

15 February 1999

**Update of UNICE Position on the Relationship Between the Provisions of the Multilateral Trading System and Trade Measures for Environmental Purposes, Including Those Pursuant to Multilateral Environmental Agreements (MEAs)**

**1. Introduction**

The following position is an update of the UNICE position dated 22 July 1996 (position attached). Originally, UNICE had suggested that trade measures be accommodated by amending GATT ARTICLE XX (exceptions) and by adding a WTO Understanding on the treatment of trade measures contained in MEAs. European industry considers it important that the high-level meeting on trade and environment comes to a conclusion on how to handle the relationship between MEAs and WTO. The subject is ripe for a decision, which will also give a positive impetus to future negotiations on trade and environment issues. Such negotiations should be launched at the third WTO Ministerial Conference as part of a new and comprehensive round of multilateral trade negotiations.

This update seeks to clarify how MEA trade measures could be made compatible with WTO. All other points mentioned in the attached UNICE position remain valid.

**2. The New UNICE Position - Adoption of an Understanding to accommodate MEA trade measures**

UNICE would like to propose that WTO accept, in principle, the validity of trade measures contained in MEAs. These measures aim at solving an international environmental problem. The WTO should decide that such measures are presumed compatible with GATT Article XX. Legally speaking the decision would constitute a rebuttable presumption in favour of the trade measure.

The presumption of compatibility will allow WTO members to initiate WTO dispute settlement proceedings against MEA trade measures, but it will require them to provide a higher burden of proof. In a typical trade case involving a unilateral measure the complainant has to prove that the measures violate a certain GATT provision, whilst the defendant will have to prove that this measure is justified by GATT Article XX. With respect to MEA trade measures, this burden of proof should be reversed. UNICE acknowledges the right of a WTO member to attack an MEA trade measure, in particular when this member is not a party to the MEA. In some cases the affected WTO member will only have the possibility of recourse to the WTO dispute settlement. The WTO should therefore not deprive its members of the only rights they might have.

Nevertheless WTO should accept that MEAs reflect a broad consensus in the international community on how to solve global environmental issues.

UNICE has consistently supported an international approach to solving global environmental problems. This is also reflected in the Rio Declaration and in its follow-up. WTO therefore cannot and should not treat MEA trade measures in exactly the same way as it treats unilateral trade actions.

UNICE considers this suggested approach reasonable. WTO accords MEA trade measures the benefit of the doubt. It neither rejects them out of hand nor does it give them *carte blanche*.

Such a proposal will not cause deadlock in global international negotiations aimed at solving environmental problems. MEA negotiators should be able to choose and decide the necessary means to achieve their environmental objectives while at the same time taking account of WTO rules and obligations. In so doing, MEA negotiators need to address such issues as necessity of the trade measure for the environmental aim, least trade-restrictiveness, and scientific justification coupled with risk assessment. UNICE accepts that it is the responsibility of MEA negotiators which measures they propose. If these criteria are met, a WTO challenge will not be successful.

### **3. Reasons for this Position Update**

The following events have prompted this update of the 22 July UNICE position. First, the trade and environment debate has increased awareness on the interrelationship between the two subjects. Thanks to the work done by the WTO Committee on Trade and Environment (CTE), there is much more co-operation and coordination between trade and environment ministries at national level during international environmental negotiations. UNICE is satisfied with this development.

Second, at international level, UNEP, UNCTAD and WTO have increasingly shown greater understanding of potential trade and environmental conflicts. Third, the WTO Appellate Body has clarified the interpretation of GATT Article XX in recent environmental cases which could be considered to be an opening of WTO towards environmental arguments.

UNICE hopes that the WTO can settle this important issue rapidly. This will enhance WTO's credibility in the trade and environment debate.

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