



“The Relationship between MEAs and WTO Rules”

**Seminar to raise awareness of trade issues in civil society
Szentendre, 10 May 2004**

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**“EU Trade Policy Decision Making
and WWF's trade policy work in Brussels”**

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Part I: Trade Policy Decision making processes in the EU: Key Findings of the WWF-study: A League of Gentlemen

1. The role of the European institutions in trade policy-making

Article 133 of the EU Treaty, defines the roles and responsibilities of the different institutions in EU trade policy making.

The Commission clearly takes the lead as it:

- **prepares proposals** for trade agreements
- **negotiates** on behalf of the EU at international forums, and
- **consults with Council representatives** to establish a common EU position.

The Council of Ministers, acting by qualified majority at the General Affairs Council, gives permission for EU trade negotiations to start, and final approval to negotiated trade agreements. There is **no formal consultation of the European Parliament at any stage**.

Key decisions on EU negotiating priorities are often taken without parliamentary or ministerial input, since proposals for EU positions in trade negotiations are often agreed as automatic 'A' points in any Council meeting. Consequently the 133 Committee is de facto the only institution giving input to the Commission.

Unlike Council meetings, the 133 Committee does not normally publish summaries of decisions taken.

1.1 The role of the European Commission

The influence of DG-Trade in proposing and negotiating trade policy is paramount. Firstly, the Commission has the right of initiative. Secondly, the Commission is the sole EU negotiator in trade talks (except in areas of 'mixed competence', such as investment and certain services, where the Commission retains the spokesman's role for the EU, but the Council Presidency can be present at negotiations).

1.2 The role of the Council and the 133 Committee

The Council is represented for all trade matters by a group of national trade officials, known as the '133 Committee'. This Committee scrutinises, amends and approves Commission proposals for EU negotiating positions on trade agreements, and its members **attend the international negotiations** themselves. The Committee agrees EU position papers in principle, and these are then passed for formal approval by the Council, usually as a written 'A' point, i.e. the issue is not discussed at the Council level. Due to the increasing technical complexity of trade decisions, more and more issues are settled by trade officials in the 133 Committee, and Ministers themselves rarely debate EU negotiating positions.

Article 133 states:

Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council *to assist it in this task* and within the framework of such directives as the Council may issue to it.

(Emphasis added)

The perception of some member states of the 133 Committee's role seems to go well beyond "assisting the Commission in its negotiations". The website of the UK Department for Trade and Industry states "Community trade policy is **decided** in the Article 133 committee"

The Treaty makes no specific provisions concerning membership, appointment or rules of procedure of the 133 Committee. (NB: According to the Irish presidency, the Council rules of procedure apply to the C133: however, they hardly say anything about the conduct of Council Committees)

The Committee has no set numbers of participants and there can be around 50 people at its meetings (this number will obviously increase after enlargement). It operates at two main levels:

- **Deputy level:** 3-4 national trade officials from each member state: Commerce or Trade Counsellors from the Permanent Representations in Brussels, plus 2-3 trade experts from the national capitals who meet on Fridays

- **Full member level or "top configuration":** a monthly Friday meeting of national Trade Directors-General from member states, plus supporting officials. In addition, other meetings of national experts examine specific issues on behalf of the 133 Committee where specialist discussion is needed.

DG Trade Commission officials attend all meetings to present their proposals, and the Director-General for Trade, Peter Carl, attends the monthly full members meeting, often also accompanied by the Commission's WTO representative, Carlo Trojan.

Like other Council Advisory Committee meetings, this Committee operates *in camera* normally. However, the role of other Committees is balanced by a wider consultation process, which includes the European Parliament from the start.

Unlike Council Committees in other policy areas:

- The 133 Committee is the sole body consulted on proposed EU positions for trade agreements ; **Parliament is excluded from the consultation process.**

- **It debates an unpublished Commission proposal.**

- In the words of one national expert: "it's the one committee where a very vocal and active Commission has the lead role, not governments".

- It holds substantial decision-making powers in itself, as national Trade Ministers do not often get involved in the technical details.

