.

Chairmanships play a role in this effort to maintain a reasonable balance of interests. Thus, the share of chairmanships and other offices held by the developing countries could shed some light on their involvement and potential influence in the organization, especially over time.

Michalopoulos (1999)'s main findings show that over the fifteen years covered, developing countries increased substantially the absolute **number of 'important' chairmanships** they hold. Indeed, both in 1987 and in 1997 they held in absolute terms more important chairmanships than the developed countries (but not by a large margin). In all cases their proportion of chairmanships is lower than their share of the total membership of the institution but higher than their share of international trade.

In a later book, Michalopoulos (2000) shows that, in the last fifty years, developing countries succeeded in establishing principle of special and differential treatment to them, to the least developed countries (LDC) and to developed countries. This different treatment reflects the recognition that the integration of developing countries into the international trading system is constrained by their own institutional weaknesses which requires additional time and technical assistance to overcome.

#### 4.3. GATT and WTO structures as model for a WEO

For Charnovitz (2002), a **WEO is needed for two reasons**: to stop the destruction of ecosystems and human environment and to rationalize the processes of international environmental governance. UNEP has achieved a number of successes, but environmental governance does not function as well as it needs to. There might be too many MEAs to handle them all in detail or to keep coherent (UNEP 2001, 2007:4, 2009).

The argument that a WEO would be stronger than UNEP might **not be valid *per se***. Reorganizations can only be useful when they implement policy changes. The strength of UNEP results from the choices that governments have made. If governments

wanted to make UNEP stronger now, they could do so. The act of establishing a WEO, without giving it more authority or funding than UNEP now has, would not make it appreciably stronger than UNEP (Charnovitz 2002). Some authors (Barkin 2005; Costa 2008) argue that a WEO would be contentious because MEAs already go further than some states prefer, rather than not far enough, in protecting the environment.

For Charnovitz (2002), the **options** are a WEO that adds new flanks to UNEP -with UNEP retaining its organizational identity- or a WEO that incorporates UNEP and in which UNEP eventually dissolves in the new organization. Either organization could be well funded or poorly funded. The transformation of the GATT to the WTO did not lead to a large increase in funding. Either organization could attract MEAs or fail to; or promote and utilize science well; or carry out monitoring and reporting; or strengthen MEAs. One main difference in favour of the second option is that it would provide for more reorganization and therefore stands a better chance of attaining greater program integration. But this has not always happened. For example, in seven years of operation, the WTO did little to integrate consideration of goods and services (Sauvé and Zampetti 2000).

For a background on the history of the idea of an international agency for the environment since the early 1970s, see Charnovitz (2002:8-10) and Stoddart (2011:46-48). Both authors give and gather good arguments for terminology, acronyms and, more importantly, scope of the eventual new institution. Esty (1993) might be among the first proposers of a WTO-counterweighing organization. Esty and Ivanova (2001) and the think pieces available [sdg2012 website](http://www.sdg2012.org)<sup>2</sup> are recommended references. Stoddart (2011) covers a number of issues related to new global environmental governing institutions. Particularly, she analyses some useful lessons from global organizations. This sub-section might complement it, specifically focusing on some **lessons from GATT and WTO structures**. They are based on different sections of the paper by Charnovitz (2002), except 4.3.1.

#### 4.3.1. **Procedural and structural formality.**

Hepburn and Stern (2008) explain that building a deal upon formal structures such as WTO's, where nothing is implemented until everything is agreed and no one is bound until the full deal is done, appears to be a dangerous route. Negotiations on emissions reflect a complex and asymmetric prisoner's dilemma where nations are more interested in doing little more than observe while other nations bear the cost of reducing their emissions. They rather propose processes based on a looser set of cooperative arrangements between states, built on a shared appreciation of the scale of the challenge. These arrangements should seek to minimize the costs of emission reductions, and ensure that the burdens are shared equitably in ways which take account of wealth, ability, and historical responsibility.

#### 4.3.2. **Centralization**

Full centralization is unconceivable in face of the hundreds of multilateral environmental agreements (MEAs), organizations or parts of them -programmes, staff and offices- (WMO, GFE, parts of IMO, FAO, WTO, World Bank, ILO, WHO and many other) and myriads of environmental programmes countries and cities in the world that could be affected. No regime is fully centralized either. For example, many trade agencies and bodies of law lie outside of the WTO. The mainstreaming of environment into all agencies is one of the successes of modern environmental policy, even if these environmental components are inadequate. Rather than centralization, Charnovitz

<sup>2</sup> <http://www.earthsummit2012.org/index.php/institutional-framework-for-sd/sdg2012>

proposes the term 'consolidation'. Environmental governance would probably not have one centre, but instead several leadership nodes.

If centralization is thought as opposite to fragmentation, the point from Charnovitz (2002) that fragmentation fosters innovation is worth considering here. Management research (Diamond 2000) shows that innovation proceeds most rapidly under conditions of some intermediate degree of fragmentation.

#### 4.3.3. Integration of MEAs as WTO integrates committees

A main target of the proposals for a WEO is the MEAs and their associated institutions (Charnovitz 2002; Kanie 2007). The German Advisory Council (2001) contended that the MEA Conferences of the Parties can be brought under the umbrella of a WEO in the same way that special committees of the WTO Ministerial Conference operate with a "high degree of autonomy". For Charnovitz (2002), such analogy is inapt, because almost all of the WTO committees are committees of the whole, and none of them so far has operated with any autonomy from the WTO membership as a whole. The only regime that has consolidated in the way that proponents want a WEO to do is intellectual property (WIPO). But WIPO might not be a convincing model for a WEO because WIPO's scope is too narrow. Thus, if WEO centralization is going to be done, it will need to chart its own course rather than follow in the footsteps of any other organization. The need for a complete reinvention is not a reason to refrain from undertaking a WEO, but a caution for not trying to do too much at once.

