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Integration Of Governance In National Law With International Environmental Law And Trade Regimes

Those that argue that the industrialized state – whether developed or developing – is currently unsustainable emphasize toxic pollution, climate change, resource depletion, and problems related to the loss of biodiversity and ecosystem integrity. Two major trends relevant to environmental protection have changed the nature of approaches to improving environmental quality in both developed and developing countries: (1) changes in the technical conceptualization of the environmental problem and (2) changes in governance by which national environmental law must now be integrated with international environmental law and trade regimes. The description of the technical challenge has evolved from: (1) dispersing pollution and waste to (2) ‘end-of-pipe’ pollution control to (3) industrial ecology involving waste and material exchange and consolidation and alternatively (4) pollution prevention and cleaner technology to (5) system changes and sustainable development.

National legal and political approaches to different environmental problems vary significantly, both conceptually and in emphasis. Some nations are more advanced in some areas, e.g., in toxics but not in others, e.g., climate change. Some nations emphasize ‘end-of-pipe’ approaches, while others focus on systemic changes encouraging shifts from products to product services. With the increasing participation of nations in multilateral environmental treaties and in international trade, there are significant additional governance challenges regarding both horizontal integration (involving the integration of approaches to toxics, climate change, resources and energy, and biodiversity/ecosystem integrity) and vertical integration (between national, international and trade law). Recent decisions in trade law – such as in the General Agreement on Tariffs and Trade (GATT), the Biosafety Protocol, and the Sanitary and Phytosanitary Measures (CITES) – present unresolved policy and governance issues.

If progress is to be made, the policy agenda must shift from the coordination of the currently-fragmented legal/political base to policy integration. Vigilance is needed to choose the right time horizon for policy implementation. This paper will discuss policy approaches to governance that integrates problem types, the governmental entities in control, and temporal concerns in environmental governance.