The 133 Committee thus has the main responsibility for amending Commission proposals for EU positions in trade negotiations. It has no formal operational guidelines; works by consensus; and has almost no formal votes.

Deadlines for comments from 133 Committee members on Commission proposals "depend on the urgency of the case". For papers relating to the current WTO round, a set 10-day response period has recently been introduced, during which the Brussels-based Trade Counsellors consult their counterparts in the member states.

At the 133 Committee, the DG Trade representatives present their proposals, and assess the strength of political will for changes. Since Council decisions on trade policy are by qualified

majority, objections at 133 Committee usually need to be supported by a significant number of 133 Committee members in order for the Commission to amend its proposal.

Insiders report that “the 133 Committee is Commission-driven and dominated” and that “it’s a waste of time for a member state to push an item on the agenda without prior agreement with the Commission”.

1.3 The European Parliament

The European Parliament is specifically excluded from consultation on trade agreements concluded under Article 133.

Parliament *is* consulted on the other trade agreements on investment and services which fall under the provisions of Article 300, but this is a non-binding consultation. There is restricted provision in Article 300 for a binding European Parliament assent on specific types of agreement, including on those which “establish a specific institutional framework by organising co-operation procedures”. This provision was used when the Commission and Council agreed to the European Parliament giving its assent on the creation of the WTO in 1993.

1.4 The role of the Council Working Groups

EU positions for some international negotiations - but not for trade - are examined and agreed by **Council Working Groups**. For multilateral environment agreements, for example, the EU negotiating position is agreed by the Council Advisory Committee on International Environmental Affairs.

But it seems that such Groups are excluded from trade policy debates. For example, the Environment Council Working Group is not consulted or involved in trade and environment issues discussed at WTO. Rather, environment-related trade issues are discussed in 133-Committee, and the environment briefings are relayed from individual national environment ministries. This precludes a discussion at EU level among environment experts in order to reach a common EU position on environmental aspects of trade.

2. Power relations in EU trade policy making

2.1 The balance of power within the Commission

Unlike legislative procedures, proposals for positions on trade agreements are not agreed by the College of Commissioners, and so the Environment Commissioner, for example, is not formally involved in approving a trade and environment paper. Commission DG Environment representatives may attend relevant 133 Committee meetings, but they do not take the floor.

Officials from other DGs are also offered tight deadlines for consultation on the final Commission proposals: for example, both DG Environment officials, and those national environment experts consulted by their trade colleagues have less than 10 days to consider and respond to proposed EU positions on trade and environment issues.

2.2 The balance of power between the Commission and the Council

Due to the Commission's initiative in drawing up proposals, and its greater technical expertise compared with national trade officials, Council representatives on the 133 Committee need to act strongly, usually with a group of countries approaching a qualified majority, in order for Commission proposals to be significantly changed.

At present, there are no timing obligations on DG Trade officials to produce proposals by any set deadline before their use in negotiations. This lack of deadline is open to manipulation by DG Trade officials, who follow most closely the timetables for trade negotiations.

2.3 The balance of power between the Commission and the European Parliament

The consultation of elected representatives of citizens normally expected in policy making is missing in trade negotiations. The current wording of the EP's agreement with the Commission – that it will take into account Parliament's views "in so far as possible" – renders the informal discussions toothless. In a recent seminar, the role of the EP in trade policy was described as that of a "privileged lobbyist", which, by virtue of a non-binding agreement with the Commission, has access to documents, but the Commission is free to take its views into account – or not.

3. European Treaty Revision

The Convention on the Future of Europe's proposed Treaty Articles establish five opportunities for formal EP involvement:

