

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

**Seminar to raise awareness of trade issues in civil society**

**Szentendre, 10 May 2004**

## **Summary**

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The **welcome address** of the seminar on the relationship between MEAs and WTO Rules and EU trade policy making was given by **Marta Bonifert**, Executive Director of the Regional Environmental Center for Central and Eastern Europe (REC), who welcomed the participants and introduced them to the mandate and work of the REC. The welcome address was followed by a short **introduction** into the background and objectives of the event by **R. Andreas Kraemer**, Director of Ecologic, who was the Chairman of the seminar. Given that the nexus of trade policy and the environment has not yet fully been realised in the new member states, Mr. Kraemer stressed the importance of the seminar. Moreover, the potential contribution of civil society groups from the new member states to the EU trade policy making process was emphasised. After these remarks, there was a brief introduction round of the organisers, speakers and participants.

The **keynote address** was given by **David A. Wirth**, Professor at the Boston College Law School, who spoke on the theoretic underpinnings of trade and environmental policies. Trade policy aims at reducing impediments to trade. However, a number of measures aiming at the protection of the environment or public health can impede free trade of goods and services. From this point of view, governments are potentially harming the free and effective market. Therefore the international trade regime includes a number of negative obligations that require states not to take certain measures and not to interfere in the market. In this regard, the WTO requests its members not to discriminate among imported products on the basis of their origin, not to discriminate between foreign and domestic “products” and not to employ quantitative restrictions for imports or exports.

By contrast environmental measures anticipate action from governments and administration to regulate the market. From this point of view, an uncontrolled market has the potential to harm the environment, to undermine public health policy, or to reach other sustainable development goals. Therefore governments regulations, such as Chemical directives or the GMO directive are needed.

Acknowledging the underlying tension between trade and environmental policies the **ensuing discussion** highlighted the complexity of the relationship between MEAs and WTO rules. Facts mentioned included mutual supportiveness of trade and environmental policies in certain areas, such as technology transfer, the change of obligations of states in the light of evolving decisions of the WTO’s dispute settlement understanding, and right of states to set up their own level of health and environmental protection.

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<sup>1</sup> Presentations, list of participants, and background material can be downloaded at: [www.ecologic-events.de/eu-trade-policy](http://www.ecologic-events.de/eu-trade-policy).

In the **first session** on the relationship between MEAs and WTO Rules **Richard G. Tarasofsky**, Head of the Sustainable Development Programme at The Royal Institute of International Affairs, briefly touched upon the evolution of the conflict, the creation of the Committee on Trade and Environment in the WTO and ongoing negotiations in the Doha Development Round. While no case was directly brought in front of the WTO, there is an increased scope for conflict between MEAs and WTO rules given the broad trade agenda, the increasing number of MEAs embodying trade measures, and the large number of important players that are not member to a number of MEAs. Also, the unclear relation has a “chilling effect” on MEA negotiations or at least this is the perception among MEA negotiators.

From an environmental perspective, jurisprudence in the WTO has developed in a positive way, such that WTO rules now allow countries to take measures that link primarily not to trade but also to other objectives, including health or the environment. There are even further signs, such as the broader definition of the term necessary in article XX (b) which now includes the public interest and the use of MEAs to interpret WTO rules. However, panel decisions do not have to build on each other and thus trends can be reversed. Consequently, the political level has to provide legal security, finding an outcome that is built on an equal footing of both sets of rules

Currently, the question of the MEA-WTO relation is included in the negotiations of the Doha Development Agenda . However, the mandate only concerns “specific trade measures”; conflicts between parties to MEAs and the result of the negotiations should not impact the rights provided 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 most of the fundamental issues.

In general, it is questionable as to whether the WTO is the right body to negotiate the relationship between MEAs and WTO rules given 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. Therefore, the strategy of the European Union to push forward with negotiations seems risky. However, as no result in the WTO or a reverse result is very dangerous for the environment, the EU commission needs support from all actors, including the civil society, to successfully negotiate in the WTO.

A number of questions were raised in the **ensuing discussion**: It was asked where the entry points for civil society are to influence the WTO agenda development and negotiations. Also, it was discussed how MEAs could contribute to ease the tension between MEAs and WTO rules, e.g. through finding a more coherent approach to trade measures and how to deal with the fear among developing countries of losing market access. Again, it was emphasised that it is important to establish a level playing field

between both sets of rules and to find mutually supportive solutions. According to one participant, the best result of the current negotiations would be to consolidate the progress and achievements without prejudging future outcomes and negotiations. This could be achieved by an interpretative understanding which codifies the existing rulings, while allowing open space to move forward in another negotiation fora.

The **second session** in the afternoon was dedicated to **EU Trade policy making**. The first presentation was given by **Tobias Reichert**, European Trade Policy Officer at WWF European Policy Office, who touched upon two subjects. He explained the institutional structure of trade policy making in the European Union, and shared his own experiences in trade policy lobbying.

