

“The Relationship between MEAs and WTO Rules and EU Trade Policy Making”

Seminar to raise awareness of trade issues in civil society

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Policy Brief

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Background

The relationship between multilateral environmental agreements (MEAs) and the World Trade Organization (WTO) has long been of particular interest in the discussion of trade impacts on the environment. However, no clear consensus on how to best address this relationship has emerged, and further debate is anticipated. The number of MEAs is growing, and the policy and legislative activities of existing MEAs continue to evolve quite rapidly, often in ways that are likely to increase their interaction with the WTO. In addition, a number of other policy areas are affected by the negotiations on the relationship between trade-related measures pursuant to MEAs and WTO rules.

At present, the clarification of the relationship between international trading rules and MEAs is an issue of foremost priority on the Doha Agenda. The Doha Declaration calls for negotiations on information-sharing and observer status between WTO committees and MEA secretariats, and on the relationship between existing WTO rules and MEAs. However, the negotiations appear limited in scope, as they are required to neither "prejudice the WTO rights of any member that is not a party to the MEA in question" nor "add to or diminish the rights and obligations of members under existing WTO agreements". So far, it remains unclear what the results of these negotiations will be.

Ultimately, international trade and the MEA regimes can only be mutually supportive in enhancing sustainable development governance if both bodies of law and policy do not undermine one another, and if the relevant institutions co-operate effectively during the entire processes of policy- and decision-making, implementation, monitoring and dispute settlement. Civil society plays a key role as a partner in these processes at the global, European and national levels.

As a result, it is essential to raise awareness among civil society groups of how important these negotiations are, and to promote the formation of individual standpoints while providing the necessary expertise to actively participate in the decision-making processes. So far, there is no balanced representation in the EU trade policy making process as only few civil society groups from the new member states are actively involved in the policy making process. Therefore, Ecologic, in co-operation with the Regional Environmental Center for Central and Eastern Europe and The Royal Institute for International Affairs, organised the seminar "The Relationship between MEAs and WTO Rules and EU Trade Policy Making", which took place on May 10th, 2004 in Szentendre, Hungary. The seminar aimed at contributing to raising awareness on the relationship between MEAs and WTO rules and demonstrated how to actively participate in European trade policy making. Moreover, a number of questions of particular concern to civil society groups from the new member states were discussed. The following pages provide an overview of the discussions and the recommendations made for future activities in this area.¹

¹ Presentations, list of participants, and background material can be found at: www.ecologic-events.de/eu-trade-policy.

The Relationship between MEAs and WTO Rules

An analysis of the relationship between MEAs and international trade rules should begin by assessing the theoretical underpinning of environmental protection policy and international trade policy. Doing so sheds light on how the interaction between the regimes should be optimised. Generally speaking, there is a fundamental tension between trade and environmental policy. Trade policy aims at reducing impediments and frequently requires states to abstain from undertaking certain measures and from interfering in the market. Conversely, environmental policy asks governments and administrations to regulate the market in order to achieve social optimal outcomes, which include health, environmental protection and other sustainable development considerations. Thus, a solution has to be found in which both regimes remain effective and efficient in their sphere of interest without undermining the policy objectives of the other regime. A starting point might be to seek win-win situations, such as technology transfer or subsidies in the fishery or agricultural sectors.

So far no trade measure taken pursuant to a MEA has been challenged in the WTO. However, there seems to be increasing scope for conflict between both regimes. This perception is founded on several considerations, such as the broad negotiation agenda of the WTO that impacts on several other policy areas, the increasing number of MEAs embodying trade measures, and important international players that are not member to certain MEAs. From an environmental perspective, jurisprudence in the WTO has developed in a positive way. Nevertheless, panel decisions do not have to build on each other and thus trends can be reversed. Thus, the “chilling effect” continues to have a negative affect on MEA negotiations, and there is need for a political solution that provides legal security. Proposals of how to solve the uncertain situation ranging from waivers, to an interpretative understanding, to an amendment of the WTO. However, it does not appear likely that WTO members will dramatically change the WTO provisions concerned in the near future. Currently, the relationship between MEAs and WTO rules is included in the negotiations of the Doha Development Agenda. The mandate, however, is limited and concerns only “specific trade measures” and conflicts between parties to MEAs. Moreover, the result of the negotiations should not impact on the rights under the WTO. Despite the fact that the more difficult issues, such as non-parties or non-specific measures, are not even included in the agenda, negotiations so far have mainly focused on definitions and have not made much progress. It is questionable as to whether the WTO is the right body to negotiate on the relationship between MEAs and WTO rules. This is due to the lack of environmental expertise of trade negotiators, the lack of transparency in the WTO, and the concept of a single undertaking, where environmental issues can easily be traded against other concerns in the final stage of negotiations. Also, the position of the European Union in the negotiations remains disputable. However, as the lack of a result in the WTO or even a reverse result can only worsen the current situation, the EU commission and other WTO members attempting to strengthen the position of MEAs should be supported by all actors, including civil society organisations, in order to successfully negotiate in the WTO and to create an equal footing of both set of rules. The desirable outcome of the current negotiations would be a codification of

existing rulings, without taking the possibility to make progress in another fora. This would consolidate the achievements reached without prejudging future outcomes and negotiations

While it is essential to identify a desirable long-term structure for the relationship between MEAs and WTO rules, in a medium time frame it is also desirable to increase synergies and enhance coherence among MEA secretariats. MEAs are self-sufficient legal bodies with different objectives, parties and different institutional structures. While a common approach to trade might be beneficial, the specific advantages of existing agreements, such as flexibility and innovation, should not be overlooked or compromised.

