

International Conference



**30 – 31
October
2003
Berlin
Germany**

The Relationship between MEA's and WTO Rules in the Negotiations on Par. 31 i DDA

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This conference is part of the international research project CAT+E, funded by the 5th Framework Programme of the European Commission - DG Research. In co-operation with the Task Force Global Issues of the German Federal Foreign Office.

Conference organised by Ecologic – Institute for International and European Environmental Policy
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"Moving forward from Cancun"
Berlin, 30. 10. 2003



Trade and environment: from GATT/WTO to Doha

- **Trade and environment:** growing interfaces, part. between rules (multiplication), mutual influences. CTE 1994.
- **Disputes on environment and trade:** 6 under GATT (since 1982), 3 since 1995 (WTO), legal case on GMO 2003.
- **Doha inclusion:** EU principal demandeur: political consensus instead of dispute settlement's results.
- **Opposition:** DC's and US/AUS/CAN: primacy of trade/development aspects, case-related approach
- **Negotiations** on the relationship WTO rules and MEA's: Doha mandate in § 31

Basic EU principles on 31 i

- **MEA's indispensable:** multilateral approach for global environmental problems essential
- **Right Forum:** Multilateral environmental policy should be made in ME fora and not in WTO (expertise, mandate).
- **Equality** MEA's and WTO are equal bodies of international law.
- **SD** for WTO as for MEA's SD as common ground and goal.
- **Mutual consideration:** in MEA negotiations as well as in dealing with trade-related questions, no "clinical isolation"

The mandate: Par. 31 i Doha Development Agenda

"With a view to **enhancing the mutual supportiveness** of trade and environment, we agree to **negotiations**, without prejudging their outcome, on:the **relationship** between **existing WTO rules** and **specific trade obligations** set out in multilateral environmental agreements (MEAs)"



Limits of the mandate

- “specific trade obligations”
- “existing WTO rules”
- “negotiations .. on... the relationship”: neutral, but “enhancing the mutual supportiveness”: reflects EU approach of balancing
- **constraint Par 31 i:** The negotiations shall not prejudice the WTO rights of any Member that is **not a party to the MEA in question**.
- **constraint Par. 32:** “...negotiations.... shall be **compatible** with the open and non-discriminatory nature of the multilateral trading system and shall **not add to or diminish the rights and obligations** of Members under existing WTO agreements.



Framework of CTESS negotiations

- **Committee on Trade and Environment Special Session:** negotiations started in February 2002, eight sessions until Cancun
- **Timeframe:** 1 January 2005: conclusion of par. 31 negotiations as part of single undertaking;
- **Cancun interim:** report of the CTE with recommendations on future action “including the desirability of negotiations, on the need to clarify relevant WTO rules....”
- **Ecological presence** CTESS has invited, on an ad hoc basis, UNEP and six MEA Secretariats at its meetings of 1-2 May and 8 July 2003



Major issues dealt with in the CTESS

- **Process**; structure of negotiations; technical or conceptual approach? EU/CH "principles" vs. US/AUS/NZ and others bottom-up approach
- **Multilateral Environmental Agreements (MEAs)**; UN-connex; open to WTO-members, regional MEA's; numerus clausus of 6 "relevant" MEA's (G 77, USA and others).
- **Specific Trade Obligations in MEA's (STOs)**; strict or expansive interpretation? Mandatory and specific or "obligation de resultat"? COP decisions?
- **Relationship Between WTO Rules and Specific Trade Obligations** in MEAs; conceptual approach (EU) or bottom-up/STO approach (USA/AUS); automatic WTO-conformity of STO's?
- **Party/Non-Party Issues**; can a MEA non party be obliged via trade related measures? At least important element of interpretation? "Among Parties" priority of MEA dispute settlement
- **Outcome**; interpretative decision/set of rules to clarify WTO texts



Assessment: limited progress

- **Results reached**: no important substantial progress in implementation of the DDA mandate
- **Preliminaries**: Focus on discussions of **definitions** and **basic approach** without reaching substantial consensus. Still at examination stage.
- **Fundamental differences** on the principal relationship of both systems, trade and environment, beyond concept "mutual supportiveness".
- **Submission to Cancun**: interim report of the CM, recommendations:
 - more frequent meetings of the CTESS, and
 - more substantive work to be done by delegations

How did par. 31 i figure in Cancun?

- **Back seat** Par. 31 i did not specifically stand out for Cancun due to "examination" stage of the CTESS, consequentially:
 - **No specific reference to 31 i** in the final substantial draft ministerial declaration of 13 September which had been rejected: "take note", "reaffirm commitment to these negotiations"
 - **Adopted final ministerial declaration** even less specific: "... we reaffirm all our Doha Declarations and Decisions and recommit ourselves to working to implement them fully and faithfully."
- **Outside call:** Cozumel High Level Round Table on Trade and Environment, environmental ministers/CS: recognize the "compatibility of MEA's and WTO rules".

After Cancun

- **Setback** Failure of Cancun = major setback for environmental issues: Shift to trade bilateralism (part. USA), which is as well uneconomical as unecological.
- **Continue CTESS?** Uncertainty on WTO agenda. But more intensely, with regular participation of UNEP and MEA representatives.
- **Political impulse** 31-negotiations need a strong political impulse. Political will needed (but 2004 difficult: Elections in US. Renewal of the EU Commission, Lamy and Zoellick leave).
- **Change Forum?** Handing over to "neutral" forum, UN? Conceptually yes: SD conflict of pillars. But politically not feasible: No consensus.
- **Way forward:** strengthen intern. env. governance: Institutional parity (i. a. perspective WEO/UNEO); apply mutual supportiveness institutionally and develop a balanced relationship between trade and environmental governance.