- i) The EP has an indirect power of assent over trade agreements. Although Parliament is accorded specific and direct powers of assent over certain international agreements, but not specifically over trade agreements, an indirect power of assent exists by linking the provisions of Articles covering Common Commercial Policy and International Agreements. The proposed Article III-217 (Common Commercial Policy) paragraph 2 states that: **"A European law or framework law shall establish the measures required to implement the common commercial policy"**; this establishes measures for the CCP as a 'legislative field' and can then be linked with the provisions in proposed Article III-227 (International Agreements), paragraph 7: **"The European Parliament's assent shall be required for.....agreements covering fields to which the legislative procedure applies" (emphasis added)**.
- ii) For international agreements, including trade agreements, the EP, under proposed Article III-227, would have to be consulted before conclusion of an agreement, within a set time-limit, but the Council can act without Parliament's opinion if time limit expires.
- iii) It would formalise the prompt and full provision of information to the EP at all stages of international trade agreements.
- iv) The EP, with other institutions, is specifically permitted to seek a Court of Justice opinion on whether any potential agreement contravenes the EU Constitution and the ECJ opinion could then stop an agreement.
- v) For the Common Commercial Policy, provision is introduced for joint decision-making between EP and Council on EU implementing laws.

4. WWF's Recommendations

4.1 Commission proposals should be made public

Commission proposals for EU positions at international trade negotiations should be made public well before final decisions are taken on them by the 133 Committee.

4.2 There should be a formal consultation period for Commission proposals

The period between publication of Commission proposals and final agreement in the 133 Committee should be significantly extended – to at least a month – and applied to all trade proposals.

4.3 Capacity for engagement on trade issues should be increased in other DGs

Other DGs need increased capacity on trade to be able to initiate Commission positions, and to respond to those developed by others. The European Parliament could propose this during their annual budget round, in the section on Commission staff.

4.4 The 133 Committee should, at a minimum, implement those transparency procedures which apply to other Council meetings

Such procedures include:

- Advance publication of agendas. (The attempt under the Danish Presidency at end of 2002 to marginally improve transparency by publishing agendas of the 133 Committee meetings was discontinued by the Greek Presidency in 2003.) (Note: agendas are published on the Council and the presidency websites during the Italian and the current Irish presidency)
- Immediate publication of records of decisions taken, and the list of participants
- Encouragement of full participation by representatives of non-trade policy areas

4.5 Council Working Groups should be formally consulted by the 133 Committee

DG-Trade organises informal groups. However, these meet infrequently - the trade and environment group meets just three or four times a year. This cannot substitute for formal and frequent consultation of the Council Advisory Committee on International Environment.

4.6 Provisions should be made for *ex ante* consultation of the European Parliament on the EU negotiating mandate, formal consultation over the course of negotiations, improved representation at international negotiations, and provision of assent at the end of negotiations.

- *Ex ante consultation on the negotiating mandate*
- *Formal consultation over the course of negotiations*

Parliamentarians should be granted access to 133 Committee meetings. Negotiations have a series of 'junctures' - international agreement on some element of the agenda, or mid-term ministerial negotiations, for example. These should provide an opportunity for parliamentary review of the progress of negotiations.

- *Improved representation of the European Parliament at international trade negotiations*

The current 'exchange of letters' which sets out the conditions for the Commission to inform MEPs during negotiations could be revisited and the requirements for information strengthened. This does not require Treaty change and is not dealt with under the Convention.

- *Assent at the end of negotiations*

4.7 Comparable provisions should be made for consultation with national parliaments

4.8 Commission competence should not be further extended to include foreign direct investment

Part II: WWF's trade policy work in Brussels

1. Lobbying EU institutions

1.1 The Commission

Following from what was said above on the power-relations in trade policy, it is obvious, that any attempt to influence EU-trade policy has to start and end with the Commission. Hence most of the work WWF does in Brussels is targeted towards it. Besides DG Trade, DG Agriculture, which takes the lead in negotiations in agricultural trade is a crucial player.

The second reason for the bigger level of engagement with the Commission, is that it provides a range of opportunities for discussions, both at a formal and an informal level.

The most important formal instruments are the Civil Society Dialogue sessions, which are held regularly on different aspects of the WTO negotiations as well as on regional and bilateral negotiations. Most of the time these take the form of Commission briefings on the state of play of negotiations, with the opportunity for participants to ask questions and make statements. In terms of influencing decision-making, these are not considered as being the most effective channels.