Yet another proposal is to further integrate economic development and environmental objectives. Still, a large number of developing countries fear that environmental regulations result in a loss of market access. While there is no single solution to this problem, a stronger involvement of UNCTAD in the discussions could foster credibility. Initiatives could build upon existing joint projects between UNEP and UNCTAD.

European Trade Policy Making

In the past, international trade policy increasingly shifted from traditional trade barriers, namely tariffs and quotas, to new types of non-tariff barriers. This trend was strengthened by the inclusion of sensitive issue areas, such as services and intellectual property rights, in the WTO. Given the impact on other policy areas, which were long considered as being domestic, and the perceived loss of national sovereignty over issues such as food safety, health or environmental protection, the understanding of and participation in EU trade policy making becomes increasingly important. This raises the key questions of how trade policy can become more transparent and open for non-trade concerns and how other actors, including civil society groups, can better engage and participate in the EU trade policy making processes.

Civil society groups have long criticised for their lack of equity, transparency and participation in EU trade policy making. In order to increase democratic control of the process many proposals have been put forth, many of which seek to better integrate the European and the national parliaments into the process, to enhance transparency of the 133 committee, to enhance coherence between trade policy and other policy areas and to increase participation of civil society groups. Indeed, the involvement of non-state actors in the making of trade policy is not new, environmental and development NGOs nevertheless have lodged complaints about the close links and privileged consultation methods between the makers of EU trade policy and groups representing European business. There has been an ongoing dialogue between civil society groups and DG Trade in the so-called civil society dialogue. However, in the past NGOs have gathered different experiences from the co-operation and exchange with the Commission, but in certain areas, such as the relationship between MEAs and WTO rules, civil society groups and Commissions perceive that co-operation is successful. Also, on the international level NGOs had a positive impact on trade policy, successfully pushing the

issue of better access to drugs for poor people on the WTO agenda and contributing to the final outcome in the WTO.

In the European Union, there are only few civil society groups from the new member states that actively participate in the trade policy making process. DG Trade supports civil society actors' participation by providing funds for travelling to the meetings in Brussels. Yet, further support might be necessary to ensure effective participation from the new member states and a more balanced presentation. While an increased number of country characteristics, national requirements and languages will make it more difficult to find consensus in important decision making processes, such as EU trade policy making, there is no obvious differentiation and separation between the old and the new member states. In particular civil society groups frequently share a common agenda and might, thus, contribute to a common trade policy.

Conclusions and Recommendations

This brief raised a number of issues and problems in regard to the relationship between environmental and international trade policy and civil society participation in the EU trade policy making process. In particular, the following issues should be highlighted:

- Participation of civil society groups in trade policy making is essential to increase mutual supportiveness of trade and environmental policy. In the past, NGOs were successful in pushing a number of issues on the agenda. In regard to the ongoing negotiations on the relationship between MEAs and WTO rules, NGO's continuous engagement and pressure is essential to achieve a desirable outcome.
- The civil society dialogue of DG Trade is one important entry point to engage with the trade policy makers and to influence European trade policy. Travel costs to these meetings are usually funded by the Commission. However, the commission might consider to organise civil society dialogue meetings in the new member states to reach a broader participation and a greater awareness of trade policy making.
- The European Trade Network and the Seattle to Brussels Network are possibilities to exchange point of views among non commercial non-state actors and to organise campaigns on the European level. Usually civil society dialogue and EU network meetings are held back to back – leaving the opportunity to join both meetings.
- Awareness augmentation and knowledge transfer are key to ensuring adequate participation of civil society groups from the new member states. In particular the complex and highly technical trade policy making process makes further capacity building efforts, such as seminars, conferences or joint research, indispensable to allow an effective participation.

- Established NGOs from the old member states might contribute to a more balanced presentation by embracing more actively civil society groups from the new European member states and sharing expertise, networks and contacts.
- A number of traditional funding sources have disappeared, although most civil society groups in the new member states are not yet ready to compete for funding with civil society groups from the old member states. It might thus be effective to create a system of privileged access to resources for civil society groups from the new member states. This could be done through the unbureaucratic provision of smaller grants.
- It is crucial for civil society groups in the new members states to develop their own interests and agenda. This is especially true in areas, which are of higher relevance for the new member states. Given the geographical situation and historical trading links on of these issues might be trade with non-WTO members.
- New member states made large experiences how to implement environmental regulations, while adapting and restructuring the economy. Both the EU and the WTO might take advantage of this knowledge and expertise in the ongoing development debate.