#### 4.3.4. Clustering MEAs

Setting up clusters of MEAs would promote better coordination among related MEAs. Clustering obviously would work better if the MEAs were co-located, but some coordination could probably be achieved by defining the cluster and promoting new linkages among the Secretariats and MEA subsidiary entities. Relocation would exact a policy cost—the loss of the alliance between the MEA and its "host" government.

The different membership in the MEAs should not be a barrier to a common organizational structure. In the ILO, the membership in each convention varies, yet the ILO provides a common mechanism for technical assistance, compliance review, and dispute settlement. In the WIPO, each treaty has a different set of parties, but the WIPO provides overall housekeeping functions and also promotes new negotiations among WIPO members. In the WTO, there are some plurilateral agreements (e.g., government procurement) with limited membership that are nevertheless part of the WTO.

#### 4.3.5. Global or non-global scope

Esty and Ivanova (2001) suggested that the WEO should limit to global-scale pollution control and natural resource management issues. Ideally (Charnovitz 2002), the WEO should be given duties that distinguish it from the national environmental agencies that exist in each country. Otherwise, the world agency would duplicate the national agencies. But all existing international agencies overlay national agencies. No existing major international agency looks only at global problems. The mandate of the WTO, the ILO, the WHO, the FAO etc. are to work on problems that each country shares.

#### 4.3.6. Policy vs. operations

Everyone agrees that the WEO should have policy functions, but there is a question of whether it should also have operational functions beyond data collection and dissemination, such as capacity building and assistance to environment-related projects in developing countries. One possibility is to leave capacity building to existing UN

institutions (such as the United Nations University and UNCTAD) or private institutions (like the LEAD program). The other possibility is for the WEO to do some capacity building if only to promote competition among capacity builders (Charnovitz 2002). WTO's Doha Ministerial Declaration states that trade ministers recognize the importance of technical assistance and capacity building in the field of trade and environment (WTO 2001).

During the First Preparatory Committee Meeting for Rio+20 one delegation suggested to transform the UNEP into an action oriented implementation programme with sufficient resources, comparable to UNDP, not into a normative, enforcement oriented world organization comparable to the WTO (SF 2010).

#### **4.3.7. Dispute Settlement**

It is sometimes suggested that the environment regime would benefit from having a dispute settlement system like that of the WTO. Charnovitz (2002) points out a few reasons why the WTO model would not be right for a WEO. First, the WTO system relies on dispute settlement rather than on compliance review, with reciprocity as the central value. For the WEO, which has substantive, measurable environmental objectives, the compliance review procedures of the MEAs will be more effective. This is because MEAs are not as confrontational as disputes in the WTO and because they can be directly linked to technical assistance, which is largely absent from the WTO. Second, the WTO system is considered strong because there is a possibility of a trade sanction in the event of non-compliance. Such trade sanctions are counterproductive, however, and injure innocent parties. Third, the internal dispute settlement model of the WTO is not usual in MEAs. The MEAs that do provide for dispute settlement typically provide for *ad hoc* arbitration or adjudication in a forum outside of the MEA, such as the International Court of Justice, which has an unused environment chamber. The Permanent Court of Arbitration established a set of rules for the arbitration of disputes relating to natural resources and the environment that are available to states, intergovernmental organizations, nongovernmental organizations, and private entities.

#### **4.3.8. Size of the Governing Council**

While periodic meeting of national environmental ministers can promote solidarity and serve as a forum for discussion, it is doubtful that such a large assembly could serve as an effective governing body. The establishment of a non universal Governing Council for UNEP was intentional, although the size of 58 countries might be rather large. Organizations without a governing body, such as the WTO, make decisions very slowly. The UN Task Force recommended that membership in the UNEP Governing Council be made universal. Charnovitz (2011) thinks that this recommendation was made without any analysis. He recommends the ILO structure as a good balance between universality and effectiveness: 28 nations in the Governing Body) and an annual conference of all party states that adopts new conventions and effectuates other business.

On the other side, the ILO plans its work so that the annual conference adopts at least one new convention virtually every year. Thus, labour ministers do not have to worry about holding a conference that fails to accomplish anything. A WEO annual conference that produced only empty declarations would soon lose interest.

## **5. A GATT-like General Agreement on International Environmental Governance**

GATT negotiations began in 1946 with the assumption that it would operate under the umbrella of the proposed ITO, which was being negotiated at the same time (Wilson 1995). GATT was not an *organisation*. Of the 23 initial signers, 12 were developed and 11 developing countries. After the ITO failure, it gradually changed role and nations turned it into the forum to handle problems in trading relationships among parties (Raychaudhuri n.d.).

Felix Dodds proposes a debate on the idea to create General Agreement on International Environmental Governace (GAIEG) to strengthen UNEP while the upgrading of UNEP is taking place, in a parallel way to the initial operational intentions for GATT towards an ITO. Several observations in this study align with it, remarkably Hepburn and Stern (2008)'s in section 4.3.1. On the other side, the high complexity of the environmental negotiations may make recommendable such intermediate step.

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