Drawing back upon the paper “League of Gentlemen” by the WWF, Mr. Reichert explained and analysed the role of the EU Commission, national parliaments and the 133 Committee in EU trade policy making in more detail. He stressed the need to create more transparent processes, to have participation from EU and national parliaments and to better integrate environmental concerns into trade policy making. Also, he asked to renew the negotiation mandate, as the EU commission continues to negotiate on the mandate that was given for the Seattle negotiations.

With respect to influencing EU trade policy making, the WWF works with the EU Commission through several channels, namely the formal dialogue sessions, bilateral meetings, and through research and expertise. While the formal dialogue between civil society and the EU commission is not regarded as being very effective, bilateral meetings on certain issues, such as the relationship between MEAs and WTO Rules, especially if backed up by research, have indeed been highly successful. Nevertheless, in other issue areas, such as the Singapore Issues, NGOs were unable to convince the EU Commission. Generally, the WWF does attempt to work with other NGOs by forming ad hoc coalitions or through the existing networks. For example, in the European Trade Network views among non commercial non-state actors are exchanged and the Seattle to Brussels network aims at organising European wide campaigns

In a second presentation **Rupert Schlegelmilch**, Head of Unit F3, DG Trade at the European Commission, pointed to the significance of civil society participation in trade policy making and showed ways to better co-operate with the commission. On one hand the importance of international trading rules and their impact on everyone’s daily life were restated. On the other hand there are examples in which civil society was able to shape the global agenda. For example, civil society was able to not only institute the issue of better access to drugs for poor people on the WTO agenda, but it also had a great impact on the final decision of the WTO. DG Trade encourages civil society groups to engage more heavily in trade policy making. To this aim DG Trade established the civil society dialogue, giving everyone interested in trade issues the possibility to participate in the dialogue. As most of the meetings are held in Brussels, the commission funds most costs

incurred by NGOs for their travel to Brussels. With respect to the EU-enlargement, country representatives of the new member states have been participating in the process of trade policy making for over a year. However, it is now important to bring more civil society actors into the policy processes.

The **ensuing discussion** centred mainly on the procedures of DG Trade's civil society dialogue. Issues discussed included the records of the meetings, the reimbursement process, and the timing of the meetings. Also, other areas of concern to NGOs, such as development aspects, investment or agriculture, and their prospects in the civil society dialogue as well as the presentation of NGOs from different sectoral backgrounds and EU member states were briefly discussed.

In the **Final Discussion** selected participants from the Seminar discussed further prospects and impediments to successful civil society participation in EU Trade policy making.

**Istvan Garai**, Executive President of the National Association for Consumer Protection in Hungary, stressed the significance of awareness and capacity building events in the new member states to demonstrate the fundamental role of participating and shaping the agenda of the trade policy agenda. However, he also stressed that further support is necessary to create sufficient knowledge and expertise to effectively and efficiently participate in trade policy making. Given their expertise, networks and contacts, established NGOs from the old member states should actively support civil society groups from the new European member states to gain a more balanced presentation and to include issues of particular interest to the new member states.

The time needed for the ongoing harmonisation process even after the EU enlargement took place, was emphasised by **Mariusz Maciejczak**, Associated Expert World Conservation Union IUCN - Office for Central Europe. In particular, the larger number of countries, different characteristics and national requirements, languages etc. will make it more difficult to find consensus in important decision making processes, such as EU trade policy making. However, there is no necessary differentiation and separation between the old and the new member states, as civil society groups frequently share a common agenda. In this respect, participation of civil society groups might contribute to a common trade policy.

**Veronika Móra**, Deputy Director of the Hungarian Environmental Partnership Foundation, asked national governments to more specifically pursue their own interests in the trade policy arena. For example, the Hungarian government did not express its own point of view on the GMO issue. The largest obstacle for effective participation is the lack of mature civil society groups in the new member states. While more time and expertise are needed for civil society groups to effectively engage with policy makers., a number of

preconditions have to be met quickly. In Hungary, there are still legal loopholes or red tape in certain areas regarding civil society groups. Another issue is that a number of traditional funding sources have disappeared and 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 be effective to create a system of privileged access to resources for civil society groups from the new member states.

The **ensuing discussion** demonstrated the need for a better participation of civil society groups from the new member states in EU trade policy making. The WTO and EU might benefit from the new member states' experiences how to implement environmental regulations, while adapting and restructuring the economy – an issue of major concern in the WTO development debate. Also, an increased participation of civil society groups might contribute to a better understanding of inhabitants and decision makers, including parliamentarians, on the trade and environment issue. Moreover, there might be certain issues, such as trade with countries that are not member of the WTO, which are of higher importance for the new member states, given their geographical situation and their historical trading links.

The seminar ended with a reception at the Regional Environmental Center for Central and Eastern Europe.