The same is unfortunately true for the "Sustainability Impact Assessments" which accompany every trade negotiation. The purpose is to identify potential negative impacts of trade liberalisation proposals on developing countries, the environment and the social situation and address them via mitigating measures or an adaptation of the EU negotiation position. The SIAs undertaken so far have however not led to measurable policy changes in the EU.

The instrument is still developing and the Commission is in the process of refining the methodology, seeking broad stakeholder participation in this. WWF is giving input into this as well, not only by attending the dialogue sessions for this process, but also by extensive written inputs.

In general, the greatest likelihood to have influence seems to occur, when NGOs can support their positions with expertise and research, that is going beyond the Commission's approach on specific issue – and is not totally in contradiction to it. In WWF's case this means that its positions seem to have an impact on some aspects of the trade and environment negotiation. While a coalition of almost all EU NGO's was totally unsuccessful to convince the Commission to drop at least the most contentious Singapore issues, investment and competition policy, from the Doha Agenda. It took the failure of Cancun to achieve this.

More informal, bilateral meetings with the Commission (in WWF's case both with DG-Trade and DG Environment) often seem to be more effective than formal meetings. Reasons for this may be, that more time is available for a real dialogue and both sides are less reluctant to "think out loud" on potential consequences and weaknesses of their positions, than in a setting where stakeholders representing opposing interests are also involved.

1.2 Member states representatives

Informal channels are the only opportunity to bring issues to the attention of Committee 133 members. And this is extremely difficult since almost all departments for trade and economic affairs in member states have a much more closed attitude towards civil society and especially NGOs than the Commission has. In WWF's case we do have good relations with a number of national trade and environment experts – but hardly any contacts with the leaders of the national delegations in the Committee. Even their names and contact details are sometimes not easy to get hold of. WWF does not work extensively on trade policy issues at EU member state level. We know from other NGOs that the formal mechanisms for Civil Society involvement at

national level (if they exist at all) are even less effective than those at EU level. The exception might be one or two Scandinavian countries.

1.3 Parliaments

As described before, the EP does not (yet) have a formal role in trade policy. Therefore “lobbying” in the traditional sense is close to meaningless. However, if an issue is important to a political group or an individual MEP, they may be ready to organise or sponsor a hearing or a seminar in the EP. This can be used as an opportunity to address a broader audience (although normally not the general public) and raise awareness for this issue. WWF works regularly with the EP to support it in its claim for a greater role in trade policy making.

In most member states, parliaments have no greater say in trade policy issues than the EP. As a consequence, few national MPs take an interest in trade policy. Even if a majority in the parliament takes a line, that doesn’t conform to that taken by its government and the EU, this can be ignored by most member states governments (as in the case of a German parliamentary resolution before Cancun). The Trade Justice Movement in the UK has started “mass lobbying” MP’s on trade policy issues – initially with great success.

2. Networking with other NGOs

2.1 Ad-hoc actions

Joint (lobbying) activities of NGOs at the EU-level normally take place on an ad-hoc and issue by issue basis. It is often larger Environment NGOs like Friends of the Earth and WWF that work together with Development NGOs and networks like Oxfam or CIDSE and APRODEV (Catholic and Protestant Development NGO Networks) e.g. to develop joint positions or undertake research on a certain topic of mutual interest. Joint activities with trade unions and social NGOs are less frequent, although they are involved in regular information sharing and discussion

2.2. Permanent Networks

Almost 50 NGOs, networks, trade and trade unions at EU and national level are part of the “European Trade Network”. The aim of the etn is to keep its members informed on new trade policy developments, especially on EU level, activities of other members, and to provide a forum for strategic discussions of these developments. It also co-ordinates the input to the administrative part of the Civil Society Dialogues.

For these purposes the etn maintains a listserv with around 90 participants and organises 3-5 meetings per year in Brussels. The etn does not aim at developing joint positions on particular policy issues.

The Seattle to Brussels Network (S2B), which shares a lot of members with the etn, is more action oriented and aims at organising Europe wide (public) campaigns on issues of common interest, currently on GATS and public services. It also maintains a listserv and organises 2-3 meetings per year in different European countries. WWF is not formally part of the S2B network.